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E# 3089379 PG 1 OF 76
Leann H. Kilts, WEBER COUNTY RECORDER
30-Sep-20 0202 PM FEE \$446.00 DEP T
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**DECLARATION
OF
CONSOLIDATION**

AND

RESTATED AND AMENDED DECLARATION

OF

COVENANTS, CONDITIONS & RESTRICTIONS

FOR

RIVERBEND TOWNHOMES

A PLANNED RESIDENTIAL UNIT DEVELOPMENT

September 2020

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**DECLARATION OF CONSOLIDATION
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RESTATED AND AMENDED DECLARATION
OF
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FOR
RIVERBEND TOWNHOMES
A PLANNED RESIDENTIAL UNIT DEVELOPMENT**

This Declaration of Consolidation and Restated and Amended Declaration of Covenants, Conditions and Restrictions for Riverbend Townhomes, a Planned Residential Unit Development (“Restated Declaration”), is made and executed by and between the Owners of Lots and Units located in Riverbend Townhomes, Phases 1 through 7 (“Riverbend”), located in West Haven City, Weber County, Utah. The Owners of the Lots and Units identified in Exhibit “A”, attached, will be members of the Riverbend Homeowners Association, Inc., a Utah nonprofit corporation (“Association”).

RECITALS

WHEREAS, the Unit Owners in Riverbend own fee simple title to that certain property situated in Weber County, Utah, described on Exhibit “A” attached hereto; and

WHEREAS, the “Declaration of Covenants, Conditions and Restrictions of Riverbend Townhomes P.R.U.D.” (“the 2007 Declaration”) was recorded in the office of the Weber County Recorder on March 29, 2007, as entry number 2252445, against the Units in Riverbend, Phase 1; and

WHEREAS, the “Declaration of Covenants, Conditions and Restrictions of Riverbend Townhomes Phase 2” (the “First 2009 Declaration”) was recorded in the office of the Weber County Recorder on March 27, 2009, as entry number 2400602, against the property and Units in Riverbend, Phase 2; and

WHEREAS, the “Declaration of Covenants, Conditions and Restrictions of Riverbend Townhomes, A Planned Residential Unit Development” (the “Second 2009 Declaration”) was recorded in the office of the Weber County Recorder on May 13, 2009, as entry number 2411373, against the property and Units in Riverbend, Phase 2; and

WHEREAS, the “Master Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements” (the “2013 Declaration”) was recorded in the office of the Weber County Recorder on November 7, 2013, as entry number 2663441, against the property and Units in Riverbend, Phases 3 through 7, and govern the Riverbend South Townhomes Owners Association (“Riverbend South”); and

WHEREAS, prior to the recording of this Restated Declaration, the Unit Owners and

Units in Riverbend, Phases 1 and 2 were part of the Riverbend Homeowners Association, Inc. ("Association"), and the Unit Owners and Units in Phases 3 through 7 were part of the Riverbend South Townhomes Owners Association, Inc. ("Riverbend South"); and

WHEREAS, the Unit Owners within the Riverbend Homeowners Association, Inc., and the Unit Owners within the Riverbend South Townhomes Owners Association, Inc. desire to combine and consolidate the two associations and create one association known as the Riverbend Homeowners Association, Inc. ("Association"); and

WHEREAS, the Unit Owners in Phases 1 and 2 of Riverbend desire to amend and replace the 2007 Declaration, the First 2009 Declaration and the Second 2009 Declaration, and replace those documents with this Restated Declaration; and

WHEREAS, the Unit Owners in Phases 3 through 7 of Riverbend desire to amend and replace the 2013 Declaration with this Restated Declaration; and

WHEREAS, the purpose and intent of this Restated Declaration is to merge and consolidate all Units, Lots and Common Area within Phases 1 through 7 of Riverbend into the Riverbend Homeowners Association, with all Units being subject to the covenants, conditions and restrictions set forth in this Restated Declaration.

WHEREAS, the interests and assets of Riverbend and Riverbend South (neither corporation issues stock to its members), and the membership interests of Riverbend's members and the membership interests of Riverbend South members shall be reallocated equally upon consolidation to all members of Riverbend as follows:

The membership interests appurtenant to each Lot in Riverbend, totaling one-hundred twenty-five (125), shall be combined with the membership interests appurtenant to each Lot in Riverbend South, totaling eighty-six (86), for a total of 211 membership interests in Riverbend, the consolidated and surviving entity. Each Lot Owner and member of the pre-consolidated Riverbend shall have an equal interest in Riverbend and each member of Riverbend South shall have an equal interest in Riverbend. Upon consolidation, Riverbend (originally consisting of 125 lots and members) and the members and lots formerly comprising Riverbend South (86 lots and members), shall total 211 lots and 211 membership interests. The 125 members of Riverbend and the 86 members of Riverbend South shall henceforth each possess equal 1/211th interests in Riverbend.

Additional terms of consolidation are set forth in the Plan of Merger which has been voted on and approved by the membership of each Association.

NOW, THEREFORE, to accomplish the Owners' objectives this Restated Declaration is hereby adopted. The 2007 Declaration, the First 2009 Declaration, the Second 2009 Declaration and the 2013 Declaration are hereby restated, amended and replaced by this Restated Declaration. It is the intent of the Members and Owners that this Restated Declaration replace all prior governing documents and that this Restated Declaration be the sole set of restrictive covenants governing the Units, the Lots, the Common Area and the Association; and

Notwithstanding any language herein to the contrary the following are not renounced, rescinded, revoked, replaced or amended: the Plat Maps (as defined herein); the submission and dedication of the real property described in Exhibit "A" to the provisions of the Utah Community Association Act (the "Act") and this Restated Declaration; the incorporation of the Riverbend Homeowners Association, Inc., as a Utah non-profit corporation, and the Articles of Incorporation on file with the State of Utah; and any other provision, paragraph, or section that is required to maintain the legal status of Riverbend as a Utah community association which, if repealed, would nullify the legal status of Riverbend; and

It is hereby declared that Lots and Units within Riverbend and Riverbend South shall be held, sold, conveyed, leased, rented, encumbered and used, subject to this Restated Declaration and the covenants, restrictions, limitations, and conditions contained herein, all of which shall constitute covenants which run with the land and shall be binding on and be for the benefit of the Association and all Lot and Unit Owners of all or any part of Riverbend, together with their grantees, successors, heirs, executors, administrators, devisees and assigns, as set forth herein.

It is further declared that Riverbend is the legal successor for all purposes of Riverbend South, that all operations and activities of Riverbend South are consolidated into Riverbend, and that Riverbend holds all powers, rights, obligations, assets, and liabilities of Riverbend and Riverbend South.

It is further acknowledged by the membership of Riverbend and Riverbend South that the plan of merger and consolidation of the two Association's is approved.

The statements set forth in the above Recitals are hereby approved and accepted as accurate and shall constitute part of this Restated Declaration.

ARTICLE I DEFINITIONS

When used in this Restated Declaration (including in that portion hereof entitled "Recitals"), each of the following terms shall have the meaning indicated.

- 1.1 **Additional Charges** shall mean and refer cumulatively to all collection and administrative costs, including but not limited to all attorney fees, late charges, accruing interest, service fees, filing and recordation fees, and other expenditures incurred or charged by the Association.
- 1.2 **Architectural Review Committee** (the "ARC") shall mean the person or persons appointed to review the designs, plans, specifications, homes, architecture, fencing, and landscaping within Riverbend.
- 1.3 **Articles of Incorporation** shall mean and refer to the Articles of Incorporation of the Riverbend Homeowners Association, Inc. on file or to be filed with the Utah Department of Commerce.

- 1.4 **Assessment** shall mean and refer to an amount assessed or imposed by the Association.
- 1.5 **Association** shall mean and refer to the Riverbend Homeowners Association, a Utah nonprofit corporation.
- 1.6 **Board of Directors or Board** shall mean and refer to the governing board of the Association.
- 1.7 **Building** shall mean and refer to any of the structures constructed in the Tract.
- 1.8 **Bylaws** shall mean and refer to the Bylaws of the Association, a copy of which is attached hereto, marked Exhibit "B," and incorporated herein by this reference.
- 1.9 **Capital Improvement or Addition** shall mean and refer to a permanent addition to or the betterment of real property that enhances its capital value and improves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs.
- 1.10 **City** shall mean and refer to the City of West Haven in Weber County, Utah.
- 1.11 **Common Areas and Facilities or Common Area** shall mean and refer to all real property in the Tract owned in common by the Unit Owners, including but not limited to the following items:
- a. The real property and interests in real property submitted hereby, including the entirety of the Tract and all improvements constructed thereon, excluding the individual Units and Lots.
 - b. All Common Areas and Facilities designated as such in the Final Plat;
 - c. All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Tract and intended for the common use of all Unit Owners, such as telephone, electricity, gas, water, cable television, and sewer;
 - d. The Tract's outdoor grounds including landscaping, open and green space, entry and monument;
 - e. All portions of the Tract not specifically included within the individual Units; and
 - f. All other parts of the Tract normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Tract owned by the Association for the common benefit of its members.

Provided, however, utility installations such as telephone, electricity, gas, water, and sewer may be dedicated to the City or other public utility and, if so, this definition shall

not be construed to allow the Association to exclude the City or other public utility from the ownership and control of the utility systems so dedicated.

- 1.12 **Common Expense** shall mean and refer to:
- a. All sums lawfully assessed against the Owners;
 - b. Expenses of administration, maintenance, management, operation, repair and replacement of the Common Areas which are maintained by the Association;
 - c. Expenses allocated by the Association among the Owners;
 - d. Expenses agreed upon as common expenses by the Association; and
 - e. Expenses declared common expenses by this Restated Declaration.
- 1.13 **Community** shall mean and refer to Riverbend, or if the context clearly requires, the Tract.
- 1.14 **Dwelling Unit** shall mean and refer to a separate physical part of the Property intended for independent use, including one or more rooms or spaces located in one or more floors or part or parts of floors in a building. Mechanical equipment and appurtenances located within any one Dwelling Unit, or located without said Dwelling Unit but designated and designed to serve only that Dwelling Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like, shall be considered part of the Dwelling Unit; so shall all decorated surfaces of interior walls, floors and ceilings, including but not limited to all paint, wallpaper, wall coverings, windows and window frames, doors and door frames, trim, carpeting, tile and linoleum. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Dwelling Unit or serving only the Dwelling Unit, and any structural members, parts, components or any other property of any kind, including fixtures or appliances within any Dwelling Unit, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the Building within which the Dwelling Unit is located shall be deemed to be part of the Dwelling Unit.
- 1.15 **Eligible Guarantor** shall mean and refer to a governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with the Restated Declaration.
- 1.16 **Eligible Insurer** shall mean and refer to an insurer of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with this Restated Declaration.
- 1.17 **Eligible Mortgagee** shall mean and refer to a mortgagee, beneficiary under a trust deed, or lender who has requested notice in writing of certain matters from the Association in accordance with this Restated Declaration.

- 1.18 **Eligible Votes** shall mean and refer to those votes available to be cast on any issue before the Association or the Board of Directors. A vote which is for any reason suspended is not an “eligible vote”.
- 1.19 **Final Plat** shall mean and refer to the Final Plats (or the “Final Subdivision Plats”) for Riverbend Townhomes, as approved by the City and on file in the Office of the Weber County Recorder, as it may be amended from time to time.
- 1.20 **Guest** shall mean and refer to a family member, guest, visitor, invitee or licensee of an Owner or Unit.
- 1.21 **Improvement** shall mean and refer to any physical change or addition to the Property to make it more valuable.
- 1.22 **Individual Charge** shall mean and refer to a charge levied against an Owner, Guest or Permittee for all expenses resulting from the act or omission of such Person, excepting the Owner's failure to pay any Assessment.
- a. The act or negligence of any Guest or Permittee shall be deemed to be the act or negligence of the Owner responsible for such Person.
 - b. Individual Charges shall include, by way of illustration but not limitation, any expense resulting from the act or omission of any Owner, Guest or Permittee including:
 - i. The cost to repair any damage to any portion of the Tract on account of loss or damage caused by such Person; or
 - ii. The cost to satisfy any expense to any other Owner or Owners or to the Association due to any intentional or negligent act or omission of such Person, or resulting from the breach by such Person of any provisions of the Project Documents; and
 - iii. Any transient occupancy tax, sales tax, use tax or other tax levied pursuant to the laws of the State of Utah and payable by any Owner, Guest or Permittee which the Association is or shall be required or entitled to collect on behalf of the levying authority, although this subsection is not considered an acknowledgment that any such tax may be levied.

While Individual Charges are not Assessments, they shall be secured by a lien in the same manner as Assessments, as set forth below, and shall be treated the same as an Assessment for purposes of lien priority and lien perfection as set forth in the Community Association Act. The Association also shall have all other remedies, both legal and equitable, described in the Project Documents available against any Owner for nonpayment.

- 1.23 **Lot.** The legal descriptions set forth in Exhibit “A”, attached, refer to ownership interests as both “Lots” and “Units.” As used in this Restated Declaration, the term “Lot” shall have the same meaning as the term “Unit” and the term “Unit” shall have the same meaning as the term “Lot”.
- 1.24 **Unit Number** shall mean and refer to the number, letter or combination thereof designating a particular Unit.
- 1.25 **Majority** shall mean and refer to those eligible votes of Owners or other groups as the context may indicate totaling more than fifty (50.00%) percent of the total eligible number.
- 1.26 **Manager** shall mean and refer to the professional Person appointed or hired by the Association to manage and operate the Tract, and assist in the administration of the Association.
- 1.27 **Mortgage** shall mean and refer to any mortgage, deed of trust or other security instrument (including the seller's rights under a contract for deed) by which a Unit or any part thereof or interest therein is encumbered. A First Mortgage is a Mortgage having priority as to all other Mortgages encumbering a Unit, or any part thereof or interest therein.
- 1.28 **Mortgagee** shall mean and refer to any person or entity named as the mortgagee, beneficiary or holder of the seller's interest (so long as a copy of the contract for deed is given to the Association) under any Mortgage by which the interest of any Owner is encumbered, or any successor to the interest of such person under such Mortgage. A First Mortgagee shall mean and refer to any person or entity holding a First Mortgage including any insurer or guarantor of a First Mortgage.
- 1.29 **Office of the County Recorder or County Recorder** shall mean and refer to the Office of the County Recorder of Weber County, Utah.
- 1.30 **Owner** shall mean and refer to a Person who is the owner of a fee or an undivided fee interest in a Unit as set forth in the official records of the Weber County Recorder, excluding a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.
- 1.31 **Permittee** shall mean a Guest, tenant, lessee, renter, or other non-Owner resident or occupant.
- 1.32 **Person** shall mean and refer to a natural person, corporation, partnership, trust, limited liability, company, or other legal entity.
- 1.33 **Plans and Specifications** shall mean and refer to any and all documents designed to guide or control the construction of an Improvement, or alterations, modifications,

changes, additions and the like thereto, including without limitation all documents indicating the size, shape, configuration and/or materials, to be incorporated; all site plans, excavation and grading plans, elevation drawings, floor plans, techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to the improvement or proposal in question.

