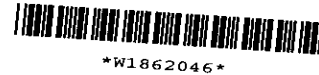


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**MASTER DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WOLF CREEK RESORT**

THIS MASTER DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made as of May 15, 2002, by **WOLF CREEK PROPERTIES, LC**, a Utah limited liability company ("**Declarant**").

PART ONE: INTRODUCTION TO THE COMMUNITY

Article I

Creation of the Community

1.1 Purpose and Intent.

Declarant intends by Recording this Declaration to establish a general plan of development for the Project. This Declaration provides a flexible and reasonable procedure for the Project's future expansion as Declarant deems appropriate and provides for its overall development, administration, maintenance and preservation. An integral part of the development plan is the creation of the Association, which is comprised of all owners of real property in the Project, to own, operate, and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents referenced in this Declaration.

1.2 Binding Effect.

All of the Property shall be owned, conveyed, and used subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be

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binding upon all Persons having any right, title, or interest in any portion of the Project, their heirs, successors, successors-in-title, and assigns. This Declaration, as it may be amended, shall remain in effect and shall be enforceable by Declarant, the Association, any Owner, and their respective legal representatives, heirs, successors, and assigns, for a term of 50 years from the date this Declaration is Recorded. After such time, this Declaration shall be extended automatically for successive periods of 10 years each, unless an instrument signed by a majority of the then Owners has been Recorded within the year preceding any extension, agreeing to terminate this Declaration, in which case it shall terminate as of the date specified in such instrument. Notwithstanding this, if any provision of this Declaration would be unlawful, void, or voidable by reasons of applicable law restricting the period of time that covenants on land may be enforced, such provision shall expire 21 years after the death of the last survivor of the now living descendants of Michael Leavitt, current Governor of the State of Utah. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

1.3 **Governing Documents.**

The Project's Governing Documents consist of:

- this Declaration and any Recorded Supplemental Declarations;
- Wolf Creek Resort Master Association, Inc.'s Articles of Incorporation and By-Laws;
- Restrictions and Rules described in Article III;
- Design Guidelines described in Article IV; and
- the Board's resolutions;

all as they may be amended from time to time.

Neighborhoods within the Project will be subject to additional covenants, restrictions, and easements, which a Neighborhood Association may administer. In such case, if there is a conflict between or among the Governing Documents and any such additional covenants or restrictions, or the governing documents or policies of any such Neighborhood Association, the Governing Documents shall control, except to the extent that the Neighborhood provisions establish a higher or stricter standard or requirement for that Neighborhood.

Nothing in this Section shall preclude any Supplemental Declaration or other Recorded covenants applicable to any portion of the Project from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration and, in such case, the more restrictive shall control. The Association may, but shall not be required to, enforce any such covenants, restrictions, or other instruments applicable to any Neighborhood. The Governing Documents apply to all Owners and occupants of property within the Project, as well as to their respective tenants, guests, and invitees. Any lease on a Unit shall provide that the

tenant and all occupants of the leased Unit are bound by and obligated to comply with the Governing Documents.

If any court should determine that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision.

Article II

Concepts and Definitions

The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below.

“Area of Common Responsibility”: The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenants, contracts, or agreements.

“Articles”: The Association’s Articles of Incorporation, as they may be amended.

“Association”: Wolf Creek Resort Master Association, Inc., a Utah non-profit corporation, to be comprised of all owners of real property in the Project, the purpose of which shall be to own, operate, and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents referenced in this Declaration.

“Base Assessment”: Assessments levied on all Units subject to assessment under **Article VIII** to fund Common Expenses for the general benefit of all Units, as determined in accordance with **Section 8.1**.

“Board”: The Association’s board of directors.

“Builder”: Any Person who purchases one or more Units for the purpose of constructing improvements for later sale to consumers, or who purchases one or more parcels of land within the Project for further subdivision, development, and/or resale in the ordinary course of its business.

“By-Laws”: The By-Laws of the Association, as they may be amended. A copy of the initial By-Laws is attached to this Declaration as **Exhibit C**.

“Class “B” Control Period”: The period of time during which the Class “B” Member is entitled to appoint a majority of the members of the Board as provided in **Section 3.5** of the By-Laws. The Class “B” Control Period shall terminate on the first to occur of the following:

(a) when 90% of the total number of Units permitted by the Land Use Plan (as it may be amended from time to time) for the Property (as it may be amended from time to time) have

certificates of occupancy issued thereon and have been conveyed to Class "A" Members other than Builders;

(b) December 31, 2032; or

(c) When, in its discretion, the Class "B" Member so determines.

"Common Area": All real and personal property, including easements, which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners. The term shall include the Limited Common Area, as defined below.

"Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents. Common Expenses shall not include any expenses incurred during the Class "B" Control Period for initial development or other original construction costs unless Members representing a majority of the total Class "A" vote of the Association approve. Payments due under leases of capital improvements such as street lights shall not be considered an initial development or original construction cost.

"Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing at the Project, or the minimum standards established pursuant to the Design Guidelines, Restrictions and Rules, and Board resolutions, whichever is the highest standard. Declarant shall establish initially such standard and it may contain both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and as the needs and desires within the Project change.

"Declarant": The Declarant named above, and any successor or assign who takes title to any portion of the Property for the purpose of development and/or sale and who is designated as Declarant in a Recorded instrument the immediately preceding Declarant executes.

"Design Guidelines": The architectural, design, and construction guidelines and review procedures adopted pursuant to **Article IV**, as they may be amended.

"Land Use Plan": The land use plan for the development of the Project prepared by The Jack Johnson Company dated March __, 2001, as it may be amended. Inclusion of property on the Land Use Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the omission of property from the Land Use Plan bar its later submission to this Declaration as provided herein.

"Limited Common Area": A portion of the Common Area primarily benefiting one or more, but less than all, Neighborhoods, as more particularly described in **Article XIII**.

"Member": A member of the Association pursuant to **Article VI**.

"Member Representative": A representative of a Member which has been properly designated as provided herein. Synonymous with a "Neighborhood Representative."

“Mortgage”: A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit. The term **“Mortgagee”** shall refer to a beneficiary or holder of a Mortgage.

“Neighborhood”: A Unit or group of Units designated as a separate Neighborhood for purposes of sharing Limited Common Areas and/or receiving other benefits or services from the Association which are not provided to all Units, and/or for the purpose of exercising voting and other rights as provided hereunder. A Neighborhood may consist of one or more housing types, including, without limitation, detached single family residential units, condominium units, and/or townhouses, resort facilities, commercial facilities, hotels, lodges, and/or recreational facilities, and other elements, all as approved by Declarant, and may include noncontiguous parcels of property. If the Association provides benefits or services to less than all Units within a particular Neighborhood, then the benefited Units may constitute a sub-Neighborhood for purposes of determining and levying Neighborhood Assessments for such benefits or services. Where the context permits or requires, the term Neighborhood shall also refer to the Neighborhood Committee (established in accordance with the By-Laws) or Neighborhood Association, if any, having concurrent jurisdiction over the property within the Neighborhood. Neighborhood boundaries may be established and modified as provided herein.

“Neighborhood Assessments”: Assessments levied against the Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as described in **Section 8.2**.

“Neighborhood Association”: A condominium association or other owners association, if any, having jurisdiction over any Neighborhood concurrent with (but subject to) the jurisdiction of the Association. Each Neighborhood shall establish a Neighborhood Association.

“Neighborhood Expenses”: The actual and estimated expenses which the Association incurs or expects to incur for the benefit of Owners within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements and a reasonable administrative charge, as may be authorized pursuant to this Declaration or in the Supplemental Declaration(s) applicable to such Neighborhood(s).

“Neighborhood Representative”: A representatives of a Neighborhood which has been properly designated as provided herein. Synonymous with a “Member Representative.”

“Owner”: One or more Persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a Recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

“Person”: A natural person, a corporation, a partnership, a limited liability company, a trustee, or any other legal entity.

“Private Amenities”: Any real property, improvements and/or facilities thereon located within the Project which Persons other than the Association own and operate for recreational and related purposes, on a club membership basis or otherwise, including, without limitation, any non-Association owned golf course(s) and all related and supporting facilities and improvements.

“Property”: The real property described in **Exhibit A**, together with such additional property as is subjected to this Declaration in accordance with the provisions hereof in the future by Recording one or more Supplemental Declarations,

“Project”: The planned community known as Wolf Creek Resort, which shall consist of the Property and all improvements thereon.

“Record,” “Recording,” or “Recorded”: The filing of a legal instrument in the Weber County, Utah Official Records.

“Restriction and Rules”: The initial restrictions and rules set forth in **Exhibit B**, as they may be supplemented, modified and repealed pursuant to **Article III** hereof.

“Special Assessment”: Assessments levied in accordance with **Section 8.4**.

“Specific Assessment”: Assessments levied in accordance with **Section 8.5**.

“Supplemental Declaration”: An instrument Recorded pursuant to **Article IX** which subjects additional property to this Declaration, designates Neighborhoods, and/or imposes additional restrictions and obligations on the land described in such instrument. The term shall also refer to an instrument Declarant Records pursuant to **Article VI** which designates Voting Groups.

“Unit”: A portion of the Project, whether improved or unimproved, which may be independently owned. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. In the case of a structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit. In the case of a parcel of vacant land or land on which improvements are under construction, the parcel shall be deemed to be a single Unit until such time as a Recorded plat subdivides all or a portion of the parcel. Thereafter, the portion encompassed on such plat shall contain the number of Units determined as set forth in the preceding paragraph. Any portion not encompassed on such plat shall continue to be treated in accordance with this paragraph.

“Voting Group”: A group of Members who vote on a common slate for election of directors, as more particularly described in **Article VI**.

PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

Article III

Use and Conduct

3.1 Framework for Regulation.

The Governing Documents establish, as part of the general plan of development for the Project, a framework of affirmative and negative covenants, easements, and restrictions which govern the Project. Within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends,

and technology. Therefore, this Article establishes procedures for modifying and expanding the initial Restrictions and Rules set forth in **Exhibit B**. This Article is not intended to apply to rules and regulations relating to use and operation of the Common Area which the Board may adopt by resolution pursuant to **Section 7.1(c)**.

3.2 **Rule Making Authority.**

(a) Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may modify, cancel, limit, create exceptions to, or expand the Restrictions and Rules. The Board shall send notice by mail to the Member Representatives concerning any proposed action at least fifteen (15) business days prior to the Board meeting at which such action is to be considered. Member Representatives shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Such action shall become effective after compliance with subsection (c) below unless Members representing more than 50% of the total Class "A" votes in the Association, and the Class "B" Member, if any, disapprove. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon receipt of a petition of the Members as required for special meetings in the By-Laws. Upon such petition of the Members prior to the effective date of any Board action under this Section, the proposed action shall not become effective until after such meeting is held, and then subject to the outcome of such meeting.

(b) Alternatively, Neighborhoods representing more than 50% of the total Class "A" votes in the Association at an Association meeting duly called for such purpose may vote to adopt rules which modify, cancel, limit, create exceptions to, or expand the Restrictions and Rules then in effect. Such action shall require approval of the Class "B" Member, if any.

(c) Prior to any action taken under this Section becoming effective, the Board shall send a copy of the new rule or explanation of any changes to the Restrictions and Rules to each Owner. The effective date shall be not less than 30 days following distribution to Owners. The Association shall provide, without cost, a copy of the Restrictions and Rules then in effect to any requesting member or Mortgagee.

(d) No action taken under this Article shall have the effect of modifying, repealing, or expanding the Design Guidelines or any provision of this Declaration other than the initial Restrictions and Rules set forth in **Exhibit B**. In the event of a conflict between the Design Guidelines and the Restrictions and Rules, the Design Guidelines shall control.

(e) The procedures required under this Section shall not apply to the enactment and enforcement of administrative rules and regulations governing use of the Common Area unless the Board chooses in its discretion to submit to such procedures. Examples of such administrative rules and regulations shall include, but not be limited to, hours of operation of a recreational facility, speed limits on private roads, and the methods of allocating or reserving use of a facility (if permitted) by particular individuals at particular times.

3.3 Owner's Acknowledgment and Notice to Purchasers.

ALL OWNERS ARE GIVEN NOTICE THAT USE OF THEIR UNITS AND THE COMMON AREA IS LIMITED BY THE RESTRICTIONS AND RULES AS AMENDED, EXPANDED, AND OTHERWISE MODIFIED FROM TIME TO TIME. EACH OWNER, BY ACCEPTANCE OF A DEED, ACKNOWLEDGES AND AGREES THAT THE USE AND ENJOYMENT AND MARKETABILITY OF HIS OR HER UNIT CAN BE AFFECTED BY THIS PROVISION AND THAT THE RESTRICTIONS AND RULES MAY CHANGE FROM TIME TO TIME. ALL PURCHASERS OF UNITS ARE ON NOTICE THAT THE ASSOCIATION MAY HAVE ADOPTED CHANGES. COPIES OF THE CURRENT RESTRICTIONS AND RULES MAY BE OBTAINED FROM THE ASSOCIATION.

3.4 Protection of Owners and Others.

Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Restrictions and Rules set forth in **Exhibit B**, all Restrictions and Rules shall comply with the following provisions.

(a) **Similar Treatment.** Similarly situated Owners shall be treated similarly; however, the Restrictions and Rules may vary by Neighborhood.

(b) **Displays.** The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Units of the kinds normally displayed in dwellings located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions with respect to displays visible from outside the dwelling.

(c) **Household Composition.** No rule shall interfere with the freedom of Owners to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit (which may include extended family) and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

(d) **Activities Within Dwellings.** No rule shall interfere with the activities carried on within the confines of dwellings, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.

(e) **Allocation of Burdens and Benefits.** No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the

Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in **Article VIII**.

(f) **Abridging Existing Rights.** No rule shall require an Owner to dispose of personal property that was in or on a Unit prior to the adoption of such rule if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Owner's ownership of the Unit, and shall not apply to subsequent owners who take title to the Unit after adoption of the rule.

(g) **Reasonable Rights to Develop.** No rule or action by the Association or Board shall unreasonably impede Declarant's right to develop the Project.

(h) **Interference with Private Amenities.** No Association rule or action shall interfere with the reasonable use or operation of any Private Amenity.