- 1.34 **Plat Map** shall mean and refer to the Final Plat.
- 1.35 **Private Street, Road, Way or Drive** shall mean and refer to those streets, roads, cul-de-sacs, ways, drives or turnabouts within the Project not dedicated to the City or any county, state, or other governmental body politic, entity or agency.
- 1.36 **Project** shall mean and refer to all 7 Phases of the Riverbend Townhomes Subdivision, as shown on the Final Plat unless the context clearly requires otherwise.
- 1.37 **Project Documents** shall mean and refer to this Restated Declaration, the Final Subdivision Plat, and the Bylaws, Rules and Regulations, and Articles of Incorporation of the Association.
- 1.38 **Property** shall mean and refer to all of the land or real estate, improvements and appurtenances comprising Riverbend submitted to this Restated Declaration.
- 1.39 **Resident** shall mean and refer to any person living or staying at the Project. This includes but is not limited to natural person or persons residing in a Dwelling Unit.
- 1.40 **Restated Declaration** shall mean and refer to this Declaration of Consolidation and Restated and Amended Declaration for Covenants, Conditions, and Restrictions for Riverbend Townhomes.
- 1.41 **Riverbend** shall refer to the Riverbend Townhomes Subdivision.
- 1.42 **Single Family** shall mean and refer to one of the following: (a) a single person, (b) a group of natural persons related to each other by blood (within three degrees of consanguinity) or legally related to each other by marriage or adoption, and an additional person or persons as a caretaker or as domestic help, or (c) a group of not more than three unrelated persons who maintain a common household to be distinguished from a group occupying a boarding house, club, fraternity or hotel.
- 1.43 **Total Votes** of the Association shall mean and refer to the total number of votes appertaining to all Units in the Association.
- 1.44 **Tract** shall mean and refer to all of the real estate submitted to this Restated Declaration.
- 1.45 **Unit** or **Lot** shall mean and refer to a separate physical part of the Property intended for independent ownership and use as shown on the Final Plat. Each Unit or Lot shall be assigned a separate “parcel” or tax identification number by the appropriate governmental

agency.

ARTICLE II SUBMISSION

- 2.1 The Tract, described with particularity on Exhibit “A” attached hereto and incorporated herein by this reference, is hereby submitted to the Restated Declaration.
- 2.2 The Property is subject to the described easements and rights of way, together with all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property.
- 2.3 ALL of THE FOREGOING IS SUBJECT TO: This Restated Declaration; all instruments of record which affect the above-described Tract or any portion thereof, including, without limitation: all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any easements, rights of-way, encroachments, or discrepancies shown on or revealed by the Final Plats or otherwise existing; an easement for each and every Common Area improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above- described Tract; and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such Common Area improvements, equipment, pipes, lines, cables, wires, utility systems, and similar facilities.

ARTICLE III THE ASSOCIATION

The foregoing submission is made upon, under and subject to the following covenants, conditions, and restrictions:

- 3.1 **Description of Improvements.** The Project includes two-hundred and eleven (211) residential Lots or Units and certain Common Area and Facilities. The Project may also contain other improvements of a less significant nature. The location and configuration of the improvements referred to in the foregoing sentences are depicted on the Final Plat.
- 3.2 **Description of Property.** The Final Plat shows the type and location of each Lot or Unit.
- 3.3 **Legal Status of the Property.** All Units shall be capable of being privately and independently owned, encumbered, and conveyed, and have separate tax identification or parcel numbers.
- 3.4 **Membership in the Association and Voting Allocations.** Membership in the Association is mandatory and may not be partitioned from the ownership of a Unit. Each Owner by virtue of his accepting a deed or other document of conveyance to a Unit is deemed to be a member of the Association.

- 3.5 **Membership.** The Association shall have one class of membership. All Owners shall be members. All members shall be entitled to vote on all issues before the Association. Each Unit shall have one (1) vote. No vote shall be cast or counted for any Unit not subject to assessment. When more than one (1) person or entity holds such interest in a Unit, the vote for such Unit shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote of the Unit shall be suspended in the event more than one (1) person or entity seeks to exercise it. Any Owner of a Unit which has been leased may, in the lease or other written instrument, assign the voting right appurtenant to that Unit to the lessee, provided that a copy of such instrument is furnished to the Secretary of the Association at least three (3) days prior to any meeting.
- 3.6 **Conveyancing.** Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a Unit shall describe the interest or estate involved substantially as follows:

All of Unit No __ contained within RIVERBEND TOWNHOMES, PHASE [], a Utah planned residential development, as the same is identified in the Final Plat recorded in Weber County, Utah as Entry No. __: __ at Page ___ of the official records of the County Recorder of Weber County, Utah (as said Final Plat may have heretofore been amended or supplemented) and in the Restated Declaration of Covenants, Conditions, and Restrictions of Riverbend, recorded in Weber County, Utah as Entry No. in Book _____ at Page _____ of the official records of the County Recorder of Weber County, Utah (as said Restated Declaration may have heretofore been supplemented), together with an undivided interest in the Common Area and Facilities.

Regardless of whether or not the description employed in any such instrument is in the above specified form, all provisions of the Project Documents shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit. Neither the membership in the Association, nor percentage of ownership interest in the Common Area and Facilities, shall be separated from the Unit to which it appertains; even though not specifically mentioned in the instrument of transfer, such mandatory membership in the Association shall automatically accompany the transfer of the Unit to which they relate.

- 3.7 **Nature and Restrictions on Ownership and Use in General.** Each Owner shall have and enjoy the privileges of fee simple ownership of his Unit. There shall be no requirements concerning who may own a Unit, it being intended that they may and shall be owned as any other property rights by any Person. The Property shall be used only for residential purposes, except as expressly set forth below, and the Common Area and Facilities shall only be used in a manner consistent with the residential nature of the Project.

**ARTICLE IV
PROPERTY RIGHTS**

- 4.1 **Easements and Rights of Way for Non-Exclusive Use of Common Area.** The Association and each Owner and Permittee shall have a right and non-exclusive easement to use and enjoy the Common Area and Facilities. Such rights and easements shall be appurtenant to and shall pass with the title to every Unit, subject to the following restrictions: (1) The right of the Association to limit the number of Guests and Permittees; (2) The right of the Association to suspend the voting privilege of an Owner in material default, including for the nonpayment of Assessments within 30 days of their due date; and (3) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for the purpose of regulating transportation, maintaining the roadways or providing utilities and other similar or related purposes. Each Owner by virtue of his acceptance of a deed or other document of conveyance shall be entitled to the exclusive ownership and possession of his Unit, an undivided percentage of ownership interest in the Common Area and Facilities, and membership in the Association as set forth herein.

**ARTICLE V
RESTRICTIONS AND RULES**

- 5.1 **Rules and Regulations.** The Association, acting through its Board of Directors, shall have the power and authority to adopt administrative or house rules and regulations, which shall be binding upon all Owners and Permittees.
- 5.2 **Rules and Rights of Owners.** Except as may be specifically set forth below, and subject to City ordinances and the Restated Declaration, whichever is more restrictive, neither the Board of Directors nor the Association may adopt any rule in violation of the following provisions:
- a. **Similar Treatment.** Similarly situated Owners and Permittees shall be treated similarly. The Unit Owners in any given phase are similarly situated to the Unit Owners in all other phases.
 - b. **Religious and Holiday Displays.** The rights of Owners and Permittees to display religious and holiday signs, symbols, and decorations on their Units of the kinds normally displayed in residences located in residential neighborhoods shall not be abridged, except that the Association may adopt time, place, and manner restrictions regulating displays which are visible from outside the Unit.
 - c. **Household Composition.** No rule shall interfere with the freedom of the occupants of Dwelling Units to determine the composition of their households, except that the Restated Declaration limits residency in a Dwelling Unit to a Single Family and the Association shall have the power to limit the total number of occupants permitted in each Dwelling Unit on the basis of the size and facilities of the Dwelling Unit and its fair share use of the Common Area and Facilities.

- d. **Activities Within Units.** No rule shall interfere with the activities carried on within the confines of Units, 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 from outside the Unit, or that create an unreasonable sounds of annoyance.
- e. **Allocation of Burdens and Benefits.** No rule shall alter the basis for allocation of financial burdens among various Units or rights to use the Common Area and Facilities 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 use of the Common Area and Facilities, from adopting generally applicable rules for use of Common Area and Facilities, or from denying use privileges to those who abuse the Common Area and Facilities, violate the Project Documents, or fail to pay Assessments. This provision does not affect the right of the Association to increase or decrease the amount of Assessments.

5.3 **Initial Use Restrictions.** The Units are subject to the following initial use restrictions which shall govern both the architecture and the activities within the Property:

- a. **Private Residence.** No Unit shall be used except for residential purposes (except as set forth below) and all residents shall be obligated by the following requirements: No temporary structure including trailers, tents, shacks, garages, barns or other outbuildings shall be used on any Unit at any time.
- b. **Business Use.** Businesses, professions or trades may be operated or maintained in a Unit subject to the prior written approval of the Board, which approval shall not be unreasonably withheld, subject to the following limitations: (i) any such business, profession or trade may not require heavy equipment or create a nuisance within the Project, (ii) may not noticeably increase the traffic flow to the Project, (iii) may not be observable from outside the Unit, and (iv) may only be carried on following approval from West Haven City pursuant to all applicable state and city laws, rules and ordinances in effect at the time any such use is requested. Specifically, it is contemplated that certain businesses, professions or trades which rely heavily on the internet and other similar type of technological advances may be operated or maintained within a Unit, subject to the foregoing limitations and all other limitations of this Restated Declaration.
- c. **Garbage and Refuse Disposal.** No Unit shall be used as a dumping ground. All trash, garbage, debris, rubbish or other waste shall be kept in a sealed, sanitary bag or container, and stored out of sight except for a twenty-four (24) hour period on pick-up days. All garbage cans will be rolled to the public street for City pick-up.

- d. **Aerials, Antennas, and Satellite Systems.** Satellite dishes, aerials, antenna, or systems may only be installed in accordance with FCC regulations. The Board of Directors may bar or regulate, in its sole discretion, satellite dishes, aerials, antenna, or systems, including HAM radio antenna, not expressly authorized by FCC regulations.
- e. **Signs.** No signs, billboards or advertising structures or devices of any kind may be built, installed or displayed on the Property or any Unit except for a single sign with a maximum size of 2' x 2' for specific purpose of advertising the sale of a Dwelling Unit.
- f. **Clothesline.** No outside clotheslines and other outside clothes drying or airing facilities shall be maintained on any Residential Unit.
- g. **Zoning.** All land use and buildings shall be in compliance with all zoning and land use ordinances as well as all regulations of the municipalities and agencies governing the Property land use and buildings.
- h. **Nuisances.** No noxious or offensive activity shall be carried on, in or about the Property, nor shall anything be done or permitted thereon which may be or may become an annoyance, disturbance, bother or nuisance to the Project, or which might interfere with the right of other residents to the quiet and peaceful enjoyment of their property.
- i. **Temporary Structures.** No structure of a temporary nature or character, including but not limited to any trailer, shack, shed, tent, garage, barn, or other out-building shall be used on any Unit at any time as a residence.
- j. **Neighborhood.** This Property is located by and is subject to the normal, everyday sounds, odors, and all other aspects associated with the nearby residential and commercial areas.
- k. **Laws.** Nothing shall be done or kept in, on or about any Unit or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.
- l. **Damage or Waste.** Each Owner shall repair any damage he or any other residents, guests, or invitees of his Unit may cause to another Owner, Lot, or Dwelling Unit, and promptly restore the property to its original condition.
- m. **Chimes and Musical Sound Makers.** Chimes, dream catchers, bells, tubes or other objects hung vertically outside the Dwelling Unit which ring, strike or otherwise produce musical sounds or harmony heard by other residents are prohibited.

**ARTICLE VI
ANIMALS AND PETS**

- 6.1 **Restrictions on Animals.** Livestock, as that term is defined by West Haven City and Weber County Ordinance, are not allowed. No pets, animals, livestock, or poultry of any kind may be commercially bred at the Property. No more than two (2) pets, as that term is defined by Weber County Ordinance, are allowed per Unit. The Board may enact reasonable rules respecting the keeping of animals within the Project, and may designate certain areas in which animals may not be taken or kept. The Board may adopt rules providing that specific types or sizes of animals not be allowed on specific parts of the Property due to health or safety concerns. No pets are allowed in the Common Area unless they are on a leash. Owners shall immediately clean up any pet droppings. Pets must be properly licensed and registered. Pets shall be household pets that are kept indoors and not be left outdoors overnight nor left unattended at any time outdoors so as to become a nuisance to the other owners within the Project.
- 6.2 **Pet Nuisance.** A nuisance shall include but is not limited to the following:
- a. causing damage to the property of anyone other than the pet owner;
 - b. causing unreasonable fouling of the air by odors;
 - c. causing unsanitary conditions;
 - d. being loose on the Property, not on a leash, or not under the control of a responsible person;
 - e. barking, howling, whining, or making other disturbing noises in an excessive or continuous fashion, or in a manner that disturbs the comfortable enjoyment of life for other residents;
 - f. molesting or harassing passersby by lunging at them, or chasing passing vehicles;
 - g. attacking or threatening to attack people or other domestic animals;
 - h. otherwise acting so as to bother, annoy, or disturb the sensibilities of a reasonable person;
 - i. interfering with the right of residents to the peaceful and quiet enjoyment of their property; or
 - j. the mere number of pets maintained creates an offensive or dangerous condition to the health, welfare, or safety of other residents.
- 6.3 **Association Liability.** The Association shall not be liable for any injury caused by a pet, nor shall the Association be required to verify an owner's compliance of this Article.
- 6.4 **Removal of Pet.** The Board has the right to require removal of any pet if the Board receives two or more written complaints about the pet owner or the pet violating the provisions of this Article VI and the Board determines the complaints are valid.

**ARTICLE VII
ARCHITECTURAL CONTROL**

- 7.1 **Architectural Review Committee.** The Architectural Review Committee (the “ARC”) shall have the right, power and authority to resolve all architectural, design and related issues. The Board of Directors has the sole right and exclusive authority to appoint all members of the ARC. Should the Board of Directors not create the ARC, then the Board of Directors shall serve as the ARC.
- 7.2 **ARC Powers and Standing.** Any instrument executed by the ARC or its legal representative that recites facts which, if true, would establish the power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument.
- 7.3 **Procedures for Approval of Plans and Specifications.** The ARC shall review and approve plans for all buildings proposed for erection, placement, or alteration within the Project. The City may require that building permit applications show evidence that the ARC has approved each building plan. Architectural designs, Plans and Specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the ARC for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, lighting, landscaping and other features of proposed construction shall be submitted as applicable. In reviewing each submission, the ARC may consider the proposed design, harmony of external design with existing structures and the common scheme, the location in relation to surrounding structures, topography, finish grade and elevation, among other things. Decisions of the ARC may be based on purely aesthetic considerations. Each Owner acknowledges, by acceptance of a deed or other document of conveyance, that opinions on aesthetic matters are subjective and may vary as ARC members change over time.
- 7.4 **No Waiver of Future Approvals.** The approval of the ARC of any proposals or Plans and Specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, Plans and Specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.
- 7.5 **Variance.** The ARC may authorize variances from compliance with any of the architectural guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations require, but only in accordance with its duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Restated Declaration, or (c) stop the ARC 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 financing shall not be considered a hardship warranting a variance.

- 7.6 **Limitation of Liability.** The ARC shall not be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of this Restated Declaration, nor for any structural or other defects in any work done according to such Plans and Specifications. By accepting a deed or other document of conveyance to a Unit, each Owner agrees to and shall defend, indemnify, save and hold the ARC harmless from any and all loss, damage, or liability they may suffer, including defense costs and attorney fees, as a result of any claims, demands, actions, costs, expenses, awards or judgments arising out of their review or approval of architectural designs, Plans and Specifications.
- 7.7 **Professional Architects and Designers.** Designs submitted for approval must be prepared by architects or by qualified residential designers of outstanding ability whose previous work must be available for inspection and evaluation as a part of the approval process.
- 7.8 **Contractors.** Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Restated Declaration may be excluded by the ARC from the Subdivision, subject to notice and the opportunity to be heard. In the event of sanctions after notice and hearing, the ARC, nor its employees, agents, representatives, or consultants shall be held liable to any person for exercising the rights granted by this Section.
- 7.9 **Enforcement of Architectural Guidelines.** Any construction, installation, alteration, or other work done in violation of this Restated Declaration shall be considered to be nonconforming.
- a. Upon written request from the ARC an Owner shall at his own cost and expense remove such non-conforming construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the non-conforming construction, alteration, or other work.
 - b. Should an Owner fail to remove and restore as required hereunder, the ARC shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration or other work without being deemed to be a trespasser.
- 7.10 **Fencing.** Fencing is not allowed without the express prior written consent of the Architectural Review Committee. No fencing shall be permitted on or within the Common Area.

**ARTICLE VIII
OPERATION AND MANAGEMENT**

- 8.1 **Board of Directors.** The Association shall be governed, directed and managed by a Board of Directors as more fully outlined in the Bylaws hereto attached as Exhibit “B”.
- 8.2 **Status and General Authority of Board of Directors.** Any instrument executed by the Board of Directors that recites facts which, if true, would establish the power and authority of the Board of Directors to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The Association shall, in connection with its exercise of any of the powers delineated in subparagraphs below, constitute a legal entity capable of dealing in its own name or in the name of the Board of Directors.
- 8.3 **Grant of Power and Authority.** The Board of Directors shall have, and is hereby granted, the following rights, authority and powers:
- a. **Access.** To enter into or upon any Unit to make repairs to and to do other work necessary for the proper maintenance and operation of any Common Area and Facilities during reasonable hours and after reasonable notice to the occupants thereof; and (2) for making emergency repairs necessary to prevent damage to the Common Area and Facilities or to another Unit, provided that a reasonable effort is made to provide notice to the occupants prior to entry.
 - b. **Grant Easements.** With or without the vote or consent of the Owners, Mortgagees, insurers or guarantors of any Mortgage, or of any other person, to grant or create, on such terms as it deems advisable, reasonable permits, licenses, and non-exclusive easements over, under, across, and through the Common Area and Facilities for public utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance, operation or regulation of the Project.
 - c. **Execute Documents.** To execute and record, on behalf of all Owners, any amendment to the Restated Declaration or Plat which has been approved by the vote or consent necessary to authorize such amendment.
 - d. **Standing.** To sue and be sued.
 - e. **Enter Into Contracts.** To enter into contracts which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.
 - f. **Transfer Interests in Real Property.** To exchange, convey or transfer any interest in real property, so long as it has been approved by a vote of at least sixty-seven percent (67%) of the Owners.

- g. **Purchase.** To purchase, otherwise acquire, and accept title to, any interest in real property, so long as it has been approved by at least sixty-seven percent (67%) of the Owners.
 - h. **Add Property.** To add any real property, or interest therein, obtained pursuant to subparagraph 8.3(g) above to the Project, so long as it has been approved by at least sixty-seven (67%) of the Units.
 - i. **Promulgate Rules.** To promulgate such reasonable administrative guidelines, rules, regulations, policies and procedures as may be necessary or desirable to aid the Board of Directors in carrying out any of its functions or to ensure that the Project is maintained and used in a manner consistent with this Restated Declaration.
 - j. **Meetings.** To establish procedures for the conduct of its meetings, including but not limited to the power to decide what portion of the meeting shall be open or closed to Owners, to retire to executive session, to regulate record keeping, and to allow, control or prohibit the electronic reproduction (video or audio) of meetings.
 - k. **Delegation of Authority.** To delegate its responsibilities, in whole or in part, over the management and control of the Project to the professional manager selected, reserving the right, power and authority, however, to control and oversee the administration of the Project.
 - l. **Interpret and Enforce Project Documents.** To interpret and enforce this Restated Declaration, the Bylaws, Rules and Regulations, and Articles of Incorporation.
 - m. **Borrow.** To borrow funds and pledge assets of the Association, so long as the transaction has been approved in advance by at least sixty-seven (67%) of the Owners.
 - n. **All other Acts.** To perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the Board of Directors to perform its functions on behalf of the Owners.
- 8.4 **Delegation of Management Responsibilities.** The Property may be managed by a professional manager selected by the Board of Directors. The agreement for professional management of the Project, and any contract for goods or services, or any lease which is entered into by the Board of Directors shall provide, or be deemed to provide hereby, that either party may terminate the contract with or without cause upon at least thirty (30) days prior written notice to the other party; and no contract may be for an initial term greater than one (1) year and may not be automatically renewable without the express agreement of the Board of Directors.

- 8.5 **Annual Meeting of the Association.** The Association shall meet on a periodic basis, at least annually, at a time and place set by the Board of Directors.
- 8.6 **Lists of Owners, Eligible Mortgagees, and Eligible Insurers or Guarantors.** The Board of Directors shall maintain up-to-date records showing: (a) the name of each person who is an Owner, the address of such person, and the Unit and membership which is owned by him; and (b) the name of each person or entity who is an Eligible Mortgagee, the address of such person or entity, and the Unit which is encumbered by the Mortgage held by such person or entity. The Board of Directors may refer to the Weber County Recorder's records to meet the requirement of subsection (a) herein. In the event of any transfer of a fee or undivided fee interest in a Unit, either the transferor or transferee shall furnish the Board of Directors with written evidence verifying that the transfer has occurred, that the Deed or other instrument accomplishing the transfer is of record in the Office of the County Recorder, and that the transferee has received a copy of the Restated Declaration and Bylaws then in force. The Board may for all purposes act and rely on the information concerning ownership in its records or, at its option, the official records of the Weber County Recorder. The address of any Owner shall be deemed to be the address of the Unit owned by such person unless the Board of Directors is otherwise advised in writing. Owners shall provide the Board of Directors with the names and contact information for all non-owner occupants upon request.
- 8.7 **Easements.** Easements and rights of way for the installation and maintenance of utilities, drainage systems and facilities, and irrigation are reserved, as set forth herein and in the legal descriptions of the Property.
- a. Within these easements and rights of way, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in, on or about the easements and rights of way, or which may obstruct or retard the flow of water through the drainage channels in the easements and rights of way.
 - b. The easement and right of way area of each Unit and all improvements within said area shall be maintained continuously by their Owners, excepting those improvements for which a public authority or utility company is expressly responsible.
- 8.8 **Liability of Owners and Residents for Damages.** Each Owner or Permittee shall be liable to the Association, or other Owners for damages to person or property in the Tract caused by his intentional misconduct, recklessness, carelessness or negligence.
- 8.9 **Slope and Drainage Control.** No structure, plant, improvement or other material may be placed or permitted to remain, or other activities undertaken which may damage or interfere with established Unit ratios, create erosion or sliding problems, or which may

change the direction or flow of drainage channels, or obstruct or retard the flow of water through the channels.

- a. The slope control area of each Unit and all improvements therein shall be maintained continuously by the Owner of the Unit, excepting those improvements for which a public authority or utility company is expressly responsible.
 - b. It shall be the responsibility of the Owner to see that his Unit strictly conforms with the grading and drainage plan established by the Association, City and/or Weber County.
- 8.10 **Liability of Board of Directors.** The Association shall indemnify every officer and member of the Board of Directors against any and all expenses, including but not limited to attorney fees reasonably incurred by or imposed upon any officer or member of the Board of Directors in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he may be a party by reason of being or having been an officer or member of the Board of Directors. The officers and members of the Board of Directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, gross negligence or bad faith. The officers and members of the Board of Directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or members of the Board of Directors may also be Owners), and the Association shall indemnify and forever hold each such officer and member of the Board of Directors free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or member of the Board of Directors, or former officer or member of the Board of Directors, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officers and director's insurance coverage to fund this obligation, if such insurance is reasonably available.

ARTICLE IX EASEMENTS AND RIGHTS OF WAY

- 9.1 **Grant of Easement.** The Association hereby reserves a nonexclusive, perpetual right-of-way and easement over, across and through the Project, together with the right to use, operate, maintain, repair and replace the Common Area and Facilities, subject to all of the terms, covenants, conditions and restrictions set forth herein.
- a. **Common Use of Easement.** Said easement is to be used in common for ingress and egress over the Common Area and Facilities by the Association and each Owner, subject to all of the terms, covenants, conditions and restrictions set forth herein.
 - b. **Private Easement.** The easement created is intended to be used as a private non-

exclusive easement for the exclusive use and benefit of the Association and each Owner.

- 9.2 **Encroachments.** If any part of the Common Area and Facilities encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Area and Facilities, or upon an adjoining Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. Such easements shall extend for whatever period the encroachment exists. Such encroachments shall not be considered to be encumbrances either on the Common Area and Facilities or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any improvement constructed or to be constructed within the Project, by error in the Final Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.
- 9.3 **Improvements.** Improvements, including Units, Common Area and Facilities constructed as subsequent phases of the Project may encroach upon portions of the Common Area and Facilities of earlier phases of the Project. A perpetual easement for such encroachment and this Restated Declaration necessary to repair, maintain and operate such improvements is hereby granted.
- 9.4 **Rights of Access.** Each Owner shall have the right to ingress and egress over, upon and across the Common Area and Facilities as necessary for access to the Lot or Unit he is occupying and he shall have the right to the horizontal, vertical and lateral support of his Lot or Unit.
- a. **Reservation of Rights.** All conveyances of Units within the Project hereafter made shall be construed to grant and reserve such easements and/or licenses as are provided herein, even though no specific reference to such easements appears in any such conveyance.
- 9.5 **Streets, Landscaping, Public Utilities and Drainage Easements.** All Common Areas and Facilities shown on Final Plats are subject to public utilities and drainage easements for the installation and maintenance of improvements and such easements shall be subject to the right of the Association to assess the Owners and Units, based upon their percentage of ownership, the costs to repair damage to the streets and landscaping, etc., and where needed or appropriate to maintain, repair, replace, relocate or extend the public utilities and drainage systems.

ARTICLE X STORAGE AND PARKING OF VEHICLES

- 10.1 **Parking.** The driving, parking, standing, and storing of motor vehicles in, on or about the Property shall be subject to rules and regulations adopted by the Board of Directors; provided, however, there shall be no outside storage or parking upon any

Lot or designated parking areas of any recreational vehicle, commercial or oversized vehicle, tractor, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other transportation device of any kind. Owners and residents shall park within the Limited Common Area located on the Lot (i.e., the driveway in front of the Unit's garage) and in the Owner's garage. Visitors and guests may park temporarily (not longer than seven (7) days in any thirty (30) day period) in unassigned parking spaces and in accordance with rules and regulations designated and promulgated by the Board of Directors.

- 10.2 **Vehicle Repair.** No Owners or Permittees shall repair or restore any vehicle of any kind upon any driveway, Limited Common Area, or Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.
- 10.3 **Garage Parking.** No garage may be altered or used in such a manner (including storage) that the number of motor vehicles which may reasonably be parked therein, after the alteration, is less than the number of motor vehicles that could have been reasonably parked in the garage as originally constructed. Due to the strict parking restrictions within the development, sufficient space shall be retained in each garage to permit the parking of the intended number of vehicles therein.
- 10.4 **Street Parking.** Parking on the private streets is prohibited.
- 10.5 **Visitor Parking.** No Owners are allowed to park in the visitor parking areas provided within the Project, except during designated hours as indicated per parking lot signs. Parking permits must be displayed on Owner and visitor vehicle dashboards while parked overnight in Community parking lots.
- 10.6 **Driveways.** Parking shall be allowed in driveways located in tandem with the garage as long as it complies with the above requirements.
- 10.7 **Automatic Tow.** Where street parking or parking in any other area, such as a Red Zone or Fire Lane, within the Project is prohibited by rule, it shall be considered an automatic tow away zone (i.e., at the vehicle owner's sole risk and expense, and without additional notice or warning required).

ARTICLE XI COMMON AREA, CAPITAL IMPROVEMENTS & MAINTENANCE

- 11.1 **Capital Improvements.** All Common Expenses for Capital Improvements or Additions to the Project shall be governed by and subject to the following conditions, limitations and restrictions:
- a. **Discretionary Expenditure Limit.** Any Capital Improvement or Addition to the Project which costs less than \$10,000.00 and does not alter the nature of the

Project, may be authorized unilaterally by the Board of Directors (the “Capital Improvement Expenditure Ceiling”).