The limitations in subsections (a) through (h) of this Section shall only limit rulemaking authority exercised under **Section 3.2**; they shall not apply to amendments to this Declaration adopted in accordance with **Article XX**.

Article IV

Architecture and Landscaping

4.1 General.

No structure or thing shall be placed, erected, or installed upon any Unit and no improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place within the Project, except in compliance with this Article and the Design Guidelines. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of his or her Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structure shall be subject to approval. All dwellings constructed on any portion of the Project shall be designed by and built in accordance with the plans and specifications of a licensed architect unless Declarant or its designee otherwise approves in its sole discretion. This Article shall not apply to Declarant's activities, nor to activities of the Association during the Class "B" Control Period.

4.2 Architectural Review.

(a) **By Declarant.** Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Project, acknowledges that, as the developer of the Project and as an owner of portions of the Project, Declarant has a substantial interest in ensuring that the improvements within the Project enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell, or lease its property. Therefore, each Owner agrees that no activity within the scope of this Article shall be commenced on such Owner's Unit unless and until Declarant or its designee has given its prior written approval for such activity,

which approval may be granted or withheld in the Declarant's or its designee's sole discretion. In reviewing and acting upon any request for approval, Declarant or its designee shall be acting solely in Declarant's interest and shall owe no duty to any other Person. Declarant's rights reserved under this Article shall continue so long as Declarant owns any portion of the Project or any real property adjacent to the Project, unless earlier terminated in a written instrument executed and Recorded by Declarant. Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder. Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this Article to (i) a design review board appointed by the Board (the "**Design Review Board**" or "**DRB**"), or (ii) a committee comprised of architects, engineers, or other persons who may or may not be Members of the Association. Any such delegation shall be in writing specifying the scope of responsibilities delegated. It shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (ii) Declarant's right to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of the foregoing entities shall be limited to such matters as Declarant specifically delegates to it.

(b) **Design Review Board.** Upon delegation by Declarant or upon expiration or termination of Declarant's rights under this Article, the Association, acting through the DRB, shall assume jurisdiction over architectural matters. The DRB, when appointed, shall consist of at least three, but not more than seven, persons who shall serve and may be removed and replaced in the Board's discretion. The members of the DRB need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers, or similar professionals, who may be compensated in such manner and amount, if any, as the Board may establish. Unless and until such time as Declarant delegates all or a portion of its reserved rights to the DRB or Declarant's rights under this Article terminate, Declarant shall have sole jurisdiction over architectural matters.

(c) **Fees; Assistance.** For purposes of this Article, the entity having jurisdiction in a particular case shall be referred to as the "**Reviewer.**" The Reviewer may establish and charge reasonable fees for review of applications and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget.

4.3 **Guidelines and Procedures.**

(a) **Design Guidelines.** Declarant may prepare the initial Design Guidelines, which may contain general provisions applicable to all of the Project as well as specific provisions which vary from Neighborhood to Neighborhood. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Reviewer in considering applications. The Design Guidelines are not the exclusive basis for decisions of the Reviewer and compliance with the Design Guidelines does not guarantee approval of any application. Declarant shall have sole and full authority to amend the Design

Guidelines as long as it owns any portion of or has a right to expand the Project pursuant to **Section 9.1**, notwithstanding a delegation of reviewing authority to the DRB, unless Declarant also delegates the power to amend to the DRB. Upon termination or delegation of Declarant's right to amend, the DRB shall have the authority to amend the Design Guidelines with the consent of the Board. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive. The Reviewer shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Project. In Declarant's discretion, such Design Guidelines may be Recorded, in which event the Recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(b) **Procedures.** Except as otherwise specifically provided in the Design Guidelines, no activities shall commence on any portion of the Project until an application for approval has been submitted to and approved by the Reviewer. Such application shall include plans and specifications showing site layout, structural design, exterior elevations and building heights on each elevation, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Design Guidelines and the Reviewer may require the submission of such additional information as may be reasonably necessary to consider any application. In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations shall not be subject to review so long as made in good faith and in accordance with the procedures set forth herein. The Reviewer shall make a determination on each application within 30 days after receipt of a completed application and all required information. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. Until expiration of Declarant's rights under this Article, the DRB shall notify Declarant in writing within three business days after the DRB has approved any application within the scope of matters delegated to the DRB by Declarant. The notice shall be accompanied by a copy of the application and any additional information which Declarant may require. Declarant shall have 10 days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the DRB. The Reviewer shall notify the applicant in writing of the final determination on any application within five days thereafter or, with respect to any determination by the DRB subject to Declarant's veto right, within five days after the earlier of: (i) receipt of notice of Declarant's veto or waiver thereof; or (ii) expiration of the 10-day period for exercise of Declarant's veto. In the case of disapproval, the Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

In the event that the Reviewer fails to respond in a timely manner, approval shall be deemed to have been given, subject to Declarant's right to veto pursuant to this Section. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to **Section 4.5**. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the mail carrier. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant. If construction does not commence (defined as footings and foundations poured or otherwise installed) on a project for which plans have been approved within one year after the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant or any aggrieved Owner. The Reviewer may, by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

4.4 No Waiver of Future Approvals.

Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

4.5 Variances.

The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

4.6 Limitation of Liability.

The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Project; they do not create any duty to

any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and the Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners. Declarant, the Association, the Board, any committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees or agents, whether or not Declarant has approved or featured such contractor as a builder in the Project; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit. In all matters, the Board, the DRB, and the members of each shall be defended and indemnified by the Association as provided in **Section 7.6**.

4.7 Certificate of Compliance.

Any Owner may request that the Reviewer issue a certificate of architectural compliance certifying that there are no known violations of this Article or the Design Guidelines. The Association shall either grant or deny such request within 30 days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall estop the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.

4.8 Archeological Finds.

In the event that any object, artifact, or structure of possible archeological or historical significance is unearthed or otherwise discovered during construction, landscaping, or other activity on a Unit, the Owner thereof shall immediately cease the activity so as not to further disturb the object or structure and shall notify the Association of the discovery. Until such time as the Association and all required governmental authorities have evaluated the find, provided for its removal and/or preservation, if necessary, and given the Unit Owner notice that activities on the Unit may continue, the construction, landscaping, or other activity shall not recommence. Any work stoppage required hereunder shall toll the one year limit for completion of an approved project as specified in **Section 4.3(b)**. Each Owner agrees to notify all Persons performing any construction, landscaping, excavation, or other work on his or her Unit of the obligations hereunder.

Article V

Maintenance and Repair

5.1 Maintenance of Units.

Each Owner shall maintain his or her Unit and all landscaping and improvements comprising a part thereof in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood pursuant to any

Supplemental Declaration or other declaration of covenants applicable to such Unit. Each Owner shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Common Area or right-of-way lying between the Unit boundary and any wall, fence, or curb located on the Common area or right-of-way within 10 feet of the Unit boundary; provided, there shall be no right to remove trees, shrubs, or similar vegetation from such area without prior approval pursuant to **Article IV**. Each Owner of a Unit adjacent to any wetland or other body of water shall maintain such property to the water's edge.

5.2 Maintenance of Neighborhood Property.

All Neighborhood Associations shall maintain their common property and any other property for which they have maintenance responsibility in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants. All Neighborhood Associations shall also be responsible for maintaining and irrigating the landscaping within that portion of any adjacent Common Area or public right-of-way lying between the boundary of their common properties and any walls, fences, or curbs located on the Common Area or public right-of-way within 10 feet of their boundaries; provided, there shall be no right to remove trees, shrubs, or similar vegetation from such area without prior approval pursuant to **Article IV**. Upon resolution of the Board, Owners within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining, and insuring certain portions of the Area of Common Responsibility within or adjacent to such Neighborhood. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way, and green space between the Neighborhood and adjacent public roads, private streets within the Neighborhood, and lakes or ponds within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association; provided, however, all Neighborhoods which are similarly situated shall be treated the same. The Association may assume maintenance responsibility for property within any Neighborhood, in addition to that designated by any Supplemental Declaration, either by agreement with the Neighborhood or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard. All costs of maintenance pursuant to this paragraph shall be assessed as a Neighborhood Assessment only against the Units within the Neighborhood to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

5.3 Responsibility for Repair and Replacement.

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary to maintain the property to a level consistent with the Community-Wide Standard. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless either the Neighborhood Association (if any) for the Neighborhood in which the Unit is located or the Association carries such insurance (which they may, but are not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a

Specific Assessment against the benefited Unit and the Owner. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his or her Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with **Article IV**. Alternatively, the Owner shall clear the Unit and maintain it in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs not covered by insurance proceeds. This Section shall apply to any Neighborhood Association responsible for common property within the Neighborhood in the same manner as if the Neighborhood Association were an Owner and the common property were a Unit. Additional Recorded covenants applicable to any Neighborhood may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Units within such Neighborhood and for clearing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION

Article VI

The Association and its Members

6.1 Function of Association.

The Association is the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility. The Association also is the primary entity responsible for enforcement of the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and Utah law.

6.2 Membership.

Each Neighborhood Association shall be a Member, and only Neighborhood Associations shall be Members. There shall be only one Membership per Neighborhood Association. Each Neighborhood Association shall establish its own procedures for determining how its voting and other rights hereunder will be exercised, provided that it shall designate only one representative at any time to deal with the Association and all matters of Association business, and shall keep the Secretary of the Association apprised of who that representative is. No Neighborhood Association shall be entitled to exercise any rights hereunder during any period in which it has failed to so designate its representative. Each Neighborhood Association shall see that all Owners in its Neighborhood comply with all provisions hereof. Nevertheless, the Association shall have enforcement rights as set forth herein against all Owners directly, and all Owners shall be directly responsible to the Association to comply with all provisions hereof.

6.3 Voting.

The Association shall have two classes of membership, Class "A" and Class "B".

(a) **Class "A"**. The Class "A" Members shall be the Neighborhood Associations. Each Neighborhood Association shall have one equal vote per _____.

(b) **Class "B"**. The sole Class "B" Member shall be the Declarant. The Class "B" Member may appoint a majority of the members of the Board during the Class "B" Control Period, as specified in the By-Laws. Additional rights of the Class "B" Member are specified in the relevant sections of the Governing Documents. After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove actions of the Board and committees as provided in the By-Laws. The Class "B" membership shall terminate upon the earlier of:

(i) two years after expiration of the Class "B" Control Period pursuant to **Article III** of the By-Laws; or

(ii) when, in its discretion, Declarant so determines and declares in a Recorded instrument.

6.4 Voting Groups.

(a) **Voting Groups.** Declarant may designate Voting Groups consisting of two or more Neighborhoods for the purpose of electing directors to the Board. Voting Groups may be designated to ensure groups with dissimilar interests are represented on the Board and to avoid some Neighborhoods being able to elect the entire Board due to the number of Units in such Neighborhoods. Following termination of the Class "B" Control Period, the number of Voting Groups within the Project shall not exceed the total number of directors to be elected by the Class "A" Members pursuant to the By-Laws. Each Voting Group shall vote on a separate slate of candidates for election to the Board. Each Voting Group is entitled to elect the number of directors specified in the By-Laws. Declarant shall establish Voting Groups, if at all, not later than the date of expiration of the Class "B" Control Period by filing with the Association and Recording a Supplemental Declaration identifying each Voting Group by legal description or other means such that the Units within each Voting Group can easily be determined. Such designation may be amended from time to time by Declarant, acting alone, at any time prior to the expiration of the Class "B" Control Period. After expiration of Declarant's right to expand the Project pursuant to **Article IX**, the Board shall have the right to Record or amend such Supplemental Declaration upon the vote of a majority of the total number of directors and approval of Members representing a majority of the total Class "A" votes in the Association. Neither Recordation nor amendment of such Supplemental Declaration by Declarant shall constitute an amendment to this Declaration, and no consent or approval of any Person shall be required except as stated in this paragraph. Until such time as Voting Groups are established, all of the Project shall constitute a single Voting Group. After a Supplemental Declaration establishing Voting Groups has been Recorded, any and all portions of the Project which are not assigned to a specific Voting Group shall constitute a single Voting Group.

Article VII

Association Powers and Responsibilities

7.1 Acceptance and Control of Association Property.

(a) The Association, through action of its Board, may acquire, hold, lease (as lessor or lessee), operate, and dispose of tangible and intangible personal property and real property.

The Association may enter into leases, licenses, or operating agreements for portions of the Common Area, for such consideration or no consideration as the Board deems appropriate, to permit use of such portions of the Common Area by community organizations and by others, whether non-profit or for profit, for the provision of goods or services for the general benefit or convenience of owners occupants, and residents of the Project.

(b) Declarant and its designees may convey to the Association, and the Association shall accept, personal property and fee title, leasehold, or other property interests in any real property, improved or unimproved. Upon Declarant's written request, the Association shall reconvey to Declarant any unimproved portions of the Common Area Declarant originally conveyed to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

(c) The Association shall be responsible for management, operation, and control of the Common Area, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate.

7.2 Maintenance of Area of Common Responsibility.

The Association shall maintain, in accordance with the Community-Wide Standard, the Area of Common Responsibility, which shall include, but need not be limited to:

(a) All portions of and structures situated on the Common Area;

(b) Landscaping within the public rights-of-way within or abutting the Project;

(c) Such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, a covenant to share costs, or any contract or agreement for maintenance thereof entered into by the Association;

(d) All ponds, streams and/or wetlands located within the Property which serve as part of the stormwater drainage system for the Project, including improvements and equipment installed therein or used in connection therewith; and

(e) Any property and facilities Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Such property and facilities shall be identified by written notice from Declarant to the Association and will remain part of the Area of Common Responsibility maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own except to the extent that it has been negligent in the performance of its

maintenance responsibilities. The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless Members representing 75% of the Class "A" votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation. Except as provided above, the Area of Common Responsibility shall not be reduced except with Declarant's prior written approval as long as Declarant owns any property described in **Exhibit A** of this Declaration (as it may be amended from time to time). The costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense; provided, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other Recorded covenants, or agreements with the owner(s) thereof. Maintenance, repair, and replacement of Limited Common areas shall be a Neighborhood Expense assessed to the Neighborhood(s) such to which the Limited Common areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

7.3 Insurance.

(a) **Required Coverages.** The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Broad form property insurance for all insurable improvements on the Common Area and within the Area of Common Responsibility to the extent that Association has assumed responsibility in the event of a casualty, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$2,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage;

(iii) Employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-quarter of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in the exercise of its business judgment, determines advisable.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses, except that (i) premiums for property insurance on Units within a Neighborhood shall be a Neighborhood Expense; and (ii) premiums for insurance on Limited Common Areas may be included in the Neighborhood Expenses of the Neighborhood(s) to which such Limited Common Areas are assigned unless the Board reasonably determines that other treatment of the premiums is more appropriate.