- b. **Expenditure Requiring Consent of Owners.** Any Capital Improvement or Addition, the cost of which will exceed the Capital Improvement Expenditure Ceiling, must, prior to the commencement of construction, be authorized by a vote of at least a majority of the Owners.
 - c. **Improvements Changing the Nature of the Project.** Any Capital Improvement which would materially alter the nature of the Project must, regardless of its cost and prior to being constructed or accomplished, be authorized by a vote of at least sixty-seven (67%) percent of the Owners.
- 11.2 **View Impairment.** The Association does not guarantee or represent that any view over and across any property, including any Unit or Building will be preserved without impairment. The Association shall not have the obligation to prune or thin trees or other landscaping except as set forth herein. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.
- 11.3 **Association’s Maintenance Responsibilities.** The Common Area and Facilities shall be the maintenance responsibility of the Association. The Association shall maintain, replace and repair those areas listed as Association responsibilities in the Maintenance Chart attached as Exhibit “C”. The Association shall maintain the exterior surfaces of the Units, including garages, but is not responsible to maintain, repair or replace any material to which the exterior surfaces are attached (studs, plywood, etc.) unless covered by the Association’s Master Insurance policy. Notwithstanding any language in this Restated Declaration to the contrary, the patio’s concrete slab constructed on each lot (whether the patio is identified on the Plat as Common Area, Limited Common Area, or is privately owned) shall be maintained, repaired and replaced by the owner of the Dwelling Unit to which the patio is attached. In the event of a conflict between the provisions of this Restated Declaration and the Maintenance Chart, the Maintenance Chart shall control. If an exterior portion of a Unit is not specifically identified in the Maintenance Chart as being the responsibility of the Association or the Owners, it shall be presumed that the maintenance of the omitted exterior portion is the responsibility of the Owner, unless the exterior portion is an area (a) the Association has typically and historically maintained or (b) is so closely connected to the exterior portion of the Unit being maintained by the Association that it
- 11.4 **Landscaping.** The Association shall maintain, repair and replace all landscaping on all Lots (including the front, side and rear yards unless otherwise specifically and expressly noted) and in the Common Area. The Association shall have absolute and unilateral control over the landscaping in the front, side and rear yards, including the design, location, selection, and planting of all trees, shrubs, bushes, sod and plants, and no alterations, modifications or changes of any kind may be made by any Owner or resident at any time without the prior written consent of the Architectural Review Committee, and any such alteration, modification or change made without its prior

written consent shall be considered non-conforming. Upon written request of the Architectural Review Committee, any non-conforming landscaping shall be removed and the property shall be restored to its original condition forthwith, at the expense of Owner or resident.

- 11.5 **Snow Accumulations.** The Association shall provide and be responsible for snow removal from all private roadways, sidewalks in the Common Areas and sidewalks and driveways located within a Lot
- 11.6 **The Maintenance Responsibility of the Owners.** Each Owner shall maintain, replace, and keep his Unit and any property he privately owns in a state of good condition and repair. Each Owner shall have the maintenance responsibilities regarding the Owner's Unit and Lot as set forth in the Maintenance Chart, attached hereto as Exhibit "C". If an item is not listed in the attached Maintenance Chart, the repair, maintenance and replacement of that item shall be the responsibility of the Unit Owner unless clearly indicated in other sections of this Restated Declaration.
- 11.7 **Garbage Removal.** Garbage containers shall be stored so as not to be visible from the street except on garbage pick-up day each week and then for a period of no longer than twenty-four (24) hours.
- 11.8 **Standard of Care - Generally.** The Property shall be maintained in a usable, clean, functional, safe, healthy, sanitary, attractive, and good condition. If a dispute arises between an Owner or resident and the Association as to the condition of a Unit, the decision of the Board of Directors shall be final, binding and conclusive.
- 11.9 **Structural Alterations by Owner.** No Owner or resident may at any time modify the drainage patterns or systems, landscaping, or make any structural alterations, modifications, changes or improvements to the non-Unit areas of Riverbend, if any, without the prior written consent of the Board of Directors.

ARTICLE XII ASSESSMENTS AND EXPENSES

- 12.1 **Common Expenses.** Each Owner by virtue of his acceptance of a Deed or other document of conveyance to a Unit covenants to and shall pay his share of the Common Expenses, and Assessments, including Additional Charges, and Individual Charges to the Association in accordance with the provisions in this Restated Declaration and as determined by the Board.
- 12.2 **Purpose of Common Area Expenses.** The Assessments provided for herein shall be used for the general purpose of operating the Project, maintain the Common Areas, promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and residents, including the maintenance of any real and personal property owned by the Association, and regulating the Community, all as may be more specifically authorized from time to time by the Board of Directors.

- 12.3 **Creation of Assessments.** Since the Assessments shall pay for the common expenses of the Association, as shall be determined by the Board of Directors from time to time, each Owner, by acceptance of a deed to a Unit, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association monthly, or as otherwise designated by the Board, all Assessments assessed by the Board.
- 12.4 **Budget.** At least thirty (30) days prior to the annual meeting of the Association, the Board of Directors shall prepare and deliver to the Owners a proposed Budget. The budget shall set forth the following:
- a. **Itemization.** An itemization of the anticipated Common Expenses for the twelve (12) month calendar year, commencing with the following January 1.
 - b. **Basis.** Shall be based upon advance estimates of cash requirements by the Board of Directors to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas and regulation of the Association, which estimate shall include but is not limited to expenses of management, irrigation water, grounds maintenance, taxes and special assessments, premiums for all insurance which the Board of Directors is required or permitted to maintain, common lighting and heating, water charges, trash collection, sewer service charges, carpeting, painting, repairs and maintenance of the Common Areas and replacement of those elements of the Common Areas that must be replaced on a periodic basis, wages for Board of Directors employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a reserve account, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Restated Declaration.
 - c. **Equal Apportionment.** The common profits, losses and voting rights of the Project shall be distributed among and the common expenses shall be charged equally to the Unit Owners.
 - d. **Approval of Budget and Assessments.** The proposed Budget and the Assessments shall become effective unless disapproved at the Annual Meeting by a vote of at least a majority of the percentage of ownership interest in the Common Areas. Notwithstanding the foregoing, however, if the membership disapproves the proposed budget and Assessments or the Board of Directors fails for any reason to establish the Budget and Assessments for the succeeding year, then and until such time as a new budget and new Assessment schedule shall have been established, the Budget and the Assessments in affect for the then current year shall continue for the succeeding year.
 - e. **Payment of Assessments.** The Board of Directors has the sole authority and discretion to determine how and when the Assessments are paid.

- f. **Additional Services.** The Board of Directors may but is not obligated to add to the Assessment of any particular Unit or Unit Owner Additional Charges for individual services offered or provided, not a Common Expense.
- g. **Personal Obligation of Owner.** Owners are liable to pay all Assessments assessed and Additional Charges; provided, however, no first mortgagee or beneficiary under a first deed of trust (but not the Seller under a uniform real estate contract, land sales contract, or other similar instrument), who obtains title to a Unit pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid Assessments which became due prior to the acquisition of title. For purposes of this Section, the term "Owner" shall mean and refer jointly and severally to: (a) the Owner of both the legal and equitable interest in any Unit; (b) the owner of record in the offices of the County Recorder of Weber County, Utah; and (c) both the Buyer and Seller under any executory sales contract or other similar instrument.
- h. **Equitable Changes.** If the aggregate of all monthly payments on all of the Units is too large or too small as a result of unanticipated income or expenses, the Board of Directors may from time to time effect an equitable change in the amount of said payments to be paid by each Owner. Owners shall be given at least thirty (30) days written notice of any changes.
- i. **Dates and Manner of Payments.** The dates and manner of payment shall be determined by the Board of Directors.
- j. **Reserve Account.** The Board of Directors shall establish and maintain a reserve account or accounts to pay for unexpected operating expenses and capital improvements.
- k. **Reserve Analysis Report.** The Board of Directors shall prepare or cause a reserve analysis to be conducted no less frequently than every six years and shall review, and if necessary, update a previously conducted reserve analysis no less frequently than every three years. The reserve analysis report shall be made available to the Owners at the annual meeting of the Association.
- l. **Statement of Assessments Due.** Upon written request, the Board of Directors shall furnish to any Owner a statement of Assessments due, if any, on his Unit. The Association may require the advance payment of a processing charge not to exceed the amount permitted by law for the issuance of such certificate.
- m. **Superiority of Assessments.** All Assessments and liens created to secure the obligation to pay Assessments are superior to any homestead exemptions to which an Owner may be entitled, which, insofar as it adversely affects the Association's lien for unpaid Assessments, each Owner by accepting a deed or other document of conveyance to a Unit hereby waives.

- n. **Suspension of Right to Use Amenities for Non-Payment.** At the discretion of the Board of Directors, the right to use any amenities in the Project may be suspended if the Owner is in arrears on his obligation to pay Assessments and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.
 - o. **Suspension of Right to Vote for Non-Payment.** At the discretion of the Board, the right of an Owner to vote on issues concerning the Association may be suspended if the Owner is delinquent in the payment of his Assessments, and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.
 - p. **Suspension of Right to Receive Utility Services.** At the discretion of the Board and as authorized by law, the right of an Owner or Unit to receive utility services paid as a common expense may be suspended.
- 12.5 **Special Assessments.** The Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required repairs or replacement of the Common Areas, Limited Common Areas, if any, sidewalks and/or the exterior of any Unit.
- 12.6 **Special Assessment on Specific Residential Units.** In addition to the monthly assessment and any special assessment authorized herein, the Board may levy at any time special assessments (a) on every Residential Unit especially benefitted by any improvement to adjacent Roadways, sidewalks, Townhouse Units, planting areas or other portions of the Common Areas or Limited Common Areas made on the written request of the Owner of the Residential Unit to be charged, (b) on every Residential Unit the Owner or occupant of which shall cause any damage to the Common Areas, Limited Common Areas, sidewalks and Dwelling Unit exteriors necessitating repairs, and (c) on every Unit as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to other provisions of this Declaration. The aggregate amount of any such special assessments shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs, and shall be allocated among the affected Units according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such assessment may be made in advance of the performance of work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to a special assessment against the Residential Units benefitted.
- 12.7 **Collection of Assessments.** The Owners must pay their Assessments in a timely manner. Payments are due in advance on the 1st day of the month. Payments are late if received after the 10th day of the month in which they were due.

- a. **Delinquent Assessments.** Any Assessment not paid when due shall be considered delinquent and a lien securing the obligation shall automatically attach to the Unit, regardless of whether a written notice is recorded.
- b. **Late Fees and Default Interest.** The Association may charge a late fee of not more than \$50.00 per month and interest in the total amount past due, including late fees and interest, of 12% per annum.
- c. **Lien.** If any Unit Owner fails or refuses to make any payment of any Assessment or his portion of the Common Expenses when due, that amount shall constitute a lien on the interest of the Owner in the Property, and upon the recording of notice of lien, it is a lien upon the Owner's interest in the Property prior to all other liens and encumbrances, recorded or unrecorded, except: (1) tax and special assessment liens on the Unit in favor of any assessing Unit or special improvement district; and (2) encumbrances on the interest of the Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.
- d. **Foreclosure of Lien and/or Collection Action.** If the Assessments remain unpaid, the Association may, as determined by the Board, institute suit to collect the amounts due and/or to foreclose the lien.
- e. **Personal Obligation.** Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him personally for the collection of the charges as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed.
- f. **No Waiver.** No Owner may waive or otherwise exempt himself from liability for the Assessments provided for herein, including but not limited to the non-use of Common Areas, a claim of set-off, or the abandonment of his Unit.
- g. **Duty to Pay Independent.** No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or committee under this Restated Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of each Owner.
- h. **Application of Payments.** All payments shall be applied in the following order: late fees, interest, legal fees and expenses, Additional Charges, Delinquent Assessments and current Assessments.

- i. **Foreclosure of Lien as Mortgage or Trust Deed.** The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's interest therein by the Board. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law, either a judicial or non-judicial foreclosure. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney fees, and a reasonable rental for the Unit during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Board may bid for the Unit at foreclosure or other sale and hold, lease, mortgage, or convey the same.
- j. **Appointment of Trustee.** If the Board elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Unit hereby irrevocably appoints the attorney of the Association, provided he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In addition, Owner hereby transfers in trust to said Trustee all of his right, title and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein.
- k. **Appointment of Attorney in Fact to Collect Rents.** Each Owner by virtue of his acceptance of a deed or other document of conveyance to a Unit hereby irrevocably appoint the Association as his attorney in fact to collect rent from any person renting his Unit, if the Unit is rented and Owner is more than sixty (60) days delinquent in his Assessments. Rent due shall be paid directly to the Association, upon written demand, until such time as the Owner's Assessments are current; and the Owner shall credit the Renter, against rent due, for the amount of money paid to the Association.
- l. **Lenders, Foreclosures and Unpaid Assessments.** Anything to the contrary notwithstanding, any first mortgagee who obtains title to a Unit pursuant to the remedies in the mortgage or trust deed or through foreclosure will not be liable for more than six (6) months of the unpaid regularly budgeted assessments, dues or charges accrued before acquisition of the title to the property by the mortgage, although the first mortgagee will also be liable for any reasonable attorney fees or costs related to the collection of the unpaid dues. All other grantees who obtain title to a Unit in a voluntary conveyance or pursuant to the remedies in a mortgage or trust deed or through foreclosure shall be jointly and severally liable with the trustor or mortgagor for all unpaid assessments, late fees, default interest and collection costs, including reasonable attorney fees, against the Unit for its share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the trustor or mortgagor the amounts paid by the grantee.

- m. **Assignment of Rents.** If the Owner of a Unit who is leasing the Unit or Unit fails to pay any Assessment for a period of more than thirty (30) days after it is due and payable, the Board of Directors may demand that the renter pay to the Association all future rent payments due the Owner, commencing with the next monthly or other periodic payment, until the amount due to the Association is paid; provided, however, the Manager or Board of Directors must give the Owner written notice, in accordance with the Restated Declaration, Bylaws or Rules, of its intent to demand full payment from the renter.
- n. **Termination of Utilities and Right to Use Amenities for Non-Payment of Assessments.** If an Owner fails or refuses to pay any Assessment when due, the Board of Directors may (a) terminate the Owner's right to receive utility services paid as a common expense; and/or (b) terminate the Owner's right of access to and use of any or all recreational facilities; provided, however, before terminating utility services or right of access and use of recreational facilities, the Manager or Board of Directors shall give written notice to the Owner of its intent and an opportunity to be heard.