(b) **Policy Requirements.** The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the location of the Project. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of **Section 7.3(a)**. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment. All insurance coverage obtained by the Board shall, to the extent available without unreasonable cost:

- (i) be written with a company authorized to do business in the State of Utah;
- (ii) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members. Policies secured on behalf of a Neighborhood shall be for the benefit of the Owners within the Neighborhood and their Mortgagees, as their interests may appear;
- (iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;
- (iv) contain an inflation guard endorsement;
- (v) include an agreed amount endorsement, if the policy contains a co-insurance clause;
- (vi) provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area as a Member (provided, this provision shall not be construed as giving an Owner any interest in the Common Area other than that of a Member);
- (vii) provide a waiver of subrogation under the policy against any Owner or household member of an Owner;
- (viii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of

any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

(ix) include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual owners, unless such Owner is acting within the scope of its authority on behalf of the Association.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the owners and their tenants, servants, agents, and guests;

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(iv) an endorsement requiring at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(v) a cross liability provision; and

(vi) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) **Restoring Damaged Improvements.** In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements on the Common Area shall be repaired or reconstructed unless the Members representing at least 75% of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide within 60 days after the loss not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the association in a neat and attractive, landscaped condition

consistent with the Community-Wide Standard. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by the Association for the benefit of its Members or the Owners of Units within the insured Neighborhood, as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under **Section 7.3(a)**.

7.4 Compliance and Enforcement.

(a) Every Owner and occupant of a Unit shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents after such notice and a hearing in accordance with the procedures set forth in **Section 3.24** of the By-Laws. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines which shall constitute a lien upon the violator's Unit. (In the event that any occupant, guest or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board);

(ii) suspending any Person's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(iii) suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association;

(iv) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(v) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Unit in violation of the Governing Documents and to restore the Unit to its previous condition and, upon failure of the owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(vi) without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of **Article IV** and the Design Guidelines from continuing or performing any further activities in the Project; and

(vii) levying Specific Assessments to cover costs incurred by the Association to bring a Unit into compliance with the Governing Documents.

In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in **Section 3.24** of the By-Laws:

- (i) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); or
- (ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may Record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner as a Specific Assessment. If a Neighborhood Association fails to perform its maintenance responsibilities, the Association may perform such maintenance and assess the costs as a Specific Assessment against all Units within such Neighborhood. Except in an emergency situation, the Association shall provide the Owner or Neighborhood Association reasonable notice and an opportunity to cure the problem prior to taking such enforcement action. All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

(b) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

- (i) the Association's position is not strong enough to justify taking any or further action; or
- (ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or
- (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or
- (iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, or rule. The Association, by contract or other agreement, may enforce applicable governmental ordinances, if applicable, and permit governmental authorities to enforce ordinances within the Project for the benefit of the Association and its Members.

7.5 Implied Rights; Board Authority.

The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the Membership. The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association. In exercising the rights and powers of the Association, making decisions on behalf of the Association, and conducting the Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in **Section 3.25** of the By-Laws.

7.6 Indemnification of Officers, Directors and Others.

Subject to Utah law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

7.7 Access Control.

Declarant, its successors or assigns shall have the exclusive right and authority, but not the obligation, to control access to the Property or any portion thereof by such means as the Board, in its sole discretion, deems reasonable and appropriate. Declarant may assign such right and authority to the Association. This authority shall include, but shall not be limited to, the right to construct, install, operate, and staff entrance gates, to require identification for admission to the Property, to videotape or otherwise record and document all Persons and vehicles entering the Property, to screen and/or require registration of vehicles, guests, and others entering the Property, and to deny entry to the Property to Persons other than Owners and residents.

7.8 Safety and Security.

EACH OWNER AND OCCUPANT OF A UNIT, AND THEIR RESPECTIVE GUESTS AND INVITEES, SHALL BE RESPONSIBLE FOR THEIR OWN PERSONAL SAFETY AND THE SECURITY OF THEIR PROPERTY IN THE PROJECT. THE ASSOCIATION MAY, BUT SHALL NOT BE OBLIGATED TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE PROJECT DESIGNED TO ENHANCE THE LEVEL OF SAFETY OR SECURITY WHICH EACH PERSON PROVIDES FOR HIMSELF AND HIS PROPERTY. NEITHER THE ASSOCIATION NOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SAFETY OR SECURITY WITHIN THE PROJECT, NOR SHALL EITHER BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SYSTEMS OR MEASURES, INCLUDING ANY MECHANISM OR SYSTEM FOR LIMITING ACCESS TO THE PROJECT, CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND SHALL BE RESPONSIBLE FOR INFORMING ITS TENANTS AND ALL OCCUPANTS OF ITS UNIT THAT THE ASSOCIATION, ITS BOARD AND COMMITTEES, AND DECLARANT ARE NOT INSURERS OR GUARANTORS OF SECURITY OR SAFETY AND THAT EACH PERSON WITHIN THE PROJECT ASSUMES ALL RISKS OF PERSONAL INJURY AND LOSS OR DAMAGE TO PROPERTY, INCLUDING UNITS AND THE CONTENTS OF UNITS, RESULTING FROM ACTS OF THIRD PARTIES.

7.9 Powers of the Association Relating to Neighborhood Associations.

The Association shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Association which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standards. The Association also shall have the power to require specific action to be taken by any Neighborhood Association in connection with its obligations and responsibilities, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefore. A Neighborhood Association shall take appropriate action required by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the Neighborhood Association fails to comply, the Association shall have the right to effect such action on behalf of the Neighborhood Association and levy Specific Assessments to cover the costs, as well as an administrative charge and sanctions.

7.10 Provision of Services.

The Association may provide, or provide for, services and facilities for the Members and/or the Owners and/or their Units, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may include the costs thereof in the Association's budget as a Common

Expense and assess it as part of the Base Assessment if provided to all Units. By way of example, such services and facilities might include landscape maintenance, pest control service, cable television service, security, caretaker, transportation, fire protection, utilities, and similar services and facilities. Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board shall be permitted to modify or cancel existing contracts for services in its discretion, unless the provision of such services is otherwise required by the Governing Documents. Non-use of services provided to all Owners or Units as a Common Expense shall not exempt any owner from the obligation to pay assessments for such services.

7.11 Relationships with Other Property.

The Association may enter into contractual agreements or covenants to share costs with any neighboring property or Private Amenity to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Area maintenance.

Article VIII

Association Finances

8.1 Budgeting and Allocating Common Expenses.

At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year, including any contributions to be made to a reserve fund pursuant to **Section 8.3**. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount to be generated through the levy of Base Assessments and Special Assessments against the Units, as authorized in **Section 8.7**. The Association is authorized to levy Base Assessments equally against all Units subject to assessment under **Section 8.7** to fund the Common Expenses. In determining the Base Assessment rate per Unit, the Board may consider any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year.

Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under **Section 8.7** to fund the Common Expenses. In determining the Base Assessment rate per Unit, the Board may consider any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year. Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under **Section 8.8(b)**), which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

The Board shall send a copy of the final budget, together with notice of the amount of the Base Assessment to be levied pursuant to such budget, to each Owner at least 30 days prior to the effective date of such budget. The budget shall automatically become effective unless disapproved at a meeting by Members representing at least 75% of the total Class "A" votes in the Association and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in **Section 2.4** of the By-Laws any such petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment. If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined. The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

8.2 Budgeting and Allocating Neighborhood Expenses.

At least 60 days before the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated Neighborhood Expenses for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. Each such budget shall include any costs for additional services or a higher level of services to be provided to such Neighborhoods and any contribution to be made to a reserve funds. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount required to be generated through the levy of Neighborhood and Special Assessments against the Units in such Neighborhood.

The Association is hereby authorized to levy Neighborhood Assessments equally against all Units in the Neighborhood which are subject to assessment under **Section 8.7** to fund Neighborhood Expenses; provided, if so specified in the applicable Supplemental Declaration or if so directed by the appropriate Neighborhood Representative, any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures shall be levied on each of the benefited Units in proportion to the benefit received.

The Board shall cause a copy of the Neighborhood budget and notice of the amount of the Neighborhood Assessment for the coming year to be delivered to the Neighborhood Representative at least 30 days prior to the beginning of the fiscal year. Such budget and assessment shall become effective unless disapproved by such Neighborhood Representative in writing delivered to the Board within 30 days thereafter. This right to disapprove shall only apply to those line items in the Neighborhood budget which are attributable to services requested by the Neighborhood and shall not apply to any item which the Governing Documents require to be assessed as a Neighborhood Assessment.

The Board may revise the budget for any Neighborhood and the amount of any Neighborhood Assessment from time to time during the year, subject to the notice requirements and the right of the affected Neighborhood to disapprove the revised budget as set forth above. All amounts collected by the Association as Neighborhood Assessments shall be held in trust for

and expended solely for the benefit of the Neighborhood for which they were collected and shall be accounted for separately from the Association's general funds.

8.3 Budgeting for Reserves.

The Board shall prepare and review at least annually a reserve budget for the Area of Common Responsibility and for each Neighborhood for which the Association maintains capital items as a Neighborhood Expense. The budgets shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repairs or replacement cost. The Board shall include in the Common Expense budget adopted pursuant to **Section 8.1** or the Neighborhood Expense budgets adopted pursuant to **Section 8.2**, as appropriate, a capital contribution to fund reserves in an amount sufficient to meet the projected need with respect both to amount and timing by annual contributions over the budget period.

8.4 Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against a Neighborhood Association if such Special Assessment is for Neighborhood Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of the Members representing more than 50% of the total votes allocated to the Members which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.5 Specific Assessments.

The Association shall have the power to levy Specific Assessments against a particular Unit as follows:

(a) To cover the costs, including overhead and administrative costs, of providing services to Units upon request of an Owner pursuant to any menu of special services which may be offered by the Association (which might include the items identified in **Section 7.10**). Specific Assessments for special services may be levied in advance of the provision of the requested service; and

(b) To cover costs incurred in bringing the Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Specific Assessment under this subsection.

The Association may also levy a Specific Assessment against the Units within any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Governing Documents, provided the Board gives prior

written notice to the Owners of Units in, or the Neighborhood representing, the Neighborhood and an opportunity for such Owners or Neighborhood to be heard before levying any such assessment.

8.6 Authority to Assess Owners; Time of Payment.

Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the month in which Declarant conveys the Unit to an Owner, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment and Neighborhood Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and any Neighborhood Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

8.7 Obligation for Assessments.

(a) **Personal Obligation.** Each Owner, by accepting a deed or entering into a Recorded contract of sale for any portion of the Project, is deemed to covenant and agree to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 18% per annum or such higher rate as the Board may establish, subject to the limitations of Utah law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Neighborhood Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections. No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his or her Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes. Upon written request, the Association shall furnish to any Owner liable for any type of assessment a certificate in writing signed by an

Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(b) **Declarant's Option to Fund Budget Deficits.** During the Class "B" Control Period, Declarant may satisfy its obligation, if any, for assessments on Units which it owns either by paying such assessments in the same manner as any other Owner, notwithstanding the commencement date of assessments set forth in **Section 8.7**, or by paying the difference between the amount of assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Unless Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. Regardless of Declarant's election, Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "B" Control Period, Declarant shall pay assessments on its unsold Units in the same manner as any other Owner.

8.8 Lien for Assessments.

The Association shall have a lien against each Unit including Declarant's to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of Utah law), and costs of collection (including attorneys' fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any Recorded first Mortgage (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure. The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no assessment shall be levied on it; and (b) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same. Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner to the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under **Section 8.7**, including such acquirer, its successors and assigns.

8.9 Exempt Property.

The following property shall be exempt from payment of Base Assessments, Neighborhood Assessments, and Special Assessments:

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- (a) All Common Area and such portions of the property owned by Declarant as are included in the Area of Common Responsibility;
- (b) Any property dedicated to and accepted by any governmental authority or public utility;
- (c) Property any Neighborhood Association owns for the common use and enjoyment of its members, or owned by the members of a Neighborhood Association as tenants-in-common;
- (d) Private Amenities; and
- (e) All undeveloped or unimproved land owned by Declarant.

PART FOUR: COMMUNITY DEVELOPMENT

Article IX

Expansion of the Community

9.1 Expansion by Declarant.

Declarant may from time to time subject to the provisions of this Declaration any additional property by Recording a Supplemental Declaration describing the additional property to be subjected. A Supplemental Declaration Recorded pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant. Declarant's right to expand the Project pursuant to this Section shall expire when Declarant no longer owns any property subject to this Declaration or 30 years after this Declaration is Recorded, whichever is earlier. Until then, Declarant may transfer or assign this right to any Person who is the developer of at least a portion of the Property. Any such transfer shall be memorialized in a written, Recorded instrument executed by Declarant.

9.2 Expansion.

(a) Declarant may, without the consent or approval of the Association or any of the Members, subject additional property to the provisions of this Declaration by Recording a Supplemental Declaration describing the additional property.

(b) The Association may also subject additional property to the provisions of this Declaration by Recording a Supplemental Declaration describing the additional property, provided such addition has been approved by the affirmative vote of Members representing more than 50% of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and so long as Declarant owns property subject to this Declaration, Declarant.

9.3 Additional Covenants and Easements.

Declarant may subject any portion of the Project to additional covenants and easements, including covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Neighborhood Assessments. Such

additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If the property is owned by someone other than Declarant, then the consent of the Owner(s) shall be necessary and shall be evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

9.4 Effect of Filing Supplemental Declaration.

A Supplemental Declaration shall be effective upon Recording unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

Article X

Additional Rights Reserved to Declarant

10.1 Withdrawal of Property.

Declarant reserves the right to amend this Declaration, so long as it has a right to annex additional property, for the purpose of removing any portion of the Project which has not yet been improved with structures from the coverage of this Declaration. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

10.2 Marketing and Sales Activities.

Declarant and Builders authorized by Declarant may construct and maintain upon portions of the Common Area such facilities and activities as, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of Units, including but not limited to, business offices, signs, model units, and sales offices. Declarant and authorized Builders shall have easements for access to and use of such facilities at no charge.

10.3 Right to Develop.

Declarant and its employees, agents and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area as it deems appropriate in its sole discretion. Every Person that acquires any interest in the Project acknowledges that the Project is a master planned community, the development of which is likely to extend over many years, and agrees not to protest, challenge, or otherwise object to (a) changes in uses or density of property outside the Neighborhood in which such Person holds an interest, or (b) changes in the Land Use Plan as it relates to property outside the Neighborhood in which such Person holds an interest.

10.4 Right to Approve Additional Covenants.

As long as Declarant owns property subject to this Declaration, no Person shall Record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Project without Declarant's review and written consent. Any attempted Recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed and Recorded by Declarant. HOWEVER, no portion of the Property shall be developed unless there has first been recorded against the same, unless waived in writing by Declarant, covenants, conditions and restrictions approved in advance in writing by Declarant which shall, among such other things as Declarant may reasonably require, establish architectural and development guidelines for such portion of the Property, and which shall not be subject to amendment or modification with Declarant's prior written consent.

10.5 Right to Approve Changes in Community Standards.

No amendment to or modification of any Restrictions and Rules or Design Guidelines shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns property subject to this Declaration.

10.6 Right to Transfer or Assign Declarant Rights.

Any or all of Declarant's rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument Declarant signs and Records. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time, occasional or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to Record any written assignment unless necessary to evidence Declarant's consent to such exercise. Upon such transfer, Declarant shall be relieved of all obligations related thereto.

10.7 Exclusive Right to Use Name of Development.

No Person shall use the name "Wolf Creek Resort" or any derivative of such name or in logo or depiction in any printed or promotional material without Declarant's prior written consent. However, Neighborhoods within the Project may use the name "Wolf Creek Resort" in printed or promotional matter where such term is used solely to specify that such Neighborhood is located within the Project, and the Association shall be entitled to use the words "Wolf Creek Resort" in its name.

10.8 Easement to Inspect and right to Correct.

Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the property within the Project, including Units, and a perpetual nonexclusive easement of access throughout the Project to the extent reasonably necessary to exercise such right. Except in an

emergency, entry onto a Unit shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

10.9 Termination of Rights.

The rights contained in this Article shall not terminate until the earlier of (a) 40 years from the date this Declaration is Recorded, or (b) Recording by Declarant of a written statement that all sales activity has ceased.

PART FIVE: PROPERTY RIGHTS WITHIN THE COMMUNITY

Article XI

Easements

11.1 Easements in Common Area.

Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common area, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The Board's right to:
 - (i) adopt rules regulating use and enjoyment of the Common area, including rules limiting the number of guests who may use the Common area;
 - (ii) suspend the right of an Owner to use recreational facilities within the Common Area (A) for any period during which any charge against such Owner's Unit remains delinquent, and (B) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of the Governing Documents after notice and a hearing pursuant to the By-Laws;
 - (iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;
 - (iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;
 - (v) permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees, and guests upon payment of use fees

established by the Board and designate other areas and facilities within the Area of Common Responsibility as open for the use and enjoyment of the public;

(vi) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and

(d) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Limited Common Areas," as described in **Article XIII**.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

11.2 Easements of Encroachment.

Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units or any Unit and any Private Amenity and any other golf course due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.3 Easements for Utilities, Etc.

(a) **Installation and Maintenance.** Declarant reserves for itself, so long as Declarant owns any property subject to this Declaration, and grants to the Association and all utility providers, perpetual non-exclusive easements throughout the Project (but not through a structure) to the extent reasonably necessary for the purpose of:

(i) installing utilities and infrastructure to serve the Project, cable, wireless and other systems for sending and receiving data and/or other electronic signals (including all technological evolutions thereof and replacements therefor), security and similar systems, walkways, cart paths, pathways and trails, drainage systems, street lights and signage on property which Declarant owns or within public rights-of-way or easements reserved for such purpose on Recorded plats;

(ii) inspecting, maintaining, repairing and replacing the utilities, infrastructure and other improvements described above; and

(iii) access to read utility meters.

(b) **Specific Easements.** Declarant also reserves for itself the non-exclusive right and power to grant and Record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any portion of the Property. The

Owner of any property to be burdened by any easement granted pursuant to this subsection (b) shall be given written notice in advance of the grant. The location of the easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

(c) **Minimal Interference.** All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

11.4 Easements to Serve Additional Property.

Declarant reserves for itself and its duly authorized agents, successors, assigns, and mortgages, an easement over the Common Area for the purposes of enjoyment, use, access, and development of any adjacent property owned by Declarant, whether or not such property is subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of their respective actions in connection with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such Property.

11.5 Easements for Maintenance, Emergency, and Enforcement.

Declarant grants to the Association easements over the Project as necessary to enable the Association to fulfill its maintenance responsibilities under **Section 7.2**. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

11.6 Easements for Channel and Wetland Maintenance and Flood Water.

Declarant reserves for itself, the Association, and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the Area of Common Responsibility to (a) install, operate, maintain, and replace pumps to supply irrigation water to the Area of Common Responsibility; (b) construct, maintain, and repair structures and equipment used for retaining water; and (c) maintain such

areas in a manner consistent with the Community-Wide Standard. Declarant, the Association, and their successors, assigns and designees shall have an access easement over and across any of the Project abutting or containing bodies of water or wetlands to the extent reasonably necessary to exercise their rights under this Section. Declarant further reserves for itself, the Association, and their successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and the Units (but not the dwellings thereon) adjacent to or within 100 feet of bodies of water and wetlands within the Project, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Project; (b) alter in any manner and generally maintain the bodies of water and wetlands within the Area of Common Responsibility; and (c) maintain and landscape the slopes and banks pertaining to such areas. All persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise 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 or other natural occurrences.

11.7 Easements for Golf Course and Resort Activities.

Every Unit and the Common Area and the common property of any Neighborhood Association are burdened with an easement permitting golf balls to unintentionally come upon such areas, and for golfers at reasonable times and in a reasonable manner to come upon the Common Area, common property of a Neighborhood, or the exterior portions of a Unit to retrieve errant golf balls; provided, however, if any Unit is fenced or walled, the golfer shall seek the Owner's permission before entry. Golfers shall not be liable for damage caused by errant golf balls, unless due to the reckless, wanton or deliberate actions of a golfer, and each Unit owner shall maintain insurance as desired to cover any such damage. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement: Declarant; the Association or its Members (in their capacities as such); the golf course owner, its successors, successors-in-title to the golf course, or assigns; any builder or contractor (in their capacities as such); any officer, director or partner of any of the foregoing, or any officer or director of any partner.

The owner of any golf course within or adjacent to any portion of the Project, its agents, successors and assigns, shall at all times have a right and non-exclusive easement of access and use over those portions of the Common Areas reasonably necessary to the operation, maintenance, repair and replacement of its golf course. Any portion of the Project immediately adjacent to any golf course is hereby burdened with a non-exclusive easement in favor of the adjacent golf course for overspray of water from the irrigation system serving such golf course. Under no circumstances shall the Association or the owner of such golf course be held liable for any damage or injury resulting from such overspray or the exercise of this easement. The owner of any golf course within or adjacent to any portion of the Project, its successors and assigns, shall have a perpetual, exclusive easement of access over the Project for the purpose of retrieving golf balls from bodies of water within the Common Areas lying reasonably within range of golf balls hit from its golf course.

11.8 Easements for Access.

Declarant reserves for itself and its successors, assigns, and designees, a perpetual easement over the roads, trails, and walkways within the Property for access by employees, independent contractors, and accompanied guests of Developer in connection with real estate sales activities within the Property. An easement is also reserved over such trails within the Project as are hereafter integrated into and become a part of the Weber County regional trails network (as so designated by Declarant or, after Declarant no longer owns any portion of the Property, the Association), and for reasonable public use of such trails for pedestrian, bicycle and similar passage in a manner consistent with the nature of the Project.

Article XII

Environmental Areas and Issues

12.1 Assignment of Responsibilities.

Within and adjacent to the Project there may be various types of property such as wetlands, drainage areas, conservation areas, open spaces, and buffers upon which restrictions, monitoring requirements, or other obligations may be imposed by governmental agencies. Declarant may from time to time and at any time deed, convey, transfer, or assign any or all of the foregoing areas or responsibilities to the Association, which shall accept, own, maintain, and preserve the foregoing areas in accordance with the requirements of such agencies. All such areas that are conveyed to the Association shall become a portion of the Common Area, and the ownership, operation, and maintenance thereof shall be a Common Expense. Alternatively, Declarant may deed, convey, transfer, or assign any or all of the foregoing areas or responsibilities to another community association, a foundation, or similar type entity with which the Association shall cooperate.

12.2 Surface Water Management System.

(a) No Owner, by erection of any structure or otherwise, shall in any way change, alter, impede, revise or otherwise interfere with the flow and the volume of water in any portion of the ditches, canals, channels, ponds, lakes, retention areas, or other bodies of water or waterways reserved for, or intended by Declarant to be reserved for, drainage ways or for the accumulation of runoff waters, as reflected in any permits therefore, or plat or instrument of records, without the specific written permission of the Association and Declarant.

(b) An Owner or Neighborhood Association shall in no way deny or prevent ingress and egress by Declarant or the Association such drainage areas for maintenance or landscape purposes. The right of ingress and egress, and easements therefore are hereby specifically reserved and created in favor of Declarant, the Association, or any appropriate governmental or quasi-governmental agency that may reasonably require such ingress and egress.

(c) No Unit shall be increased in size by filling in any water retention or drainage areas on which it abuts. Owners shall not fill, dike, rip-rap, block, divert or change the established drainage ways without the prior written consent of the Association and Declarant.

(d) Water management for any Unit or Neighborhood shall be provided in accordance with the overall drainage system for the Property. Surface water drainage and management including but not limited to, storm water treatment and storage capacity, shall conform to the overall drainage system requirements and permits, if any, for the Property and meet with the approval of Declarant and applicable governmental agencies.

(e) Lakes and spillways in any Neighborhood or Unit are part of a functioning water management system and any use by an Owner or Neighborhood Association shall be on a non-interfering basis only. Additional on-site stormwater treatment areas may be required and constructed in the future.

(f) The use of any wetland or water body within the boundary of a Neighborhood or Unit is managed by the Association. Owners shall cooperate in maintaining the same in a clean, attractive, pristine manner in order to be aesthetically pleasing.

(g) The use of pesticides in any water body or wetland is prohibited, excepting only any such use by the Association and Declarant.

(h) No wells may be drilled, dug, or installed within any Unit or Neighborhood except by the Declarant or with the Declarant's written consent.

12.3 Conservation Areas.

Any portions of the Common Area designated as a conservation area shall be maintained and preserved by the Association in accordance with the rules and regulations of all applicable governmental agencies. The Association shall not, and it shall not allow any Person to, undertake or perform any activity of improvements to a conservation area, or remove any native vegetation, without the prior approval of such agencies. No excavation, placement of debris, dumping, construction, or other activity shall be permitted in a conservation area.

12.4 Open Space and Buffers.

Any property conveyed or dedicated to the Association, which is designated as open space, landscape buffer, preserve area, or conservation area on any plat, permit, or other Recorded document, shall be owned and maintained by the Association in a natural open condition. The Association or any subsequent owner shall not do anything that diminishes or destroys the open space, buffers, preserve area, or conservation areas, and such areas shall not be developed for any purpose except that which improves or promotes the use and enjoyment of such areas as open space.

12.5 Effluent Disposal & Water Supply.

By the act of purchasing or occupying a Unit within the Property, all Owners understand and irrevocably consent to the possibility of irrigation of the Common Area, other areas within the Property, and areas adjacent to the Property, including any golf course, with treated effluent, provided that the effluent emanates from an approved treatment plant with a current operating permit from the appropriate governmental agency. Declarant, its designees, successors or assigns shall have the exclusive right to develop and utilize the ground and surface water

resources of the Property for any legal purpose, including the distribution and use of such water beyond the Property. Such right shall include an easement over the Property for access, and for installation and maintenance of facilities and equipment to capture and transport ground water, surface water, and stormwater runoff. The conveyance of any Unit to an Owner or parcel to a Builder by Declarant does not include the right to develop or utilize the ground, surface, or storm water resources within such Unit or parcel. Declarant or its designee may establish programs for reclamation of stormwater runoff and wastewater for appropriate uses within or outside the properties and may require Owners and occupants of Units to participate in such programs to the extent reasonably practical. No Owner or occupant shall have any right to compensation for water claimed or reclaimed from his or her Unit. Additionally, the Board may establish restrictions on or prohibit outside use of potable water within the Property.

12.6 Recycling Program.

The Board may, but shall not be obligated to, establish a recycling program for the Project. In such event, all occupants of Units shall support such program by recycling, to the extent reasonably practical, all materials which the Association's recycling program is set up to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation. Any costs associated with the implementation or operation of a recycling program shall be Common Expenses and any income the Association receives as a result of such recycling efforts shall be applied to Common Expenses.

Article XIII

Limited Common Areas

13.1 Purpose.

Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use or primary benefit of Owners and occupants within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Limited Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, water features and other portions of the Common Area within a particular Neighborhood, or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of an Limited Common Area shall be a Neighborhood Expense allocated among the Owners in the Neighborhood(s) to which the Limited Common Areas are assigned.

13.2 Designation.

Initially, any Limited Common Area shall be designated as such in the deed conveying such area to the Association or on the subdivision plat relating to such Common Area; provided, however, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Area to additional Units and/or Neighborhoods, so long as Declarant has a right to subject additional property to this Declaration. Thereafter, a portion of the Common Area may be assigned as Limited Common Area and Limited Common Area may be reassigned upon approval of the Board and the vote of Neighborhoods representing a majority of the total Class "A" votes in the Association, including a majority of the Class "A" votes within the Neighborhood(s) affected by the proposed assignment or reassignment. As long as Declarant

owns any property subject to this Declaration, any such assignment or reassignment shall also require Declarant's written consent.