ARTICLE XIII INSURANCE

- 13.1 **Types of Insurance.** The Association shall obtain and keep in full force and effect at all times the insurance coverage provided herein by companies licensed to do business in the State of Utah.
- 13.2 **Riverbend Subject to Insurance Provisions of the Community Association Act.** As authorized by U.C.A. 57-8a-402(4)(a) of the Community Association Act (“Act”), the Unit Owners at Riverbend hereby subject the Association and the Units, Buildings and Units within Riverbend to the provisions of the Act wherein the Association shall maintain property insurance on the physical structure of all attached dwellings (Buildings) and Common Areas in the Project, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils, as provided in U.C.A. 57-8a-403(1)(a). The Association hereby incorporates the provisions of the Act as set forth in U.C.A 57-8a-401 through 407, as amended. The Association shall determine the amount of the Association’s insurance deductible as in the Board’s opinion is consistent with good business practice.
- 13.3 **Owner’s Personal Insurance.** The Association shall not be responsible for nor purchase insurance coverage on the contents of the Units except as such coverage is provided by the Act. Each Owner is required to obtain insurance (renter’s or Unit Owner’s coverage) for their own protection and benefit and as a requirement of any loan they may have on their Unit, which Owner’s insurance is for the purpose of insuring the Owner’s personal property, the Owner’s share of any Association deductible for which the Owner may be responsible, and for any other insurable event or item not covered under the provisions of the Association’s insurance policy as

provided in the Act. The Association shall not be required to monitor or verify that Owners have purchased an individual insurance policy to insure against the liabilities described herein.

- 13.4 **Primary Coverage and Deductible.** If a loss occurs that is covered by the Association's property insurance policy and a Unit Owner's property insurance policy, the Association's policy provides primary insurance coverage and the Unit Owner is responsible for the Association's policy deductible, as set forth in U.C.A. 57-8a-405.
- 13.5 **Notice by Association to Unit Owners.** The Association shall provide fair and reasonable notice to each Unit Owner of the Unit Owner's obligation under the preceding subsection for the Association's policy deductible and of any change in the amount of the deductible.
- 13.6 **Public Liability and Property Damage Insurance.** The Association shall obtain comprehensive public liability insurance coverage for the Project in such amounts and in such forms as it deems advisable to provide adequate protection against liability for personal injury, death and property damage. Coverage shall include without limitation, liability for operation of automobiles on behalf of the Association and all reasonably insurable activities in connection with the ownership, operation, maintenance, and other use of the Project.
- 13.7 **Worker's Compensation Insurance.** The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association, if any, in the amounts and in the forms now or hereafter required by law.
- 13.8 **Fidelity Insurance or Bond.** The Association may obtain fidelity insurance or a bond in such amounts and in such forms as the Association deems appropriate to cover against dishonesty of employees or the Manager, destruction or disappearance of money or securities, and forgery.
- 13.9 **Additional Coverage.** The provisions of this Restated Declaration shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required or permitted by the Act or by this Restated Declaration in such amounts and in such forms as the Association may from time to time deem appropriate.
- 13.10 **Adjustment and Contribution.** Exclusive authority to adjust losses under the insurance policies hereafter in force on the Project shall be vested in the Association.
- 13.11 **Review of Insurance.** The Association shall review annually the coverage and policy limits of all insurance on the Project and shall adjust the same at its discretion. Such annual review may include an appraisal of the improvements in the Project by a representative of the insurance carrier or carriers providing the policy or policies on the Project, or such other qualified appraisers as the Association may select.

**ARTICLE XIV
DAMAGE OR DESTRUCTION**

- 14.1 **Destruction, Condemnation, and Obsolescence.** The following provisions shall apply with respect to the destruction, condemnation, or obsolescence of Riverbend.
- 14.2 **Definitions.** Each of the following terms shall have the meaning indicated:
- a. **“Substantial Destruction”** shall exist whenever, as a result of any damage or destruction to the Project or any part thereof, the excess of the estimated cost of restoration over the funds available is twenty-five (25%) percent or more of the estimated restored value of the Project.
 - b. **“Partial Destruction”** shall mean any other damage or destruction to the Project or any part thereof.
 - c. **“Substantial Condemnation”** shall exist whenever a complete taking of the Project or a taking of part of the Project has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the estimated cost of restoration over the funds available is twenty-five (25%) percent or more of the estimated restored value of the Project.
 - d. **“Partial Condemnation”** shall mean any other such taking by eminent domain or grant or conveyance in lieu thereof.
 - e. **“Substantial Obsolescence”** shall exist whenever the Project or any part thereof has reached such a state of obsolescence or disrepair that the excess of the estimated cost of restoration over the funds available is twenty-five (25%) percent or more of the estimated restored value of the Project.
 - f. **“Partial Obsolescence”** shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.
 - g. **“Restored Value”** shall mean the fair market value of the Project after Restoration as determined by an MAI or other qualified appraisal.
 - h. **“Estimated Cost of Restoration”** shall mean the estimated costs of restoring the Project to its former condition.
 - i. **“Available Funds”** shall mean any proceeds of insurance, condemnation awards, payments in lieu of condemnation, and any uncommitted funds of the Board of Directors or Association. Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a mortgagee, or that portion of any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee for the condemnation or taking of the Unit in which they are interested.

- 14.3 **Determination by Board of Directors.** Upon the occurrence of any damage or destruction to the Project or any part thereof, or upon a complete or partial taking of the Project under eminent domain or by grant or conveyance in lieu thereof, the Board of Directors shall make a determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Project. In addition, the Board of Directors shall, from time to time, review the condition of the Project to determine whether Substantial Obsolescence exists. In making such determinations the Board of Directors may retain and rely upon one or more qualified appraisers or other professionals.
- 14.4 **Restoration of the Project.** Restoration of the Project shall be undertaken by the Board of Directors promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty- seven percent of the Project's undivided Ownership interest and is further consented to by Eligible Mortgagees holding Mortgages on Units which have appurtenant at least fifty-one (51%) percent of the undivided ownership interest in the Common Area and Facilities which is then subject to Mortgages held by Eligible Mortgagees.
- 14.5 **Notices of Destruction or Obsolescence.** Within thirty (30) days after the Board of Directors has determined that Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgagee a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall, with or without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Restated Declaration), take appropriate steps to determine the preferences of the Owners regarding Restoration.
- 14.6 **Excess Insurance.** In the event insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Board of Directors or Association exceed the cost of Restoration when Restoration is undertaken, the excess shall be paid and distributed to the Owners in proportion to their respective undivided interests in the Common Area and Facilities. Payment to any Owner whose Unit is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.
- 14.7 **Inadequate Insurance.** If the cost of Restoration exceeds Available Funds, the Board of Directors may elect to make a special assessment to pay for the deficiency.
- 14.8 **Reallocation in Event of Partial Restoration.** In the event that all or any portion of one or more Units will not be the subject of Restoration (even though the Project will continue as a planned residential development) or is taken in a condemnation

proceeding or pursuant to any agreement in lieu thereof, the undivided Ownership interest in the Common Area and Facilities shall be immediately reallocated to the remaining Units.

- 14.9 **Sale of the Project.** Unless Restoration is accomplished as set forth above, the Project shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, ownership under this Restated Declaration and the Final Plat shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Board of Directors to the Owners in proportion to their respective undivided interests in the Common Area and Facilities. Payment to any Owner whose Unit is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.
- 14.10 **Authority of Board of Directors to Represent Owners in Condemnation or to Restore or Sell.** The Board of Directors, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Area and Facilities.
- 14.11 **Settlement Proceeds.** The award in any condemnation proceeding and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear.
- 14.12 **Restoration Power.** The Board of Directors, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell the Project and each Unit therein whenever Restoration or sale, as the case may be, is undertaken as hereinabove provided.
- 14.13 **Right of Entry.** Such authority shall include the right and power to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale, as the case may be.
- 14.14 **Termination of Legal Status.** Any action to terminate the legal status of the Property after Substantial Destruction or Condemnation occurs shall be agreed to by Owners who represent at least sixty-seven (67%) percent of the total allocated votes in the Association, and by Eligible Mortgage holders who represent at least fifty-one (51%) percent of the votes of the Units that are subject to mortgages held by eligible holders.
- 14.15 **Eligible Mortgagee.** The termination of the legal status of Riverbend for reasons other than Substantial Destruction or Condemnation of the property shall be agreed to by Eligible Mortgage holders that represent at least sixty-seven (67%) percent of the votes of the mortgaged Units. However, implied approval may be assumed when an Eligible Mortgage holder fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

ARTICLE XV
MORTGAGEE PROTECTION

- 15.1 **Mortgagee Protection.** The lien or claim against a Unit for unpaid Assessments levied pursuant to the Restated Declaration shall be subordinate to any Mortgage recorded on or before the date such Assessments become due, subject to the following:
- a. **Effects of Voluntary and Involuntary Sale.** The lien or claim against a Unit for such unpaid Assessments shall not be affected by any sale or transfer of such Unit, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Unit or the exercise of a power of sale available shall extinguish any debt payable prior to such sale or transfer. Nevertheless, any such unpaid Assessments which are extinguished in accordance with the foreclosure or power of sale shall not relieve the purchaser or transferee of such Unit from liability for, nor such Unit the lien of any Assessments becoming due thereafter.
 - b. **Books and Records Available for Inspection.** The Board of Directors or the Association shall make available to the Owners, to Mortgagees, and lenders, and to holders, insurers, or guarantors of any Mortgage current copies of the Restated Declaration, Bylaws, and administrative rules and regulations concerning the Project, as well as the books, records, and financial statements of the Board of Directors and the Association. The term “Available,” as used in the Paragraph, shall mean available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association shall have the right to recover its photocopying and service charges incurred in making the inspection and photocopying available.
 - c. **Right to Financial Statement.** The holder, insurer or guarantor of any Mortgage shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal year. Any financial statement requested pursuant hereto shall be furnished to the requesting party within a reasonable time following such request.
 - d. **Eligible Mortgagee Designation.** Upon written request to the Association or Board of Directors by the holder, insurer, or guarantor of a Mortgage (which request identifies the name and address of such holder, insurer or guarantor and the Unit Number or address of the property encumbered by the Mortgage held or insured by such holder, insurer, or guarantor), such holder insurer, or guarantor shall be deemed thereafter to be an “Eligible Mortgagee” or “Eligible Insurer” or “Eligible Guarantor,” as the case may be, shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:
 - i. **Condemnation Loss or Award.** Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a Mortgage held, insured, or guaranteed by such Eligible Insurer or Guarantor.

- ii. **Delinquency.** Any delinquency in the payment of Assessments owed by an Owner of a Unit subject to a Mortgage held, insured or guaranteed by such Eligible Insurer or Guarantor, which delinquency remains uncured for a period of sixty days.
- iii. **Lapse of Insurance.** Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Board or the Association.
- iv. **Consent Required.** Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees.

ARTICLE XVI AMENDMENT

- 16.1 **General.** Except as provided elsewhere in this Restated Declaration, including by way of illustration but not limitation to sections pertaining to the annexation or withdrawal of land, any amendment to this Restated Declaration shall require the affirmative written vote or consent of at least sixty-seven percent (67%) of the Total Votes of the Association cast either in person or by proxy at a meeting duly called for such purpose or otherwise approved in writing by such Owners without a meeting. Any Amendment authorized pursuant to this Section shall be accomplished through the recordation in the Office of the Weber County Recorder of an instrument executed by the Association. In such instrument an officer or delegate of the Association shall certify that the vote required by this Section for amendment has occurred.
- 16.2 **Consent of Eligible Mortgagee.** The consent of Eligible Mortgagees holding at least sixty seven percent (67%) of the undivided ownership interest of the Owners in the Project in the Common Area and Facilities and shall be required to any amendment which would terminate the legal status of the Project; and the consent of Eligible Mortgagees holding at least fifty-one (51%) percent of the undivided ownership interest of the Owners in the Project in the Common Area and Facilities shall be required to add to or amend any material provision of this Restated Declaration or the Final Plat which establishes, provides for, governs, or regulates any of the following, which are considered as “material”:
- a. voting rights;
 - b. responsibility for maintenance and repairs;
 - c. reallocation of interests in the Common Area and Facilities, or rights to their use;
 - d. redefinition of any Unit boundaries;
 - e. convertibility of Units into Common Area and Facilities or vice versa;

- f. expansion or contraction of Riverbend, or the addition, annexation, or withdrawal of property to or from Riverbend;
 - g. restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the documents;
 - h. any provisions that expressly benefit mortgage holders, insurers or guarantors.
- 16.3 **Material Amendment.** Any addition or amendment shall not be considered material for purposes of this Section if it is for the clarification only or to correct a clerical error.
- 16.4 **Notice to Eligible Mortgagee.** Notice of any proposed amendment to any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Restated Declaration or the Final Plat is required shall be mailed postage prepaid to the address for such Mortgagee shown on the list maintained by the Association. Any Eligible Mortgagee who does not deliver to the Board of Directors or the Association a negative response to the notice of the proposed amendment within thirty (30) days from the date of such mailing shall be deemed to have approved the proposal. The foregoing consent requirements shall not be applicable to amendments to this Restated Declaration and the Final Plat or the termination of the legal status of the Project as a planned residential development if such amendments or such termination are made or accomplished in accordance with the provisions of this Restated Declaration regarding Condemnation or Substantial Obsolescence.