13.3 Use by Others.

Upon approval of a majority of Owners of Units within the Neighborhood to which any Limited Common Area is assigned, the Association may permit Owners of Units in other Neighborhoods to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Limited common Area.

Article XIV

Party Walls and Other Shared Structures

14.1 General.

Each wall, fence, driveway or similar structure built as a part of the original construction on the Units which serves and /or separates any two adjoining Units shall constitute a party structure. Any dispute arising concerning a party structure shall be handles in accordance with the provisions of **Article XV**.

14.2 Maintenance; Damage and Destruction.

The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal portions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY.

Article XV

Dispute Resolution and Limitation on Litigation

15.1 Agreement to Encourage Resolution of Disputes Without Litigation.

(a) Declarant, the Association and its officers, directors, and committee members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b),

unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in **Section 15.2** in a good faith effort to resolve such Claim.

(b) As used in this Article, the term “**Claim**” shall refer to any claim, grievance or dispute arising out of or relating to

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of improvements within the Community, other than matters of aesthetic judgment under **Article IV**, which shall not be subject to review;

except that the following shall not be considered “Claims” unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in **Section 15.2**:

(i) any suit by the Association to collect Assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association’s ability to enforce the provisions of this Declaration relating to creation and maintenance of community standards;

(iii) any suit between Owners, which does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(iv) any suit in which any indispensable party is not a Bound Party; and

(v) any suit as to which any applicable statute of limitations would require within 180 days of giving the Notice required by **Section 15.2(a)**, unless the party or parties against whom the claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

15.2 Dispute Resolution Procedures.

(a) **Notice.** The bound Party asserting a Claim (“**Claimant**”) against another Bound Party (“**Respondent**”) shall give written notice to each Respondent and to the Board stating plainly and concisely;

(i) the nature of the Claim, including the Persons involved and the Respondent’s role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) **Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) **Mediation.** If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in **Section 15.2(a)** (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in Utah. If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim. If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate. Each Party shall bear its own costs of the mediation, including attorneys fees, and each Party shall share equally all fees charged by the mediator.

(d) **Settlement.** Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the Agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

15.3 **Initiation of Litigation by Association.**

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by a vote of Neighborhoods entitled to cast 75% of the total Class "A" votes in the Association, except that no such approval shall be required for actions or proceedings:

(a) initiated during the Class "B" Control Period;

(b) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;

(c) initiated to challenge property taxation or condemnation proceedings;

(d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

(e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it; or

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

Article XVI

Private Amenities and Other Resort Activities

16.1 General.

Neither Membership in the Association nor ownership or occupancy of a Unit shall confer any ownership interest in or right to use any Private Amenity. Rights to use the Private Amenities will be granted only to such persons, and on such terms and conditions, as may be determined from time to time by the respective owners of the Private Amenities. The owners of the Private Amenities shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the terms of any written agreements with their respective members.

16.2 Conveyance of Private Amenities.

All Persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant, the Association, any Builder, or by any Person acting on behalf of any of the foregoing, with regard to the continuing ownership, operation, existence, location or configuration of any Private Amenity. No purported representation or warranty in such regard, either written or oral, shall be effective unless specifically set forth in a written instrument executed by the record owner of the Private Amenity. The ownership, operation, existence, location or configuration of any Private Amenity may change at any time by virtue of, but without limitation, (a) the sale to or assumption of operations of any Private Amenity by a Person other than the current owner or operator; (b) the establishment of, or conversion of the membership structure to, an "equity" club or similar arrangement whereby the members of the Private Amenity or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Private Amenity; (c) the conveyance of any Private Amenity to one or more of Declarant's affiliates, shareholders, employees, or independent contractors, and/or (d) the decision of the owner or operator to abandon, redevelop (to any extent, which may include any entirely different type of use, such as dwelling units or commercial facilities), or change the location or configuration of, all or any part of any Private Amenity, subject to all required approvals of Developer and/or the Association. Consent of the Association, any Neighborhood Association, any Neighborhood, or any Owner shall *not* be required to effectuate any change in ownership, operation of any Private Amenity, for or without consideration, and subject to or free of any mortgage, covenant, lien or other encumbrance.

16.3 View Impairment.

Declarant, the Association, or the owner of any Private Amenity or other golf course, does not guarantee or represent that any view over and across the Private Amenity or other golf course from Units adjacent thereto will be preserved without impairment. Owners of Private Amenities and/or golf courses shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in their sole and absolute discretion, to add trees and other landscaping thereto from time to time. In addition, the owner of any golf course may, in its sole and absolute discretion, change the location, configuration, size and elevation of the tees, bunkers, fairways, greens, and the golf course itself, from time to time. Any such additions or changes may diminish or obstruct any view from the Units and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

16.4 Rights of Access and Parking.

There is hereby established for the benefit of the Private Amenities and golf courses and their members (regardless of whether such members are Owners hereunder), guests, invitees, employees, agents, contractors, and designees, a right and nonexclusive easement of access and use over all roadways located within the Project reasonably necessary to travel between the entrance to the Project and the Private Amenities and golf courses and over those portions of the Property (whether Common Area or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of the Private Amenities and golf courses. Without limiting the generality of the foregoing, members of the Private Amenities and guests and invitees of the Private Amenities and golf courses shall have the right to park their vehicles on the roadways located within the Project at reasonable times before, during, and after tournaments and other similar functions held by or at the Private Amenities and golf courses to the extent that the Private Amenities and golf courses, as applicable, have insufficient parking to accommodate such vehicles.

16.5 Architectural Control.

Declarant, the Association, any Neighborhood Association, or any committee shall not approve any construction, addition, alteration, change, or installation on or to any portion of the Project which is adjacent to, or otherwise in the direct line of sight of, any Private Amenity without giving the Private Amenity at least 15 days' prior written notice of its intent to approve the same together with copies of the request and all other documents and information finally submitted in such regard. The Private Amenity shall then have 15 days to respond in writing approving or disapproving the proposal, stating in detail the reasons for any disapproval. In the event the Private Amenity disapproves the proposal, the same shall be deemed disapproved by the Declarant, the Association, any Neighborhood Association, and any committee. The failure of the Private Amenity to respond to the notice within the 15-day period shall constitute a waiver of the Private Amenity's right to object to the matter. This Section shall also apply to any work on the Common Area or any common property or common elements of a Neighborhood Association, if any.

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16.6 Limitations on Amendments.

In recognition of the fact that the provisions of this Article are for the benefit of the Private Amenity, no amendment to this Article, and no amendment in derogation of any other provisions of this Declaration benefiting any Private Amenity, may be made without the written approval of the Private Amenity. The foregoing shall not apply, however, to amendments made by Declarant.

16.7 Jurisdiction and Cooperation.

It is Declarant's intention that the Association and the Private Amenities shall cooperate to the maximum extent possible in the operation of the Project and the Private Amenities. Each shall reasonably assist the other in upholding the Community-Wide Standard as it pertains to maintenance and the Design Guidelines. The Association shall have no power to promulgate Use Restrictions or Rules other than those set forth in **Exhibit B** affecting activities on or use of the Private Amenities without the prior written consent of the owners of the Private Amenity affected thereby.

16.8 Assumption of Risk and Indemnification.

Each Owner, by its purchase of a Unit, hereby acknowledges that the Project is a resort community with resort-type activities, which may include, without limitation, Private Amenities, golf courses, tennis courts, hot air balloons, carnivals, rides, horses and horseback riding, outdoor concerts, festivals, children's events, games and activities, outdoor theatre, golf, tennis and other tournaments, running, cross country skiing and mountain bike courses and/or races and/or other competitions of various kinds, and other resort-type facilities, events, activities and programs (collectively, "**Resort Activities**"), and expressly assumes the risk of noise, nuisances, hazards, personal injury, or property damage related to any and all Resort Activities, including, without limitation: (a) noise from maintenance equipment (it being specifically understood that such maintenance typically takes place around sunrise or sunset), (b) noise caused by Resort Activities and participants, (c) use of pesticides, herbicides, and fertilizers, (d) view restrictions caused by installation, relocation and maturation of trees and shrubbery, (e) use of effluent in the irrigation or fertilization, (f) reduction in privacy, including that related to maintenance activities, (g) errant equipment, including golf balls and golf clubs, and (h) facilities design. Each such Owner agrees that neither Declarant, the Association, any of the Declarant's affiliates or agents, nor any Resort Activities participant (unless acting recklessly or in a willfully wrongful manner) shall be liable to an Owner or any other person claiming any loss of damage, including, without limitation, indirect, special, or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to the proximity of Owner's Unit to any golf course, Private Amenity or other Resort Activity venue, including, without limitation, any claim arising in whole or in part from the negligence of Declarant, any of Declarant's affiliates or agents, or the Association. The Owner hereby agrees to indemnify and hold harmless Declarant, Declarant's affiliates and agents, and the Association against any and all claims by Owner's visitors, tenants, and others upon such Owner's Unit. Each Owner further covenants that the Association, the Declarant and the owners and operators of all Resort Activities shall have the right, in the nature of an easement, to subject all or any portion of the

Property to nuisances incidental to the maintenance, operation or use thereof, and to the carrying out of such Resort Activities.

16.9 Additional Golf Course Provisions.

(a) **Disclaimer.** All Persons, including without limitation all Owners, are hereby advised that no representations, warranties or commitments have been or are made by the Declarant or any other Person with regard to the present or future development, ownership, operations or configuration of, or right to use, any golf course or related facilities within, near or adjacent to the Property, whether or not depicted on the Land Use Plan, or any other land use plan, sales brochure or other marketing display, rendering or plan. No purported representation, warranty or commitment, written or oral, in such regard shall ever be effective without an amendment hereto executed by the Declarant. Further, the ownership, operation or configuration of, or rights to use, any such golf course or related facilities may change at any time and from time to time for reasons including, but not limited to: (1) the purchase or assumption of operation of any such golf course or related facilities by an independent Person; (2) the conversion of any such golf course or related facilities to an equity club or similar arrangement whereby members of such golf course or an entity owned or controlled thereby become the owner(s) and/or operator(s) of such golf course or related facilities (and, perhaps, such members become the only Persons entitled to use such golf course or related facilities); (3) the conveyance, pursuant to contract, option or otherwise, of such golf course or related facilities to one or more affiliates, shareholders, employees or independent contractors of the Declarant; or (4) the conveyance of any such golf course or related facilities, or portion thereof, to the Association. As to any of the foregoing or any other alternative, no consent of the Association or any Owner shall be required to effectuate such transfer (except for the consent of the Association in the event of a transfer to the Association). No Owner or its tenants or visitors shall have any ownership interest in, or right to use, any such golf course or relate facilities solely by virtue of: (i) his, her or its Association membership; or (ii) his, her or its ownership, use or occupancy of any Unit, or portion thereof.

(b) **Rights of Access and Parking.** Each such golf course and its members, invitees (including, without limitation, players and spectators, and regardless of whether such members or invitees are Owners), employees, agents, contractors or designers shall at all times have a right and nonexclusive easement of access and use over all roadways located within the Property as reasonably necessary to travel to and from any entrance within the Property to and from such golf course or related facilities and, further, over those portions of the Property (whether Common Area or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement (whether Common Area or otherwise) reasonably necessary to the operation, maintenance, repair, and replacement of such golf course and its facilities. Without limiting the generality of the foregoing, members and invitees of such golf course shall have the right to park their vehicles on the roadways within the Property at reasonable times before, during and after golf tournaments and the other functions held at such golf course.

(c) **Limitations on Amendments.** In recognition of the fact that the provisions of this Declaration related to golf courses are for the benefit of any such golf course, no amendment to this Declaration in derogation of the provisions applicable to golf courses may

be made without the written approval thereof by the owner(s) of any such golf course(s). The foregoing shall not apply, however, to amendments made by the Declarant.

(d) **Golf Cart Path Easements; Carts.** There may be golf cart path easements designated as such on one or more plats of the Property, or portions thereof, which may be used for golf cart paths, pedestrian walkways, maintenance and vehicle access, and unhindered access between said paths and any golf course. Nothing shall be placed or maintained in any golf cart path easement which shall interfere with utilization thereof as a playable part of such golf course, and all landscaping and other improvements within a golf cart path easement (except those installed or constructed by the Declarant) shall require the approval of the owner of the golf course benefited by such easement. No privately owned golf carts shall be allowed on any golf course within the Project.

(e) **Golf Balls, Disturbances and Nuisances.** Each Owner understands and agrees that his, her or its Unit is or may be adjacent to or near one or more golf courses and related facilities and that golf course-related activities, including, without limitation, regular course play and tournaments, may be held within or adjacent to the Property. Each Owner acknowledges that the location of his, her or its Unit may result in nuisances or hazards to persons and property on such Unit as a result of normal golf course operations or as a result of such other golf course-related activities. Each Owner covenants for itself, its successors and assigns, and for such Owner's tenants, visitors and family members, that it and they assume all risks associated with such location, including but not limited to, the risk of property damage or personal injury arising from stray golf balls or actions incidental to such golf course-related activities and shall indemnify and hold harmless the Association, the Declarant, the owner(s) and operator(s) of any such golf course related facilities and any and all sponsors and promoters of any tournament or other activity on or involving any such golf course or related facilities, for, from and against any liability, claims or expenses, including attorneys' fees and court costs, arising from such property damage or personal injury. Each Owner further covenants that the Association, the Declarant and the owner of any such golf course shall have the right, in the nature of an easement, to subject all or any portion of the Property to nuisances incidental to the maintenance, operation or use of any such golf course, and to the carrying out of such golf course-related activities, including, without limitation, tournament play.

(f) **Operation of the Golf Course.** Each Owner acknowledges that the operation and maintenance of any golf course within, near or adjacent to the Property may require that maintenance personnel and other workers will perform work relating to the operation and maintenance of such golf course as early as 4:00 a.m. and as late as 10:00 p.m. on a daily basis, and, in certain circumstances (including, without limitation, during tournaments), at any time of the day or night. In connection therewith, each Owner and its tenants and visitors agree that the Declarant, and the owner or owners of all or any portion of such golf course, and the employees, agents and contractors of the Declarant and such owners, shall not be responsible or accountable for, and shall be held harmless from, any claims, causes or action, loss or liability arising in connection with or associated with any noise or inconvenience normally associated with such operation and maintenance activities.

(g) **Other Golf Course Related Agreements.** No Owner or its tenants or visitors, and no guest, invitee, employee, agent or contractor thereof, shall at any time enter upon

any golf course (or related facilities) within, adjacent to or near the Project for any purpose (other than to engage in golf play or as a spectator or guest of the golf course, in each and every case subject to all the rules and regulations of such golf course including, without limitation, all requirements relating to membership, fees, reservation of tee times and the like), and each Owner and its tenants and visitors shall keep his, her or its pets and other animals off all golf courses (and out of any related facilities) at all times. No Owner shall (or permit his, her or its tenants and visitors, guests, invitees, employees, agents or contractors to) interfere in any way with play on the golf course (whether in the form of physical interference, noise, harassment of players or spectators, or otherwise). Each Owner (for such Owner and its tenants and visitors, guests and invitees) recognizes, agrees and accepts that: (a) operation of a golf course and related facilities will often involve parties and other gatherings (whether or not related to golf, and including without limitation weddings and other social functions) at or on the golf course and related facilities, tournaments, loud music, use of public address systems and the like, occasional supplemental lighting and other similar or dissimilar activities throughout the day, from early in the morning until late at night; (b) by their very nature, golf courses present certain potentially hazardous conditions, which may include, without limitation, lakes or other bodies of water and man-made or naturally-occurring topological features such as washes, gullies, canyons, uneven surfaces and the like; and (c) irrigation of the landscaping on a golf course or related facilities may result in water spraying, drifting or blowing onto adjacent or nearby Units. Neither such Owner nor its tenants or visitors, guests and invitees shall make any claim against the Declarant, the Association, the DRB, any other committee of the Association, any sponsor, promoter or organizer of any tournament or other event, or the owner or operator of any golf course within, adjacent to or near the Project (or any affiliate, agent, employee or representative of any of the foregoing) in connection with the matters described or referenced in (a), (b) and (c) above whether in the nature of a claim for damages relating to nuisance, personal injury or property damage, or otherwise.

Article XVII

Mortgage Provisions

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Project.

17.1 Notices of Action.

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an “**Eligible Holder**”), will be entitled to timely written notice sent to such address of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Project or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a

period of 60 days, or any other violation of the Governing Documents relating to such Unit or the Owner or its tenants which is not cured within 60 days; and

(c) Any lapse, cancellation or materially modification of any insurance policy maintained by the Association.

17.2 No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

17.3 Notice to Association.

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

PART SEVEN: CHANGES IN THE COMMUNITY

Article XVIII

Changes in Ownership of Units

Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title. Notwithstanding any other provision hereof, all transferors shall see that Transfer Assessments are paid when required under this Declaration and shall remain jointly and severally responsible for the same until paid. All commercial builders constructing Units shall use Utah State approved form Real Estate Purchase Contracts for all sales of Units.

Article XIX

Changes in Common Area

19.1 Condemnation.

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Neighborhoods representing at least 67% of the total Class "A" votes in the Association and of Declarant, as long as Declarant owns any property subject to the Declaration or which may be made subject to the Declaration) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any

condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

(a) If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking Declarant, so long as Declarant owns any property subject to the Declaration, and Neighborhoods representing at least 75% of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of **Section 7.3(c)** regarding funds for restoring improvements shall apply.

(b) If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

19.2 Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action partition of any portion of the Common Area without the written consent of all Owners and Mortgagees, and Declarant as long as Declarant owns any property subject to this Declaration. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

19.3 Transfer or Dedication of Common Area.

The Association may dedicate portions of the Common Area to any governmental or quasi-governmental entity.

Article XX

Amendment of Declaration

20.1 By Declarant.

In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Class "B" membership, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor or mortgage loans, to make, purchase, insure, or guarantee mortgage loans on the Units; or (iv) to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent in writing. So long as the Class "B" membership exists, the Class "B" Member

may unilaterally amend this Declaration for any other purpose, provided the amendment has no materially adverse effect upon the rights of more than 2% of the Members.

20.2 By Members.

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 75% of the total Class "A" votes in the Association, including 75% of the Class "A" votes held by Members other than Declarant, and Declarant's consent, so long Declarant owns any property subject to this Declaration. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

20.3 Validity and Effective Date.

No amendment may remove, revoke or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege). If any Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. Any amendment shall become effective upon Recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

Article XXI

Transfer Assessments

Upon any transfer of any Unit after the original sale thereof ("original sale" being defined for purposes of this sentence as (a) the original sale of a Unit built by a Builder if the Unit was constructed by such Builder with the intent of selling the same to consumers without any personal use thereof by such Builder, and (b) in any other case, the first sale of the Unit after the original sale by Declarant), there shall be automatically levied and due at the closing of the subject transfer an assessment against such Unit equal to 0.75% of the gross sales price thereof, less actual customary expenses of sale (or the equivalent thereof which would have been received by the transferor had the transaction been an arms-length, third-party cash transaction, in the event the transfer is not the same) ("**Transfer Assessment**"). Each Transfer Assessment shall be the joint and several obligation of both the subject transferor and transferee, and shall be subject to all other provisions hereof regarding transfers, including, without limitation, the lien provisions hereof. Transfer Assessments shall be used exclusively by the Association for

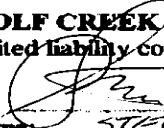
E# 1862046 BK2247 PG937

purposes related to Project amenities and Resort Activities.

IN WITNESS WHEREOF, Declarant has executed this Declaration the date and year first written above.

DECLARANT:

WOLF CREEK PROPERTIES, LC, a Utah limited liability company

By: 
Name: STEVEN ROBERTS
Its: MANAGING MEMBER

STATE OF UTAH)
) ss.
COUNTY OF Utah)

The foregoing instrument was acknowledged before me on July 16, 2002, by Steven Roberts, who acknowledged that he execute the same in the capacity indicated.

Notary Public: Rachelle Johnson

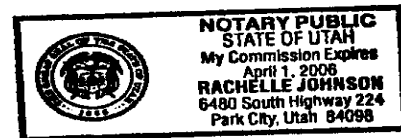


EXHIBIT A

LAND INITIALLY SUBMITTED

(SEE PARCEL MAP FOLLOWING TEXT FOR PARCEL LOCATION)

PARCEL 8
PARCEL ZONING RE-15

A PARCEL OF LAND LOCATED IN THE WEST 1/2 OF SECTION 23 AND THE NORTH 1/2 OF THE NORTHWEST 1/4 OF SECTION 26, AND THE NORTHEAST 1/4 AND SOUTHEAST 1/4 OF SECTION 22, TOWNSHIP 7 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH LINE OF ELKHORN PHASE 4, ENTRY NO. 1691677, SAID POINT BEING EAST 3319.98 FEET AND SOUTH 2187.95 FEET FROM THE CENTER OF SECTION 22, TOWNSHIP 7 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN (BASIS OF BEARING NORTH 89°14'39" WEST FROM THE CENTER OF SAID SECTION 22 TO THE WEST QUARTER OF SAID SECTION 22) AND RUNNING THENCE ALONG THE BOUNDARY OF SAID ELKHORN PHASE 4 THE FOLLOWING SEVENTEEN (17) COURSES: 1) THENCE SOUTH 64°18'02" EAST 143.88 FEET; 2) THENCE SOUTH 64°05'34" EAST 107.47 FEET; 3) THENCE SOUTH 57°53'09" EAST 126.51 FEET; 4) THENCE SOUTH 49°24'26" EAST 63.32 FEET; 5) THENCE SOUTH 50°06'38" EAST 878.91 FEET; 6) THENCE SOUTH 45°20'49" EAST 60.21 FEET; 7) THENCE SOUTH 50°20'55" EAST 139.47 FEET; 8) THENCE NORTH 40°24'15" EAST 190.43 FEET; 9) THENCE NORTH 50°06'38" WEST 89.48 FEET; 10) THENCE NORTH 39°53'22" EAST 130.00 FEET; 11) THENCE NORTH 50°06'38" WEST 121.32 FEET; 12) THENCE NORTH 39°53'22" EAST 66.83 FEET; 13) THENCE NORTH 49°33'31" WEST 125.01 FEET; 14) THENCE NORTH 06°44'36" EAST 176.13 FEET; 15) THENCE NORTH 50°28'53" WEST 816.79 FEET; 16) THENCE NORTH 70°55'39" WEST 280.22 FEET; 17) THENCE SOUTH 28°54'59" WEST 147.15 FEET TO THE EASTERLY BOUNDARY OF ELKHORN PHASE 3, ENTRY NO. 1572366; THENCE ALONG SAID EASTERLY BOUNDARY THE FOLLOWING THREE (3) COURSES: 1) THENCE NORTH 67°04'42" WEST 98.99 FEET; 2) THENCE NORTH 36°18'19" WEST 176.96 FEET; 3) THENCE NORTH 24°31'00" WEST 345.10 FEET TO THE ELKHORN PHASE 1 BOUNDARY, ENTRY NO. 1415848; THENCE ALONG SAID BOUNDARY THE FOLLOWING SIX (6) COURSES; 1) THENCE NORTH 37°54'53" EAST 181.56 FEET; 2) THENCE NORTH 48°24'42" WEST 226.68 FEET; 3) THENCE NORTH 82°17'10" WEST 63.68 FEET; 4) THENCE NORTH 67°26'40" WEST 128.35 FEET; 5) THENCE NORTH 05°52'06" EAST 106.09 FEET; 6) THENCE NORTH 84°41'43" WEST 75.38 FEET TO THE NORTHEASTERLY CORNER OF LOT 8, ELKHORN SUBDIVISION PHASE 1A, ENTRY NO. 1449010; THENCE ALONG THE NORTHERLY AND WESTERLY BOUNDARY OF SAID LOT 8, THE FOLLOWING TWO (2) COURSES: 1) THENCE NORTH 51°37'08" WEST 142.52 FEET; 2) THENCE SOUTH 32°53'34" WEST 127.51 FEET TO THE NORTHERLY BOUNDARY OF SAID ELKHORN PHASE 1, SAID POINT ALSO BEING A

PART OF LOTS 12 TO 16 - HIGHLANDS AT WOLF CREEK PH. 1
22-174-1107
22-195-1108
22-020-0021, 0022, 0027
22-016-0014

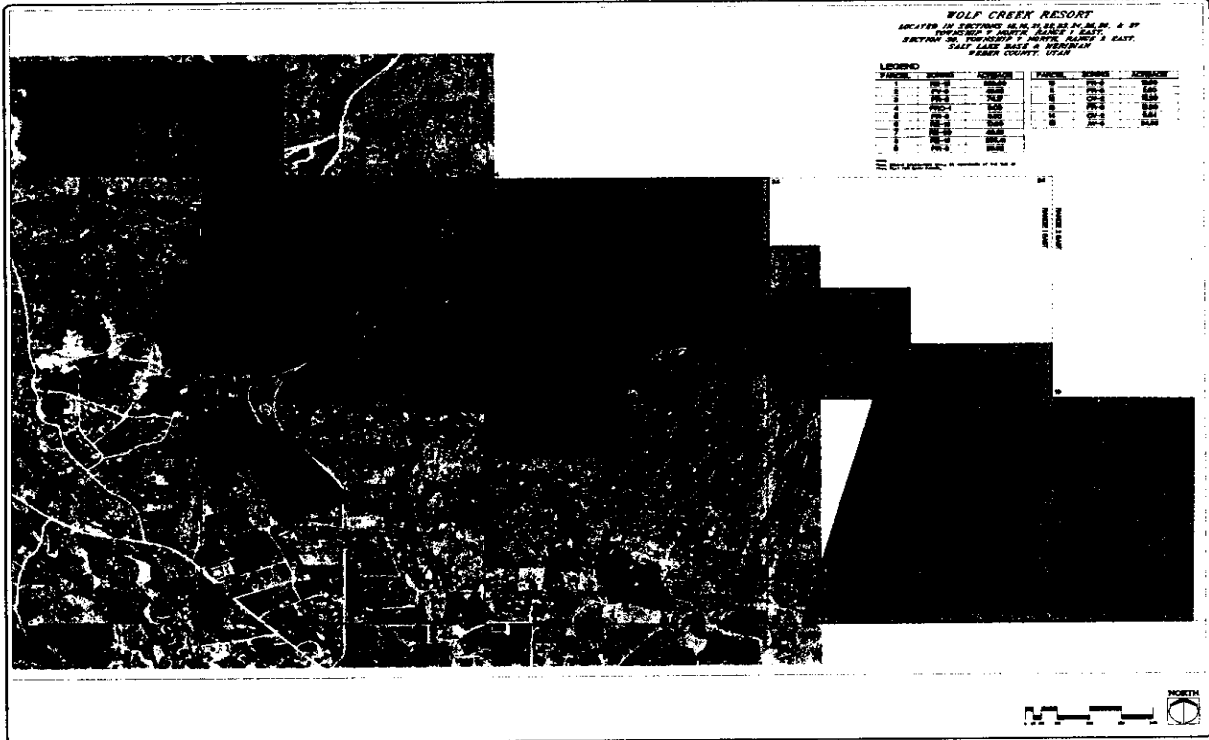
NON-TANGENT POINT OF CURVATURE OF A 666.00 FOOT RADIUS CURVE TO THE LEFT, THE CENTER OF WHICH BEARS SOUTH 32°40'18" WEST; THENCE ALONG SAID NORTHERLY BOUNDARY THE FOLLOWING TWO (2) COURSES: 1) THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE 72.40 FEET THROUGH A CENTRAL ANGLE OF 06°13'43" TO A POINT OF REVERSE CURVATURE OF A 1463.00 FOOT RADIUS CURVE TO THE RIGHT, THE CENTER OF WHICH BEARS NORTH 26°26'35" EAST; 2) THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE 46.80 FEET THROUGH A CENTRAL ANGLE OF 01°49'58" TO THE WESTERLY LINE OF SAID SECTION 23; THENCE NORTH 00°17'59" EAST ALONG THE SECTION LINE 405.88 FEET; THENCE NORTH 31°12'57" WEST 448.67 FEET; THENCE NORTH 26°48'28" EAST 958.00 FEET; THENCE SOUTH 50°52'00" EAST 2118.00 FEET; THENCE SOUTH 67°30'12" EAST 422.00 FEET; THENCE SOUTH 44°20'14" EAST 596.11 FEET; THENCE SOUTH 00°21'47" WEST 1495.41 FEET; THENCE SOUTH 00°21'31" WEST 1325.17 FEET; THENCE NORTH 89°48'12" WEST 2647.25 FEET; THENCE NORTH 00°27'52" EAST 1150.49 TO THE SOUTH LINE OF ELKHORN PHASE 3, ENTRY NO. 1572366, THENCE ALONG THE SOUTH AND EASTERLY BOUNDARY OF SAID ELKHORN PHASE 3 THE FOLLOWING NINE (9) COURSES: 1) THENCE SOUTH 89°07'48" EAST 132.34 FEET; 2) THENCE NORTH 89°51'02" EAST 189.94 FEET; 3) THENCE NORTH 01°26'25" WEST 130.53 FEET; 4) THENCE NORTH 17°10'22" WEST 157.52 FEET; 5) THENCE NORTH 58°18'49" EAST 68.60 FEET; 6) THENCE NORTH 38°47'54" EAST 172.79 FEET; 7) THENCE NORTH 28°21'04" EAST 73.83 FEET; 8) THENCE NORTH 45°52'46" EAST 143.92 FEET; 9) THENCE NORTH 55°13'30" EAST 124.26 FEET TO THE POINT OF BEGINNING. CONTAINING 194.24 ACRES, MORE OR LESS.