ARTICLE XVII RULES ASSESSING FINES

- 17.1 **Fines; Authorization.** The Board of Directors is authorized to assess a fine against Unit Owners who violate provisions of this Restated Declaration, the Association Bylaws, or the Association rules and regulations (collectively referred to herein as “Rules”). The assessment of a fine shall be in accordance with the provisions of the Utah Community Association Act, Utah Code Annotated, § 57-8a-208 (“Act”), the provisions of this Article, and the rules and regulations adopted by the Board.
- 17.2 **Written Warning of Violation.** Before assessing a fine, the Board shall provide a written warning of the violation to the Unit Owner informing the Unit Owner that a fine will be imposed if the violation is not cured as stated in the written warning. The written warning shall:
- a. describe the violation;
 - b. state the Rule or provision of the governing documents that the Unit Owner’s conduct violates;

- c. state that the board may, in accordance with the Act, § 57-8a-208, assess fines against the Unit Owner if (i) the violation is not cured (within the time required for a continuing violation), or (ii) if a similar violation is committed again within one year after the day on which the board gives the Unit Owner the written warning or assess a fine against a Unit Owner; and
 - d. for a continuing violation, state a time that is not less than 48 hours after the day on which the Board gives the Unit Owner the written warning by which the Unit Owner shall cure the violation.
- 17.3 **Repeat Violations.** If a violation is temporarily cured or stopped, but the same violation is repeated by the same Unit Owner or their tenant within one year from the date a written warning is first served or fine is assessed on the Unit Owner or tenant, the Board shall not be required, prior to assessing a fine or an additional fine, to serve another written warning upon the Unit Owner or tenant within the one-year period, but may rely upon the notice provided in the first written warning.
- 17.4 **Time to Cure.** For a continuing violation, the violation must be cured within a time that is not less than 48 hours of the written warning that is delivered to the Unit Owner or the tenant, unless such time period is extended by the Board for good cause. The member of the Board or their agent that serves the written warning on the Unit Owner shall write on the notice the (a) date and time the written warning was served on the Unit Owner or tenant, and (b) the date and time by which the violation must be cured (if the violation is a continuing violation). If a Unit Owner repeats the violation within one year after receiving the written warning or fails to cure a continuing violation within the time required but less than one year after receiving the warning, the Unit Owner may be assessed a fine.
- 17.5 **Fines.** The Board may assess a fine against a Unit Owner if (a) within one year after the day on which the Board gives the Unit Owner a written warning, the Unit Owner commits another violation of the same rule or provision identified in the written warning, or (b) for a continuing violation, if the Unit Owner does not cure the violation within the time period that is stated in the written warning. If the violation is fully and completely cured within the time provided in the written warning, and is not repeated within one year of the time the written warning is first served on the Unit Owner, no fine may be assessed by the Board.
- 17.6 **Additional Fines.** The Board may, without providing an additional written warning, assess an additional fine against a Unit Owner each time a Unit Owner (1) commits a violation of the same rule or provision within one year from the day on which the board assesses a fine against a Unit Owner for a violation of the same rule, or (2) allows a violation to continue for 10 days or longer after the day on which the Board of Directors assesses the fine. Additional fines shall be assessed according to the amount stated in the Rules for multiple violations.

- 17.7 **Manner of Providing Written Warning and Fine.** The written warning of a violation of the Rules of the association and the written notice of a fine imposed by the Board may be provided to the Unit Owner in any one or more of the following ways:
- a. Delivering a copy to the Unit Owner personally; or
 - b. Sending a copy through first class mail, certified or registered mail (at the discretion of the Board), addressed to the Unit Owner at his or her place of residence, in which case an additional 48 hours shall be allowed to cure the violation; or
 - c. Leaving a copy with a person of suitable age and discretion at the Unit Owners Unit; or
 - d. Affixing a copy in a conspicuous place on the Unit; or
 - e. If the person committing the violation is a tenant of the Unit Owner, by delivering a copy to the owner and the tenant residing in the Unit in any manner described in the preceding four subparagraphs.
- 17.8 **Non-Unit Owner Occupied Units: Renters & Guests.** In cases where the Unit is not occupied by the Unit Owner and the violation of the Rules is committed by a tenant residing in the Unit, the Unit Owner and tenant shall be jointly and severally liable for the failure of the tenant to cure a violation of the Rules. For purposes of the lease between the Unit Owner and the tenant, the provisions of the Rules and these community rules shall be incorporated by reference into the terms of the lease and the Unit Owner may collect from the tenant any fines the Unit Owner becomes obligated to pay by virtue of the tenant's actions. Residents (defined herein as renters, tenants, guests of Unit Owners or renters, and any person who temporarily or permanently lives in a Unit, but excluding Unit Owners), are subject to the Rules adopted by the Association. Unit owners are ultimately responsible for the activities of Residents who reside in, visit, or in any manner use their Unit and the Common Area. Any fine assessed against a Resident or Unit Owner shall be joint and several liability of the Resident or Unit Owner as authorized in UCA § 57-8a-218 (2)(b)((iii)(B). Because Residents are subject to the provisions of the Association Rules, Residents are also subject to fines in the same manner as a Unit Owner. Any fine assessed against a Resident may be collected by the Unit Owner from the resident. If a Resident violates a Rule, both the Resident and the Unit Owner may be served a written warning as provided above. It shall be the responsibility of the Unit Owner to see that the Resident cures the violation within the time allotted. Failure of the Unit Owner to have the Resident timely cure the violation shall subject the Unit Owner to the fine as provided herein as if the Unit Owner committed the violation.
- 17.9 **Board Action.** Any action by the Board involving a written warning or a notice of fine may be taken by the Association's managing agent or by any officer of the Board if so authorized or later ratified by a quorum of the Board, consisting of 50% or more of the

Board present at a meeting either in person, by email, by telephone conference, or if not present at a meeting, members consenting to the action after conferring with other members of the Board.

- 17.10 **Violations for Which a Fine May be Assessed.** A fine may be assessed for the violation of a provision in the Association's Rules, any amendments thereto, or for a rule describe in Exhibit "D", which is attached and incorporated by this reference. The list of violations of a rule or regulations listed on Exhibit "D" may be modified by the Board pursuant to their power to enact rules governing conduct within a project as contained in the Act, Utah Code Ann. 57-8a-101 et seq. Exhibit "D" may be used to incorporate provisions in the Rules for which a violation may be assessed. For Rules which are not set forth in the attached Exhibit "D", the amount of each fine shall be the amount set forth in Exhibit "D".
- 17.11 **Continuous Violations.** Each 10-day period during which a violation of the governing documents of the Association, the Rules of the Association, or the rules listed on Exhibit "D", continues after the time period expires during which the Unit Owner is required to cure the violation, constitutes a separate violation and is subject to a fine in the amount listed in Exhibit "D". The violation of a provision in the Rules or a provision listed on Exhibit "D", which is temporarily cured within the time period required in the written warning, but which is repeated or violated again within one year of the date the original written warning was served or fine was assessed, is deemed to be a continuous violation for which another written warning is not required to be served.
- 17.12 **Amount of Fines.** The amount of a fine for a violation of the governing documents or the Rules or the provisions listed on Exhibit "D", shall be in the amount listed on Exhibit "D". A cumulative fine, which is a fine for a violation that is not timely cured or a fine that is repeatedly assessed due to repeated violations for which a written warning has previously been served, may not exceed \$1,000.00 per calendar month.
- 17.13 **Late Fees on Fines not paid.** Fines not paid within 10 days of their due date shall accrue interest at the rate of 1% per month until paid and a late fee of \$25.00 for each month the fine remains unpaid. An additional late fee shall be assessed for each and every 30-day period the fine remains unpaid after it is due. No interest or late fees may accrue until 10 days after a hearing (if requested by the Unit Owner) has been conducted and a final decision has been rendered by the Board.
- 17.14 **Protesting the Fine.** A Unit Owner or tenant who is assessed a fine may request an informal hearing to protest or dispute the fine within 30 days from the date the fine is assessed (which is the date written on the notice of fine). The Unit Owner protesting the fine shall request the informal hearing by delivering a written request to any member of the Board stating the grounds for the protest or dispute and setting forth in detail the following:

- a. the grounds for the protest, including any unusual circumstances justifying a reduction in the standard fine;
- b. the facts relied upon by the protesting Unit Owner with respect to the violation or non-violation of the Rules.
- c. the amount of the fine the Unit Owner claims should be paid and the reasons supporting that claim; and
- d. any errors made by the Board in calculating, assessing, or collecting the fine.

17.15 **Informal Hearing.** Within 21 days of receiving the written request for hearing, the Board shall schedule an informal hearing at which time the requesting Unit Owner or tenant will be given an opportunity to present evidence and witnesses supporting the Unit Owner's position. The Board shall allow the Unit Owner, committee members, or any other person involved in the hearing to participate in the hearing by means of electronic communication. No formal rules of evidence will be required, and the Board can receive the evidence submitted by the requesting Unit Owner and determine the probative value of such evidence. If it chooses and if it would be of benefit to the requesting Unit Owner, the Board may also produce evidence supporting its decision to fine the Unit Owner. However, the intent of the hearing is to listen to the violating Unit Owner's explanation for his or her behavior or activities and not to have a trial. The Board may terminate the hearing at any time if any individual present becomes unruly, inconsiderate or rude.

17.16 **Decision of the Board.** The Board may, after the requesting Unit Owner has had the opportunity at the hearing to present the evidence desired, may either:

- a. leave the amount of the fine as originally stated;
- b. reduce the fine to an amount agreed upon by a majority of the Board present at the hearing;
- c. reduce the fine to an amount agreed to by the offending Unit Owner with the agreement that the offending Unit Owner will pay the fine within 10 days and not appeal the fine in district court;
- d. suspend all or a portion of the fine conditioned on the Unit Owner not repeating the violation for one year; or
- e. forgive the fine.

The Board shall render its written decision no later than ten (10) days after the date of the hearing.

- 17.17 **Appeals.** A Unit Owner may appeal a fine by initiating a civil action within 180 days after:
- a. a hearing has been held and a final decision has been rendered by the Board, or
 - b. the time to request an informal hearing has expired without the Unit Owner making such a request.
- 17.18 **Lien.** A fine assessed which remains unpaid after the time for appeal has expired becomes a lien against the Unit Owner's interest in the property in accordance with the same standards as a lien for the nonpayment of common expenses under U.C.A. § 57-8a-301.
- 17.19 **Promulgation of Additional Rules and Fines.** The Board is authorized to adopt and to amend the administrative rules and regulations as may be necessary or desirable to insure the project is maintained and used in a manner consistent with the interests of the Unit Owners, to protect and enhance the quality of life in the Association, to protect the property values of the units, to ensure a quality and enjoyable lifestyle, and to respect the rights and privileges of all residents to be free from the annoyance, disturbance and nuisance of others. The method by which the Board may adopt new rules shall be as follows:
- a. New rules shall be adopted at a regular or special meeting of the Board and in conformity with existing law. The rule shall be in writing and voted on and approved by a majority of the members of the Board. If the violation of the new rule shall have a fine associated with it, the amount of the fine shall be stated in the rule and included in Exhibit "D".
 - b. Prior to the new rule becoming enforceable, the Board shall cause to be delivered, personally or by regular U.S. mail, a copy of the new rule to each Unit Owner. If a Unit Owner is not living in his Unit, the Board shall cause to be delivered to the tenant of that Unit, or posted to the door of the Unit, a copy of the new rule. In addition, the Board shall cause to be delivered a copy of the new rule, personally, by email or other electronic means, or by regular US mail to the address of record of the absentee owner. The new rule shall become enforceable five (5) days from the day it is mailed to each Unit Owner or posted on the door of an absentee Unit Owner.
 - c. Rules adopted in this manner shall deal only with the health, safety or welfare of Residents or Property. Rules adopted by the Board may also be used to clarify provisions in the Restated Declaration, Bylaws, or rules and regulations, or to change the amount of a fine associated with the violation of a Rule.
 - d. Rules adopted by the Board shall have the same force and effect as rules contained in the Restated Declaration, the Bylaws, or other Rules adopted by the Association, including the power to collect fines from those who violate these

rules.

**ARTICLE XVIII
MISCELLANEOUS**

- 18.1 **Alterations to the Common Area and Facilities.** Anything to the contrary notwithstanding, no Owner or resident may at any time modify the landscaping or make any structural alterations, modifications, changes or improvements to the Common Area and Facilities including but not limited to the construction or installation of any additions, the extension or enclosure of any existing structures not shown on the approved Plans and Specifications, without the prior written consent of the ARC and the Board of Directors.
- 18.2 **Interpretation.** To the extent Utah law is consistent with this Restated Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the Articles and Sections of this Restated Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both genders.
- 18.3 **Severance.** The invalidity or unenforceability of any portion, paragraph or section of this Restated Declaration shall not affect the validity or enforceability of the remainder hereof.
- 18.4 **Covenants to Run with Land.** This Restated Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Association, all other signatories hereto, all parties who hereafter acquire any interest in a Unit or in the Project, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or occupant of a Unit shall comply with, and all interests in all Units shall be subject to, the terms of this Restated Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Restated Declaration. By acquiring any interest in a Unit in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Restated Declaration.
- 18.5 **Enforcement and Right to Recover Attorney Fees.**
- a. **General Remedies.** Should the Association, Board of Directors or an aggrieved Owner be required to take action to enforce the Project Documents, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including a reasonable attorney fees, which may arise or accrue.

- b. **Additional Remedies.** In addition, the Board of Directors may impose the following sanctions after proper notice and the opportunity to be heard:
- i. imposing Individual Charges and fines, which may be secured by a lien against the Owner's interest in the Property;
 - ii. suspending an Owner's right to vote;
 - iii. suspending any Person's right to use any of the recreational amenities located in the Common Area and Facilities; provided, however, nothing herein contained shall authorize the Board of Directors to limit ingress or egress to or from a Lot or Dwelling Unit;
 - iv. exercising self-help or taking action to abate any violation of the Riverbend Documents in a non-emergency situation;
 - v. exercising self-help in any emergency situation (specifically including but not limited to the towing of vehicles that are in violation of the parking rules);
 - vi. requiring an Owner at his sole expense to remove any structure or improvement in the Common Area and Facilities, and upon the failure of the Owner to do so, the Board of Directors or its designee shall have the right to enter the property and remove the violation and restore the property to its original condition, and such action shall not be deemed a trespass;
 - vii. without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the Project Documents; and
 - viii. Levying Individual Charges to cover costs and expenses incurred by the Association to bring an Owner into compliance.

18.6 Party Walls.

- a. Each wall which is built as a part of the original construction of the Units upon the properties and placed on the dividing line between the Units shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply.
- b. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.
- c. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of

the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

- d. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful acts causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- e. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

18.7 **Security.** Neither the Association, Board of Directors or Manager shall in any way be considered insurers or guarantors of security within the Project. Neither the Association, Board of Directors or Manager shall be held liable for any loss or damage, including malfunction, by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners and Permittees acknowledge that neither the Association, Board of Directors nor Manager, or their employees, agents or representatives represent or warrant that any fire protection system or burglar alarm system designated by or installed in the Project may not be compromised or circumvented, that any fire protection or burglar alarm systems will prevent loss by fire, smoke, burglary, theft, hold- up, or otherwise nor that the gate, fire protection or burglary alarm systems will in all cases provide the detection or protection for which the system is designed or intended. Each Owner for himself and his Permittees acknowledges and understands that the Association, Board of Directors and Manager, and their employees, agents or representatives are not insurers and that each Owner and his Permittees expressly, by accepting a deed or other document of conveyance or taking possession of a Lot or Unit, or entering the Project, assume all risks for loss or damage to persons or property within the Project, including negligence, and further acknowledges that the Association, Board of Directors and Manager, and their employees, agents or representatives have made no representations or warranties, nor has any Owner or his Permittees relied upon any representations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose, relative to the security of the Project, or any fire and/or burglar alarm systems recommended or installed or any security measures undertaken within the Project.

18.8 **Agent for Service of Process.** The President of the Association is the person to receive service of process for the Association. The Registered Agent shall be the same as the registered agent for the Association as shown on the records on file with the Utah Department of Commerce, Division of Corporations and Commercial Code.

18.9 **Term.** This Restated Declaration shall continue for a term of fifty (50) years from its date of recordation. Thereafter, this Restated Declaration shall be automatically extended for successive periods of ten (10) years until a vote of greater than fifty

percent (50.0%) of the Units determines that this Restated Declaration shall terminate. This Restated Declaration may be amended as provided herein.

- 18.10 **Effective Date.** This Restated Declaration, any amendment or supplement hereto, and any amendment or supplement to the Final Plat shall take effect upon its being filed for record in the Office of the County Recorder.

[Signatures on Next Page]

EXHIBIT “A”

LEGAL DESCRIPTION RIVERBEND

PHASE 1

ALL OF UNITS 1 THRU 6, BUILDINGS 1, 2, 5, 7, 8, 9, 10 & 11, RIVERBEND TOWNHOMES PHASE 1, WEST HAVEN CITY, WEBER COUNTY, UTAH.

ALL OF UNITS 1 THRU 4, BUILDINGS 3, 4 & 6, RIVERBEND TOWNHOMES PHASE 1, WEST HAVEN CITY, WEBER COUNTY, UTAH.

ALL OF UNITS 1 THRU 8, BUILDING 12, RIVERBEND TOWNHOMES PHASE 1, WEST HAVEN CITY, WEBER COUNTY, UTAH.

(08-469-0001 THRU 08-469-0069)

PHASE 2

ALL OF LOTS 1 THRU 6, BUILDINGS 13, 14, 15, 16, 17, 20, & 21, RIVERBEND TOWNHOMES PHASE 1, WEST HAVEN CITY, WEBER COUNTY, UTAH.

ALL OF LOTS 1 THRU 5, BUILDINGS 18, 19, & 22, RIVERBEND TOWNHOMES PHASE 1, WEST HAVEN CITY, WEBER COUNTY, UTAH.

(08-492-0001 THRU 08-492-0058)

PHASE 3

ALL OF LOTS 1 THRU 6, BUILDING 39, RIVERBEND TOWNHOMES PHASE 3, WEST HAVEN CITY, WEBER COUNTY, UTAH.

ALL OF LOTS 1 THRU 3, BUILDING 40, RIVERBEND TOWNHOMES PHASE 3, WEST HAVEN CITY, WEBER COUNTY, UTAH.

(08-547-0001 THRU 08-547-0010).

PHASE 4

ALL OF UNITS 1 THRU 6, BUILDINGS 23 & 24, RIVERBEND TOWNHOMES PHASE 4, WEST HAVEN CITY, WEBER COUNTY, UTAH.

ALL OF UNITS 1 THRU 3, BUILDING 25, RIVERBEND TOWNHOMES PHASE 4, WEST HAVEN CITY, WEBER COUNTY, UTAH.

(08-539-0001 THRU 08-539-0016)

PHASE 5

ALL OF UNITS 1 THRU 5, BUILDING 26, RIVERBEND TOWNHOMES PHASE 5, WEST HAVEN CITY, WEBER COUNTY, UTAH.

ALL OF UNITS 1 THRU 4, BUILDING 27, RIVERBEND TOWNHOMES PHASE 5, WEST HAVEN CITY, WEBER COUNTY, UTAH.

ALL OF UNITS 1 THRU 3, BUILDINGS 28, RIVERBEND TOWNHOMES PHASE 5, WEST HAVEN CITY, WEBER COUNTY, UTAH.

(08-555-0001 THRU 08-555-0013)

PHASE 5A

ALL OF UNITS 1 THRU 6, BUILDING 32, RIVERBEND TOWNHOMES PHASE 5A, WEST HAVEN CITY, WEBER COUNTY, UTAH.

(08-564-0001 THRU 08-564-0007)

PHASE 6

ALL OF UNITS 1 THRU 5, BUILDINGS 29, 30 & 31, RIVERBEND TOWNHOMES PHASE 6, WEST HAVEN CITY, WEBER COUNTY, UTAH.

(08-565-0001 THRU 08-565-0016)

PHASE 7

ALL OF UNITS 1 THRU 6, BUILDINGS 33, 34 & 38, RIVERBEND TOWNHOMES PHASE 7, WEST HAVEN CITY, WEBER COUNTY, UTAH.

ALL OF UNITS 1 THRU 3, BUILDINGS 35 & 36, RIVERBEND TOWNHOMES PHASE 7, WEST HAVEN CITY, WEBER COUNTY, UTAH.

ALL OF UNITS 1 THRU 5, BUILDINGS 37, RIVERBEND TOWNHOMES PHASE 7, WEST HAVEN CITY, WEBER COUNTY, UTAH.

(08-576-0001 THRU 08-576-0030)

EXHIBIT “B”

BYLAWS

**BYLAWS
OF
RIVERBEND HOMEOWNERS ASSOCIATION**

The following are adopted as the administrative Bylaws of Riverbend Homeowners Association (“Riverbend”), a Utah nonprofit corporation.

**ARTICLE I
NAME AND LOCATION**

- 1.1 **Name.** The name of the corporation is the Riverbend Homeowners Association.
- 1.2 **Principle Place of Business.** The principle office of the Association shall be at that address listed on with the Utah State Department of Commerce, but meetings of the members and Board may be held at such times and places within the State of Utah as the Board of Directors may designate.

**ARTICLE II
DEFINITIONS**

- 2.1 **Definitions.** Except as otherwise provided herein or as may be required by context, all terms defined in Article I of the Restated Declaration shall have such defined meanings when used in these Bylaws.

**ARTICLE III
ASSOCIATION**

- 3.1 **Composition.** The association of Owners is a mandatory association consisting of all Owners at Riverbend.
- 3.2 **Voting.** Each Unit Owner shall have one vote in connection with the ownership of his Unit. An Owner may vote in person, by proxy, or by written ballot, or in any manner permitted by the Revised Nonprofit Corporations Act.
- 3.3 **Place of Meeting.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place as may be designated by the Board from time to time and stated in the notice of meeting.

- 3.4 **Annual Meeting.** Unless otherwise designated by the Board, the annual meeting of the Association shall be held during the month of November of each year at some reasonable location in Weber County, Utah, or on such other annual date and time as may be designated by the Board from time to time.
- 3.5 **Special Meetings.** The President shall call a special meeting (a) if he or she so desires, (b) if a majority of the members of the Board of Directors direct him to do so, or (c) upon receipt of a petition signed and presented to the Secretary of the Board by at least twenty-five percent (25%) of the members of the Association. The notice of any special meeting shall state the date, time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.
- 3.6 **Notice of Meeting.** It shall be the duty of the Secretary to give notice of (a) each annual meeting of the Owners not less than fifteen (15) and not more than thirty (30) days in advance of such meeting; and (b) each special meeting of the Owners at least three (3) days and not more than twenty (20) days in advance of such meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Owner of record, at the address of his respective Unit or such other address (including electronic address) as each Owner may have designated by notice in writing to the Secretary. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.
- 3.7 **Notification by Mail, Website and Email.** Any notice permitted or required to be delivered by the Board or from the Association to the Owners may be delivered either personally, by U.S. mail, or by electronic means.
- a. If notice is by mail, it shall be deemed to have been delivered 24 hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to each Owner at the address given by such person to the Board of Directors for the purpose of service of such notice or to the Unit of such person if no address has been given. Such addresses may be changed by Owner from time to time by notice in writing to the Board of Directors.
 - b. If notice is by electronic means, any notice delivered by the Association to Owners under the provisions of the Restated Declaration or these Bylaws may be sent by electronic means, including but not limited to text message, email, or the Association's website. The Association shall maintain records of all notices sent to members by electronic means, including the electronic address to which notice was sent. When notices are sent electronically, the Association shall first compile a list of Owners' current electronic addresses (such as email or text messaging addresses or other types of well-known electronic forms, such as Facebook) and the Association shall send notification of all Association meetings and business to the electronic address of the Owners. The Association secretary shall thereafter send an electronic notice, via email or a comparable electronic means, of all Association meetings and business to those Owners who do not object to electronic notification in this manner.

A member may, by written demand, require the Association to provide notice to the Unit owner by mail.

- c. If notice is by personal means, notice may be delivered to Owners by hand delivery directly to the Owner or a responsible occupant of an Owner's Home, or by securely attaching a copy of the notice to the front entry door of the Owner's Home.
- 3.8 **Voting Requirements.** An Owner shall be deemed to be in "good standing" and "entitled to vote" at any annual meeting or at any special meeting of the Association if, and only if, he shall be in full compliance with all of the terms, covenants, and conditions of the Project Documents, and shall have fully paid all Assessments that are currently due.
- 3.9 **Proxies.** The votes appertaining to any Unit may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Owner, or in cases where the Owner is more than one person, by or on behalf of all such persons. No such proxy shall be revocable except by actual written notice to the person presiding over the meeting, by the Owner or by any of such persons, that it be revoked. Any proxy shall be void if it is not dated, if it purports to be revocable without notice, or if it is not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Unless it expressly states otherwise, a proxy shall terminate automatically upon the adjournment of the first meeting held on or after the date of that proxy. Each proxy must be filed with the Secretary of the Board before the meeting. Only individual Owners or the legal representative of an Organizational Owner may be proxies.
- 3.10 **Quorum.** At the first meeting of the Association, twenty-five percent (25%) of the votes of the membership shall constitute a quorum for any action except as otherwise provided in the Articles, the Restated Declaration, or these Bylaws. If a quorum is not present at the first meeting, another meeting may be called, without notice other than announcement at the meeting, at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. If, however, such a quorum shall not be present or represented at the second meeting, the members entitled to vote thereat shall have the power to adjourn the meeting from time to time until a quorum as aforesaid shall be present or be represented.
- 3.11 **Order of Business.** The order of business at all meetings of the Association shall be as follows:
- a. roll call to determine quorum status;
 - b. proof of notice of meeting;
 - c. reading of minutes of preceding meeting;
 - d. reports of officers;
 - e. report of special committees, if any;
 - f. appointment of inspectors of election, if applicable;
 - g. election of Board Members, if applicable;
 - h. unfinished business; and
 - i. new business.

- 3.12 **Conduct of Meeting.** The President shall, or in his absence the Vice-president, preside over all meetings of the Association; the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted by the meeting as well as record of all transactions occurring thereat.

ARTICLE IV BOARD OF DIRECTORS

- 4.1 **Powers and Duties.** The affairs and business of the Association shall be managed by the Board of Directors. The Board of Directors shall have all the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Restated Declaration, and may do all such acts and things necessary to operate and maintain the Project. The Board may delegate its authority to a manager or managers. Subject to any limitations or provisions contained in the Restated Declaration, the Board shall be responsible for at least the following:
- a. Preparation of an annual budget;
 - b. Determining the annual assessment of each Owner;
 - c. Managing the Association;
 - d. Maintaining the Common Areas and Facilities;
 - e. Collecting the Assessments;
 - f. Depositing Assessments into a federally insured interest-bearing account or accounts;
 - g. Adopting and amending rules and regulations;
 - h. Enforcing the Project Documents;
 - i. Opening of bank accounts on behalf of the Association and designating the signatories required therefor.
 - j. Making, or contracting for the making of, repairs, additions, and improvements to, or alterations of, the Property and repairs to, and restoration of, the Property, in accordance with the Restated Declaration and other provisions of these Bylaws, after damage or destruction by fire or other casualty.
 - k. Commencing legal action when necessary;
 - l. Purchasing and maintaining insurance for the Association and the Board;
 - m. Paying the cost of all services rendered to the Project and not billed directly to Owners of individual Units.
 - n. Keeping books and records of the Association;
 - o. Providing common utility services as needed;
 - p. Paying any amount necessary to discharge any mechanic's or materialman's lien or other encumbrance levied against the Common Area or Facilities;
 - q. Giving notice of alleged violations of the Project Documents and providing the alleged violator the opportunity to be heard;
 - r. Levying fines, sanctions and citations;
 - s. Making emergency repairs;
 - t. Towing or impounding motor vehicles;
 - u. Evicting non-Owner residents in material violation of the Project Documents or who have created and failed to abate a nuisance;

- v. As limited by the Restated Declaration, hire a Manager, an independent contractor, and conduct such other business as the Board deems necessary, and to prescribe the duties of those hired; and
 - w. Doing such other things and acts necessary to accomplish the foregoing.
- 4.2 **Composition of Board of Directors.** The Board of Directors shall be composed of at least three (3) but not more than seven (7) members of the Association. A change from the existing number of board members may be made by a majority vote of the Owners present at the Association's annual meeting. The first Board elected after this Restated Declaration is recorded shall consist of five (5) members and shall include at least three Board members from Phase 1 or Phase 2 of Riverbend, and at least one Board member from what was previously the Riverbend South Townhomes Owners Association (Phases 3 through 7 of Riverbend). Thereafter, the Board shall include whomever is elected by the members of the Association. The two members receiving the least number of votes shall serve an initial one year term and their replacements shall serve two year terms thereafter. The three members receiving the greatest number of votes shall serve two year terms.
- 4.3 **Qualification.** Only individual Owners or officers or agents of organizational Owners other than individuals shall be eligible for Board membership. Only one owner per Unit shall serve on the Board at the same time.
- 4.4 **Election and Term of Office of the Board.** The term of office of membership on the Board shall be two (2) years and each member shall serve on the Board until such time as his successor is duly qualified and elected. Terms shall be staggered to permit an approximate number of Board members to be elected each year.
- 4.5 **Initial Organizational Meeting.** The first meeting of the members of the Board shall be immediately following the annual meeting of the Association or at such other time and place designated by the Board.
- 4.6 **Regular Meetings.** Regular meetings of the Board shall be held from time to time and at such time and place as shall be determined by a majority of the members of the Board, but no less often than quarterly.
- 4.7 **Special Meetings.** Special meetings of the Board may be called by the President or any two Board members, on at least forty-eight (48) hours prior notice to each member. Such notice shall be given personally, by regular U.S. mail postage prepaid, by telephone or electronic means, and such notice shall state the time, place and purpose of the meeting. Any meeting attended by all members of the Board shall be valid for any and all purposes.
- 4.8 **Waiver of Notice.** Before or at any meeting of the Board, any member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any such meeting of the Board shall constitute a

waiver of notice. If all the members are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