EXCLUDING THEREFROM:

ALL OF ELKHORN PHASE 1, ENTRY NO. 1415848, ELKHORN PHASE 1A, ENTRY NO. 1449010, ELKHORN PHASE 2 AMENDED, ENTRY NO. ~~1537449~~, ELKHORN PHASE 3, ENTRY NO. 1572366, ELKHORN PHASE 4, ENTRY NO. 1691677, IF AND TO THE EXTENT FORMING A PART THEREOF.

1537449

E: 1862046 BK2247 PG940



JLC JOHNSON COMPANY

WOLF CREEK RESORT
 WEBER COUNTY, UTAH
 ZONING MAP

E# 1862046 BK2247 PG941

EXHIBIT B

INITIAL RESTRICTIONS AND RULES

The following restrictions shall apply to all of the Property until such time as they are amended, modified, repealed or limited pursuant to the Declaration. The words used in these Rules and Regulations shall be given their normal, commonly understood definitions, except that capitalized terms shall have the same meaning as set forth in the Declaration to which these Rules and Regulations are attached unless the context indicates otherwise.

1. **General.** The Property shall be used only for residential, recreational and related purposes (which may include, without limitation, an information center and/or a sales office for any real estate broker retained by Declarant to assist in the sale of portions of the Property, offices for any property manager retained by the Association, or business offices for Declarant or the Association, and commercial purposes as shown on the Land Use Plan) consistent with this Declaration and any Supplemental Declaration.

2. **Restricted Activities.** The following activities are prohibited within the Project unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board:

(a) Parking any vehicles on public or private streets or thoroughfares, or parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles or inoperable vehicles in places other than enclosed garages; provided, construction, services and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Area;

(b) Raising, breeding or keeping animals, livestock or poultry of any kind, except that a reasonable number of dogs, cats or other usual and common household pets (as determined by the Board in its absolute and sole discretion) may be permitted in a Unit; however, those pets which are permitted to roam free, or, in the sole discretion of the Board, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet. Dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the dwelling. Pets shall be registered, licensed and inoculated as required by law.

(c) Any activity which emits foul or obnoxious odors outside the Unit or creates noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Units;

(d) Any activity which violates governmental laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;

(e) Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Unit;

E# 1862046 BK2247 PG942

(f) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance or nuisance to persons using the Common Area or to the occupants of other Units;

(g) Outside burning of trash, leaves, debris or other materials, except during the normal course of constructing a dwelling on a Unit;

(h) Use or discharge of any radio, loudspeaker, horn, whistle, bell or other audio equipment or sound device so as to be audible to occupants or other Units, except alarm devices used exclusively for security purposes;

(i) Use and discharge of firecrackers and other fireworks;

(j) Dumping grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances in any drainage ditch, stream, pond or lake or elsewhere within the Project, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff, and Declarant and Builders may dump and bury rocks and trees removed from a building site on such building site;

(k) Accumulation of rubbish, trash or garbage except between regular garbage pick ups, and then only in approved containers;

(l) Obstruction or rechanneling drainage flows after location and installation of drainage swales, storm sewers or storm drains, except that Declarant and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of a unreasonably interfere with the use of any Unit without the Owner's consent;

(m) Subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit after a subdivision plat including such Unit has been approved and Recorded, except that Declarant shall be permitted to subdivide or replat Units which it owns;

(n) Swimming, boating, use of personal flotation devices or other active use of lakes, ponds, streams or other bodies of water within the Project, except that (i) fishing shall be permitted with appropriate licenses, and (ii) Declarant, its successors and assigns, shall be permitted and shall have the exclusive right and easement to retrieve golf balls from bodies of water within the Common Areas and to draw water from lakes, ponds and streams within the Project for purposes of irrigation and such other purposes as Declarant shall deem desirable. The Association shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of rivers, lakes, ponds, streams or other bodies of water within or adjacent to the Project;

(o) Use of any Unit for operation of a timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, except that Declarant and its assigns may operate such a program with respect to Units which it owns;

(p) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(q) On-site storage of gasoline, heating or other fuels, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment. This provision shall not apply to any underground fuel tank authorized pursuant to the Declaration;

(r) Any business, trade, garage sale, moving sale, rummage sale or similar activity, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Project; (iii) the business activity does not involve door-to-door solicitation of residents of the Project; (iv) the business activity does not, in the Board's reasonable judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in the Project which is noticeably greater than that which is typical of Units in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety or other residents of the Project, as may be determined in the sole discretion of the Board. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation; work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time; (ii) such activity is intended to or does generate a profit, or (iii) a license is required. Leasing of a Unit shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by Declarant or a Builder approved by Declarant with respect to its development and sale of the Project or its use of any Units which it owns within the Project, including the operation of a timeshare or similar program. Furthermore, this subsection shall not apply to any rental program operated by the Declarant or its assigns to which certain condominium Units within the Property may be subject;

(s) Capturing, trapping or killing of wildlife within the Project, except in circumstances posing an imminent threat to the safety of persons using the Project, or as determined by the Association to constitute a nuisance;

(t) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within the Project or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(u) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit without prior approval pursuant to the provisions of the Declaration;

(v) Operation of motorized vehicles on pathways or trails maintained by the Association, except that golf carts may be operated on cart paths intended for such purposes;

(w) Disposal or drainage of sewage, wastewater, storm water or other water matter from the Property into canals or other bodies of water within or adjacent to the Property; and

(x) Any construction, erection, placement or modification of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of the Declaration. This shall include, without limitation, signs, basketball hoops, swing sets and similar sports and play equipment; clotheslines or other clothes drying facilities; garbage cans; woodpiles; above-ground swimming pools; docks, piers and similar structures; and hedges, walls, dog runs, animal pens, or fences of any kind. Standard TV antennas, satellite dishes and other similar hardware (collectively, "**Reception Devices**") which are one meter in diameter or less shall be permitted at the Project, and no other Reception Devices shall be permitted, provided that the erection of all otherwise permitted Reception Devices shall be subject to the prior written approval of the DRB, which shall have the maximum authority permitted by applicable law to impose conditions thereon, such as prior written approval of location, appearance (including color) and screening. In the event any screening or other condition required by the DRB is determined by the Board (in its sole and absolute discretion) to be likely to result in a cost in excess of the amount the Owner in question can be legally required to incur, the Board shall have the authority to expend common funds to pay or reimburse such excess cost. "For sale" and "for lease" signs shall be permitted provided: (i) the sign is limited in size to 18" by 24"; (ii) no more than one sign shall be permitted per Lot at any time; (iii) the sign shall be restricted to the Lot; (iv) the sign shall be permitted only while the Lot is being actively and seriously marketed; (v) the sign must be professional in appearance and kept in good repair at all times; and (vi) no balloons, banners, streamers or attachments to the sign will be permitted.

3. **Prohibited Conditions.** The following shall be prohibited within the Property:

(a) Plants, animals, devices or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Project;

(b) Structures, equipment or other items on the exterior portions of a Unit which have become rusty, dilapidated or otherwise fallen into disrepair;

(c) Mobile homes or temporarily buildings or structures of any kind other than sheds or workshops to be used only for the works incidental to the erection of any permanent buildings on a Unit;

(d) Septic tanks;

(e) Sprinkler or irrigation systems or wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals or other ground or surface waters within the Project, except that Declarant and the Association shall have the right to draw water from such sources.

4. **Leasing of Units.** "Leasing," for purposes of this Paragraph, is defined as regular, exclusive occupancy of a Unit by any person, other than the Owner for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity or

emolument. All leases shall be in writing. The Board may require a minimum lease term and may limit the number of times a Unit may be leased per year, which requirements may vary from Neighborhood to Neighborhood. Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Unit Owner within 10 days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-Laws and the Restrictions and Rules.

5. **Window Treatments and Visibility.** Only appropriate and tasteful draperies, shades and other interior window coverings, as determined by the DRB, which shall be plain and neutral on the exterior facing side, shall be utilized in Units. Owners in question may submit proposed window treatments to the Association for prior approval. In no event will materials such as towels, sheets, aluminum foil, etc. be used to cover windows, even on a temporary basis. Owners shall at all times utilize appropriate window treatments. Owners shall not erect or display any signs, banners or similar items visible from outside their Units without the prior written consent of the DRB.

E# 1862046 BK2247 PG946

EXHIBIT C
BY-LAWS
OF
WOLF CREEK RESORT
MASTER ASSOCIATION, INC.

ARTICLE I
NAME, PRINCIPAL OFFICE AND DEFINITIONS

1.1 **Name.** The name of the corporation is Wolf Creek Resort Master Association, Inc. (the “Association”).

1.2 **Principal Office.**

The principal office of the Association shall be located at 3900 North Wolf Creek Drive, Eden, UT 84310. The Association may have such other offices, either within or outside Utah, as the Board may determine or as the affairs of the Association may require.

1.3 **Definitions.**

The words used in these By-Laws shall be given their normal, commonly understood definitions, except that capitalized terms shall have the same meaning as set forth in the Declaration to which these By-Laws are attached unless the context indicates otherwise.

ARTICLE II
MEMBERSHIP: MEETINGS, QUORUM, VOTING, PROXIES

2.1 **Membership.**

The Association shall have two classes of membership, Class “A” and Class “B,” as more fully set forth in the Declaration. The provisions of the Declaration pertaining to membership are incorporated by this reference.

2.2 **Place of Meetings.**

Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate.

2.3 **Annual Meetings.**

The Association’s first meeting, whether a regular or special meeting, shall be held within one year after the date of the association’s incorporation. Subsequent regular annual meetings shall be set by the Board so as to occur during the third quarter of the Association’s fiscal year on a date and at a time set by the Board.

E# 1862046 BK2247 P6947

2.4 Special Meetings.

The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Members representing at least 10% of the total Class "A" votes of the Association.

2.5 Notice of Meetings.

Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than 10 nor more than 30 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting. In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice. If mailed, the notice shall be deemed to be delivered when deposited with a mail carrier in accordance with **Section 6.5** hereof and addressed to the Member at his address as it appears on the Association's records, with postage prepaid.

2.6 Waiver of Notice.

Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may waive, in writing, notice of any meeting of the Members, either before or after such meeting. Any Member who attends a meeting waives notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7 Voting.

The voting rights of the Members shall be as set forth in the Declaration and in these By-Laws, and such voting rights provisions are specifically incorporated by this reference.

2.8 Proxies.

Members may not vote by proxy, but only in person through their Member Representatives.

2.9 Quorum.

For purposes of any Association meeting, a quorum shall consist of the Members actually in attendance at such Association meeting.

E† 1862046 BK2247 PG948

2.10 Conduct of Meetings.

The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.11 Action Without a Meeting.

Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, prior notice, or a vote if written consent specifically authorizing the proposed action is signed by Members holding at least the minimum number of votes necessary to authorize such action at a meeting if all Members entitled to vote thereon were present. Such consents shall be signed within 60 days after receipt of the earliest date consent, dated, and delivered to the Association. Such consents, as filed with the minutes of the Association, shall have the same force and effect as a vote of the Members at a meeting. Within 10 days after receiving written consent authorization for any action, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

**ARTICLE III
BOARD OF DIRECTORS: SELECTION, MEETINGS, POWERS**

A. Composition and Selection.

3.1 Governing Body: Composition

The Board shall govern the Association's affairs. Each director shall have one vote. Except with respect to the Class "B" Member's appointees, directors shall be Owners.

3.2 Number of Directors.

The Board shall consist of three to seven directors, as provided herein. The initial Board shall consist of three directors as identified in the Articles.

3.3 Directors During Class "B" Control Period.

Directors appointed by the Class "B" Member pursuant to **Section 3.5** hereof shall be appointed by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member.

3.4 Nomination and Election Procedures.

(a) **Nominations and Declarations of Candidacy.** Prior to each election of directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which each and every eligible person who has a bona-fide interest in serving as a director may file as a candidate for any position Class "A" votes shall fill. The Board shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of directors in a fair, efficient and cost-effective manner. Nominations also shall be permitted from

the floor. Except with respect to Class "B" Member selected directors, nominations for election to the Board may also be made by a Nominating Committee. The Nominating Committee, if any, shall consist of a Chair person, who shall be a member of the Board, and three or more Member Representatives of Members, with at least one representative from each Voting Group. The Board shall appoint members of the Nominating Committee not less than 30 days prior to each annual meeting to serve a term of one year and until their successors are appointed, and such appointment shall be announced in the notice of each election. The Nominating Committee may make as many nominations for election to the Board as it shall in its discretion determine. The Nominating Committee shall nominate separate slates for the directors, if any, to be elected at large by all Class "A" votes, and for the director(s) to be elected by the votes within each Voting Group. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates. Each candidate shall be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes.

(b) **Election Procedures.** Each Member may cast all of its votes for each position to be filled from the slate of candidates on which such Member is entitled to vote. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

3.5 Election and Term of Office.

Except as these By-Laws may otherwise specifically provide, election of directors shall take place at the Association's annual meeting. Notwithstanding any other provision of these By-Laws:

(a) Within 30 days after the time that Class "A" Members other than Builders first own 25% of the Units permitted by the Land Use Plan for the Property (as Exhibit A to the Declaration may be amended from time to time), or whenever the Class "B" Member earlier determines, the President shall call for an election at which the Members may elect one of the three directors, who shall be an at-large director. The remaining two directors shall be appointees of the Class "B" Member. The Members' director shall not be subject to removal by the Class "B" Member and shall be elected for a term of two years or until the happening of the event described in subsection (b), whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (b), a successor shall be elected for a like term.

(b) Within 30 days after the time that Class "A" Members other than Builders own 50% of the Units permitted by the Land Use Plan for the Property (as Exhibit A to the Declaration may be amended from time to time), or whenever the Class "B" Member earlier determines, the Board shall be increased to five directors. The President shall call for an election at which the Members may elect two of the five directors, who shall serve as at-large directors. The remaining three directors shall be appointees of the Class "B" Member. The Members' directors shall not be subject to removal by the Class "B" Member and shall be elected for a term of two years or until the happening of the event described in subsection (c) below, whichever is

shorter. If such directors' terms expire prior to the happening of the event described in subsection (c) below, successors shall be elected for a like term.

(c) Within 90 days after termination of the Class "B" Control Period, the President shall call for an election by which the Members shall be entitled to elect three of the five directors, who shall serve as at-large directors. The remaining two directors shall be appointees of the Class "B" Member. Directors elected by the Members shall not be subject to removal by the Class "B" Member and shall serve until the first annual meeting following the termination of the Class "B" Control Period. If such annual meeting is scheduled to occur within 90 days after termination of the Class "B" Control Period, this subsection shall not apply and directors shall be elected in accordance with subsection (d) below.

(d) Not later than the first annual meeting after the termination of the Class "B" Control Period, the Board shall be increased to seven directors and an election shall be held. Six directors shall be elected by the Members. Each Voting Group, through its Members, shall elect an equal number of directors. If after such vote any of the six directorships remain, such directorship(s) shall be filled at large by the vote of all Members. Three directors shall serve a term of two years and three directors shall serve a term of one year, as such directors determine among themselves. Until termination of the Class "B" membership, the Class "B" Member shall be entitled to appoint one director. Upon termination of the Class "B" membership, the director elected by the Class "B" Member shall resign and the remaining directors shall be entitled to appoint a director to serve until the next annual meeting, at which time the Members shall be entitled to elect a director to fill such position. Such director shall be elected for a term of two years. Upon expiration of the term of office of each director elected by the Members, Members entitled to elect such director shall be entitled to elect a successor to serve a term of two years. Directors elected by the Members shall hold office until their respective successors have been elected.

3.6 Removal of Directors and Vacancies.

By the vote of Members holding a majority of the votes entitled to be cast for the election of such director, the Members may remove, with or without cause, any director they elected. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director. Any Member-elected director who has three consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent (or is the representative of a Member who is so delinquent) in the payment of any assessment or other charge due the Association, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term. In the event of the death, disability, or resignation of a director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members entitled to fill such directorship may elect a successor for the remainder of the term. Any director whom the Board appoints shall be selected from among Members within the Voting Group represented by the director who vacated the position. This Section shall not apply to directors the Class "B" Members appoints nor to any director serving as Declarant's representative. The Class "B" Member or Declarant shall be entitled to appoint a successor to

fill any vacancy on the Board resulting from the death, disability or resignation of a director appointed by or elected as a representative of the Class "B" Member or Declarant.

B. Meetings.

3.7 Organizational Meetings.

The first meeting of the Board following each annual meeting of the membership shall be held within 10 days thereafter at such time and place as the Board shall fix.

3.8 Regular Meetings.

Regular meetings of the Board may be held at such time and place as a majority of the directors shall determine, but at least four such meetings shall be held during each fiscal year with at least one per quarter.

3.9 Special Meetings.

The Board shall hold special meetings when the President or Vice President or any two directors signs and communicates written notice of such.

3.10 Notice; Waiver of Notice.

(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The notice shall be given to each director by: (i) personal delivery; (ii) first class mail or air mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) facsimile, computer, fiber optics, or other electronic communication device, with confirmation of transmission. All such notices shall be given at the director's telephone number, fax number, electronic mail number, or sent to the director's address as shown on the records of the Association. Notices sent by first class mail or air mail shall be deposited with the mail carrier at least five business days before the time set for the meeting. Notices given by personal delivery, telephone, or other device shall be delivered or transmitted at least 72 hours before the time set for the meeting.

(b) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.11 Telephonic Participation in Meetings.

Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications

equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

3.12 Quorum of Board.

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any Board meeting cannot be held because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.13 Conduct of Meetings.

The President shall preside over all Board meetings, and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.14 Open Meetings; Executive Session.

(a) Except in an emergency, notice of Board meetings shall be posted at least 48 hours in advance of the meeting at a conspicuous place within the Project which the Board establishes for the posting of notices relating to the Association. Notice of any meeting at which assessments are to be established shall state that fact and the nature of the assessment. Subject to the provisions of **Section 3.15** hereof, all Board meetings shall be open to all Members and, if required by law, all Owners; but attendees other than directors may not participate in any discussion or deliberation unless a director requests that they be granted permission to speak. In such case, the President may limit the time any such individual may speak.

(b) Notwithstanding the above, the President may adjourn any Board meeting and reconvene in executive session, and may exclude persons other than directors, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

3.15 Action Without a Formal Meeting.

Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the directors. Such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

3.16 Powers.

The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Governing Documents, and as provided by law. The Board may do or cause to be done on behalf of the Association all acts and things except those which the Governing Documents or Utah law require to be done and exercised exclusively by the Members or the membership generally.

3.17 Duties.

Duties of the Board shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget and establishing each Owner's share of the Common Expenses and any Member Expenses;
- (b) levying and collecting such assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard;
- (d) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve funds may be deposited, in the Board's judgment, in depositories other than banks;
- (f) making and amending use restrictions and rules in accordance with the Declaration;
- (g) opening bank accounts on behalf of the Association and designating the signatories required;
- (h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these By-Laws;
- (i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association's obligation in this regard shall be conditioned in the manner provided in the Declaration;

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the cost of all services rendered to the Association;

(l) keeping books with detailed accounts of the Association's receipts and expenditures;

(m) making available to any prospective purchase of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in **Section 6.4** hereof;

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Project;

(o) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by Utah law, the Articles, or the Declaration; and

(p) assisting in the resolution of disputes between owners and others without litigation, as set forth in the Declaration.

3.18 Compensation.

Directors shall not receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total Class "A" votes in the Association at a regular or special meeting of the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding the interested director.

3.19 Right of Class "B" Members to Disapprove Actions.

So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove any action, policy, or program of the Association, the Board and any committee which, in the sole judgment of the Class "B" Member, would tend to impair rights of Declarant or Builders under the Declarant or these By-Laws, or interfere with development or construction of any portion of the Project, or diminish the level of services the Association provides.

(a) **Notice.** The Class "B" Member shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board, or any committee. Such notice shall be given by certified mail,

return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies as to Board meetings with **Sections 3.9 and 3.10** hereof and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting; and

(b) **Opportunity to be Heard.** The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met. The Class "B" Member, its representatives or agents, shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Class "B" Member, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, the Board or the Association. The Class "B" Member 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 regulations.

3.20 **Management.**

The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority or those duties set forth in **Sections 3.17(a)** (with respect to adoption of the budget), **3.17(b)**, **3.17(f)**, **3.17(g)** and **3.17(i)**. Declarant or its affiliate may be employed as managing agent or manager. The Board may delegate to one of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.

3.21 **Accounts and Reports.**

The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

- (a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;
- (b) accounting and controls should conform to generally accepted accounting principles;
- (c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;

(f) commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet as of the last day of the preceding period; and

(v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution); and

(g) an annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent public accountant; provided, upon written request of any holder, guarantor or insurer of any first Mortgage on a Unit, the Association shall provide an audited financial statement. During the Class "B" Control Period, the annual report shall include certified financial statements.

3.22 **Borrowing.**

The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain Member approval in the same manner provided in the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 50% of the Association's budgeted gross expenses for that fiscal year.

3.23 Rights to Contract.

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or Member and other owners or residents associations, within and outside the Project. Any common management agreement shall require the consent of a majority of the Board.

3.24 Enforcement.

The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Declaration the Board shall comply with the following procedures prior to imposition of sanctions:

(a) **Notice.** The Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than 10 days within which the alleged violator may present a written request for a hearing to the Board or the Covenants Committee, if one has been appointed pursuant to **Article V** hereof; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within 10 days of the notice. If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; provided the Board or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) **Hearing.** If a hearing is requested within the allotted 10-day period, the hearing shall be held before the Covenants Committee, or if none has been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) **Appeal.** Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To exercise this right, a written notice of appeal must be received by the Association's manager, President, or Secretary within 10 days after the hearing date.

(d) **Additional Enforcement Rights.** Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, towing vehicles that violate parking rules) or, following compliance with the dispute resolution procedures set forth in the

Declaration, if applicable, by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of such abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred. Any entry onto a Unit for purposes of exercising this power of self-help shall not be deemed as trespass.

3.25 Board Standards.

In the performance of their duties, Association directors and officers shall be insulated from personal liability as provided by Utah law for directors and officers of non-profit corporations, and as otherwise provided in the Governing Documents. Directors are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business judgment rule. As defined herein, a director shall be acting in accordance with the business judgment rule so long as the director: (a) acts within the express or implied terms of the Governing Documents and his or her actions are not *ultra vires*; (b) affirmatively undertakes to make decisions which are necessary for the continued and successful operation of the Association and, when decisions are made, they are made on an informed basis; (c) acts on a disinterested basis, promptly discloses any real or potential conflict of interests (pecuniary or other), and avoids participation in such decisions and actions; and (d) acts in a non-fraudulent manner and without reckless indifference to the affairs of the Association. A director acting in accordance with the business judgment rule shall be protected from personal liability. Board determinations of the meaning, scope, and application of Governing Documents provisions shall be upheld and enforced so long as such determinations are reasonable. The Board shall exercise its power in a fair and nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

ARTICLE IV OFFICERS

4.1 Officers.

Officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among Board members; other officers may, but need not be Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more officers may be held by the same person, except the offices of President and Secretary.

4.2 Election and Term Office.

The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the Members, to serve until their successors are elected.

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4.3 Removal and Vacancies.

The Board may remove any officer whenever in its judgment the best interests of the Association will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4 Power and Duties.

The Association's officers shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.5 Resignation.

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

4.6 Agreements, Contracts, Deeds, Leases, Checks, Etc.

All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.

4.7 Compensation.

Compensation of officers shall be subject to the same limitations as compensation of directors under **Section 3.18** hereof.

**ARTICLE V
COMMITTEES**

5.1 General.

The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2 Covenants Committee.

In addition to any other committees which the Board may establish pursuant to **Section 5.1** hereof, the Board may appoint a Covenants Committee consisting of at least three and no more than seven Members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established,

shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.24 hereof.

**ARTICLE VI
MISCELLANEOUS**

6.1 Fiscal Year.

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2 Parliamentary Rules.

Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with Utah law or the Governing Documents.

6.3 Conflicts.

If there are conflicts among the provisions of Utah law, the Articles, the Declaration, and these By-Laws, the provisions of Utah law, the Declaration, the Articles, and the By-Laws (in that order) shall prevail.

6.4 Books and Records.

(a) **Inspection by Members and Mortgagees.** The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Governing Documents, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the Association's office or at such other place within the Project as the Board shall designate.

(b) **Rules for Inspection.** The Board shall establish rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing documents requested.

(c) **Inspection by Directors.** Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the Association's expense.

6.5 Notices.

Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally, sent by U.S. mail, first class postage prepaid:

(a) if to a Member or Member, at the address which the Member or Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member or Member;

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section; or

(c) if to any committee, at the principal address of the Association or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

6.6 Amendment.

(a) **By Class "B" Member.** Prior to termination of the Class "B" Control Period, the Class "B" Member may unilaterally amend these By-Laws. Thereafter, the Class "B" Member may unilaterally amend these By-Laws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; or (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, to make, purchase, insure or guarantee mortgage loans on the Units; provided, however, any such amendment shall not materially and adversely affect the title to any Unit unless the Owner shall consent thereto in writing. Additionally, so long as the Class "B" membership exists, the Class "B" Member may unilaterally amend these By-Laws for any other purpose, provided the amendment has no materially adverse effect upon the rights of more than 2% of the Members.

(b) **By Members Generally.** Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 51% of the total Class "A" votes in the Association, and the consent of the Class "B" Member, if such exists. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) **Validity and Effective Date of Amendments.** Amendments to these By-Laws shall become effective upon Recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its Recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

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No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declaration, the Class "B" Member, or the assignee of such right or privilege.

E# 1862046 BK2247 PG963

CONSENT AND SUBMISSION AGREEMENT

The undersigned, as owner of the real property legally described in Exhibit 1 attached hereto (the "Property"), or holder of a mortgage lien against the same (which, if applicable is described below), hereby subjects and subordinates the Property and all of its interest therein to all of the provisions of that certain Master Declaration of Covenants, Conditions and Restrictions for Wolf Creek Resort dated as of May 15, 2002 and recorded as Entry Number _____, in Book _____ at Page _____, Weber County, Utah Official Records.

Description of Mortgage (if applicable):

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____, by _____, who acknowledged that he/she/they execute the same in the capacity indicated.

Notary Public: _____
Residing At: _____
My Commission Expires: _____

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