- 4.9 **Quorum.** A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act done or decision made by a majority of the Directors present at a duly held meeting at which a quorum is present, shall be regarded as the act of the Board of Directors.
- 4.10 **Vacancies.** Vacancies in the Board caused by any reason other than removal of a member by a vote of the Association shall be filled by vote of the majority of the remaining members of the Board at a special meeting of the Board held for that purpose promptly after the occurrence of any such vacancy, even though the total members remaining may constitute less than a quorum of the Board; and each person so elected shall be a member for the remainder of the term of the member so replaced. A vacancy created by the removal of a member by a vote of the members of the Association at a special meeting called for that purpose shall be filled by the election and vote of the members of the Association at said meeting, or as soon thereafter as possible.
- 4.11 **Removal of Board Member.** A member may be removed, with or without cause, and his successor elected, at any duly called regular or special meeting of the Association at which a quorum of the Association is present, by an affirmative vote of a majority of the members of the Association. Any member whose removal has been proposed by the Owners shall be given at least thirty (30) days' notice of the calling of the meeting and the purpose thereof and an opportunity to be heard at the meeting. Any Board member who misses twenty-five percent (25%) or more of the Board Meetings in any twelve-month period or who misses three (3) consecutive meetings in any calendar year, shall be automatically removed from the Board.
- 4.12 **Compensation.** Board members shall not be compensated for their services but shall be reimbursed for all expenses reasonably incurred in connection with Board business and approved by the Board. Board officers, agents, and employees shall receive such reasonable compensation as may be approved by the Board of Directors. Appointment of a person as an officer, agent, or employee shall not, of itself, create any right to compensation. A member may enter into a separate and independent contract with the Association to provide additional services for a fee.
- 4.13 **Conduct of Meetings.** The President shall preside over all meetings of the Board and the Secretary shall keep a Minute Book of the Board recording therein all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings, subject to the following:
- a. **Open Meetings.** Each meeting of the Board shall be open to all members of the Association, but members other than members of the Board may not participate in any discussion or deliberation unless expressly so authorized by a majority of a quorum of the Board. The Board may adopt procedures, policies, and guidelines for conducting of its meetings, retiring to executive session, and prohibiting photographs

and/or any electronic (video or audio) recordation of the meetings, or any part thereof.

- b. **Executive Session.** The Board may, with approval of a majority of a quorum, adjourn a meeting and reconvene in an Executive Session to discuss and vote upon private, confidential, sensitive or personnel matters, litigation, and orders of business of a similar nature. The nature of any and all business to be considered in an Executive Session shall first be announced in open session.
 - c. **Action Without a Formal Meeting.** Any action to be taken at a meeting of the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all members of the Board.
- 4.14 **Report of Board.** The Board shall present at each annual meeting of Owners, or when called for by vote of the Association at any special meeting of the Association, a full and clear statement of the business and condition of the Association.

ARTICLE V NOMINATION AND ELECTION OF BOARD MEMBERS

- 5.1 **Nomination Process.** The process for the nomination and election of the Board of Directors shall proceed as set forth herein.
- 5.2 **Nominating Committee.** Nomination for election to the Board of Directors shall be made by a nominating committee. Nominations may also be made from the floor at the annual meeting. The nominating committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more members of the Association. The nominating committee shall:
- a. be appointed by the Board of Directors prior to each annual meeting of the members.
 - b. serve until replaced by the Board.
 - c. make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not fewer than the number of vacancies that are to be filled.
 - d. ensure that such nominations may be made from among members.
- 5.3 **Failure to Follow Nomination Process.** Should the Board fail to follow the process described in this paragraph then nominations shall be made from the floor at the annual meeting or by the Board of Directors prior to the annual meeting, or both.
- 5.4 **Nomination Approval.** Anyone nominated as a candidate prior to or at the Association's election meeting should have first granted their approval and affirmatively stated that he or she is willing to serve for the term if elected.
- 5.5 **Nominations.** The names of the candidates recommended by the Nominating Committee or the Board shall be included in the Notice of the annual meeting sent to members of the

Association, and may be included on proxy and absentee ballots sent to members. Write-in candidates are permitted. Nominations may also be received from members of the Association from the floor at the annual meeting of the members.

- 5.6 **Election.** At the annual meeting for the election of new Board members for which a quorum is present as set forth in 3.10 above, the Board shall prepare and distribute a ballot to each owner. Owners who do not attend the meeting may vote by proxy ballot or by written ballot when issued by the Board. Each Unit Owner or their proxies may cast as many votes as there are vacancies on the Board. Voting by secret ballot shall not be required.

ARTICLE VI OFFICERS

- 6.1 **Designation.** The principal officers of the Association shall be a President, a Vice-president, a Secretary and a Treasurer, all of whom shall be elected by the Board. The Board may appoint assistant secretaries and such other officers as in its judgment may be necessary. All officers shall be members of the Association. Two or more offices may be held by the same person, except that the President shall not hold any other office.
- 6.2 **Election of Officers.** The officers of the Association shall be elected by the members of the Board of Directors at their first meeting after the annual meeting of the Association. Any vacancy in an office shall be filled by the remaining members of the Board of Directors at a regular meeting or special meeting called for such purpose.
- 6.3 **Removal of Officers.** The officers shall hold office until their respective successors are chosen and qualify in their stead. Any officer elected or appointed by the Board may be removed at any time by the affirmative vote of a majority of the Board, and his successor may be elected at any regular meeting of the Board, or at any special meeting of the Board called for such purposes.
- 6.4 **President.** The President shall be the chief executive officer; he shall preside at meetings of the Association and the Board and shall be an ex officio member of all committees; he shall have general and active management of the business of the Board and shall see that all orders and resolutions of the Board are carried into effect. He shall have all of the general powers and duties, which are usually vested in or incident to the use of president of a stock corporation organized under the laws of the State of Utah.
- 6.5 **Vice-president.** The Vice-president shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Board or the President shall prescribe. If neither the President nor the Vice-president is able to act, the Board shall appoint a member of the Board to do so on an interim basis.
- 6.6 **Secretary.** The Secretary shall attend all meetings of the Board and all meetings of the Association and record all votes and the minutes of all proceedings in a book to be kept

by him or her for that purpose and shall perform like duties for committees when required. He shall give, or cause to be given, notices for all meetings of the Association and the Board and shall perform such other duties as may be prescribed by the Board. The Secretary shall compile and keep current at the principal office of the Association, a complete list of the Owners and their last known post office addresses. This list shall be open to inspection by all Owners and other persons lawfully entitled to inspect the same, at reasonable hours during regular business days. The Secretary shall also keep current and retain custody of the Minute Book of the Association, containing the minutes of all annual and special meetings of the Association and all sessions of the Board including resolutions.

- 6.7 **Treasurer.** The Treasurer shall have custody of all funds and securities. He shall keep full and accurate records of receipts and disbursements, shall prepare all required financial data, and shall deposit all monies and other valuable effects in such depositories as may be designated by the Board. He shall disburse funds as ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and members, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Project.

ARTICLE VII DISPUTE RESOLUTION

- 7.1 **Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes.** The Association, Owners, all persons subject to these Bylaws, and any person not otherwise subject to these Bylaws who agrees to submit to this Section (collectively the “Bound Parties”), agree to encourage the amicable resolution of disputes between the Bound Parties or involving enforcement of the provisions of these Bylaws, the Bylaws and any Rules and Regulations adopted by the Association, and to avoid the emotional and financial cost of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party, including without limitation, claims, grievances or disputes (“Claims”) arising out of or relating to the violation, interpretation, application or enforcement of these Bylaws, the Bylaws, the Association rules, or the Articles of Incorporation, except those Claims exempted in Section 7.2, shall be subject to the procedures set forth in this Article.
- 7.2 **Exempt Claims.** The limitations in this Article VII pertaining to exhausting administrative remedies shall not apply to the following Claims (“Exempt Claims”):
- a. Any lien, claim, action or complaint wherein the Association or the Board alleges against a Unit Owner the nonpayment of Common Expenses, whether by special assessment or any other form of nonpayment of funds owed to the Association; and
 - b. Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce its Rules and its Restated Declaration; and

- c. Any suit between Owners seeking redress since a claim which would constitute a course of action under the laws of the State of Utah in the absence of a claim based on the Restated Declaration, Bylaws, Articles or Rules of the Association, if the amount in controversy exceeds \$10,000.00; and
- d. Any fines assessed by the Association.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 7.3, but there shall be no obligation to do so.

7.3 Mandatory Procedures for All Other Claims. Any Bound Party having a Claim (“Claimant”) against any other Bound Party (“Respondent”), other than a Claim exempted from this provision by Section 7.2, shall not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of such Claim until it has complied with the following procedures:

- a. **Notice.** In the event that any Claimant shall have a grievance against any Respondent, said Claimant shall set forth said grievance or complaint in writing (the “Notice”) and shall deliver the same to the Respondent, stating plainly and concisely:
 - i. the nature of the Claim, including date, time, location, persons involved, Respondent's role in the Claim and the provisions of these Bylaws, the Bylaws, the Rules, the Articles of Incorporation or other authority out of which the Claim arises; and
 - ii. the basis of the Claim (i.e., the provisions of the Restated Declaration, Bylaws, Rules or Articles triggered by the Claim); and
 - iii. what Claimant wants Respondent to do or not do to resolve the Claim; and
 - iv. that Claimant wishes to resolve the Claim by mutual agreement with Respondent, and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.
- b. **Response.** Within ten (10) days of receiving the Notice from Claimant, the Respondent shall set forth a response in writing (the “Response”) and shall deliver the same to the Claimant, stating plainly and concisely:
 - i. those facts and/or allegations contained in Claimant's Notice with which Respondent agrees and disagrees, and a statement of the facts and allegations related to the grievance as understood and believed by Respondent; and
 - ii. those provisions of the Restated Declaration, the Bylaws, the Rules, the Articles of Incorporation or other authority out of which the Claim arises

which Respondent understands applies to and controls the resolution of the Claim; and

- iii. what Respondent is willing to do or not do to resolve the Claim; and
 - iv. that Respondent wishes to resolve the Claim by mutual agreement with Claimant and is willing to meet in person with Claimant at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.
- c. **Negotiation.** Each Claimant and Respondent shall make every reasonable effort to meet in person and confer to resolving the Claim by good faith negotiation. Upon receipt of a written request from any party, accompanied by a copy of the Notice, the Board (if not involved in the dispute as either a Claimant or Respondent) may appoint a representative to assist the parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the parties and to the welfare of the Community.
- d. **Meeting.** In the event that the cause of said grievance or complaint is not rectified by the parties within twenty (20) days from the date of the receipt of Respondent's response, within ten (10) days from the date of expiration of said initial twenty (20) day period, a time and place mutually acceptable to the Claimant and the Respondent shall be established for a meeting between the Claimant and the Respondent.
- e. **Resolution or Litigation.** At such meeting, the Claimant and Respondent shall be entitled, but not required, to be represented by counsel. The parties, and/or counsel for the Claimant and counsel for the Respondent shall attempt to reach an amicable solution to the grievance or complaint. In the event that the parties are not able to reach such a solution within thirty (30) days from the date of the meeting between the Claimant and the Respondent, the Claimant shall then be entitled to proceed to have the matter judicially determined. Any resolution by the parties shall be reduced to writing and signed by each party or the party's legal representative prior to the end of the thirty (30) day period referred to herein.
- f. **Exhaustion of Remedies Required.** All grievances and complaints of Claimants shall follow procedure outlined and set forth herein prior to the commencement of any litigation relative to said grievances and complaints. However, if a Respondent fails to provide the written response required within ten (10) days, or if either party refuses to meet in good faith within the time frames set forth herein to discuss resolution of the grievance or complaint, the non-offending party shall be released from the obligation to comply with this Article 7 and may seek judicial relief without the need to wait for additional time periods to expire.

7.4 **Allocation of Costs of Resolving Claims.** Each Party shall bear all of its own costs incurred prior to and during the proceedings described in Section 7.3, including the fees of its attorney or other representative.

- 7.5 **Enforcement of Resolution.** If the parties agree to resolve any Claim through negotiation in accordance with Section 7.3 and any party thereafter fails to abide by the terms of such agreement, then any other party may file suit to enforce such agreement without the need to again comply with the procedures set forth in Section 7.3. In such event, the party taking action to enforce the agreement shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties pro rata) all costs incurred in enforcing such agreement, including without limitation attorney fees and court costs.

ARTICLE VIII FISCAL YEAR

- 8.1 The fiscal year of the Association shall be the calendar year consisting of the twelve-month period commencing on January 1 of each year terminating on December 31 of the same year. The fiscal year herein established shall be subject to change by the Board should it be deemed advisable or in the best interests of the Association.

ARTICLE IX BOOKS AND RECORDS

- 9.1 **GAAP.** The books and accounts of the Association shall be kept in accordance with generally accepted accounting procedures under the direction of the Treasurer.
- 9.2 **Record Review.** At the close of each fiscal year, the books and records of the Association shall be reviewed by the Association, and financial statements shall be distributed to all Owners.
- 9.3 **Inspection of Records.** The membership register, books of account, and minutes of meetings of the Association, of the Board of Directors, and of committees of the Board of Directors, and all other records of the project maintained by the Association or Manager, shall be made available for inspection and copying by any member of the Association or his duly appointed representative at any reasonable time and for a non-commercial purpose reasonably related to his interest as a member, at the office where the records are maintained. Upon receipt of a written request from a member along with the fee prescribed by the Board of Directors to defray the costs of reproduction, the Manager or other custodian of records of the Association shall prepare and transmit to the member a copy of any and all records requested. The Board of Directors shall comply with the provisions in the Community Association Act regarding the production of records.
- 9.4 **Record Retention Policy.** The attached Exhibit "E" shall serve as the record retention schedule for the Association. It shall serve as a guideline and is not an exclusive list. Some of the records in Exhibit "E" may not currently exist, but are listed in the event they exist in the future. The Board shall use its best judgement in determining the retention period for any record not mentioned in Exhibit "E". The records described shall be kept for as long as indicated. Once their retention period has expired, the Board may destroy the documents.

**ARTICLE X
AMENDMENT TO BYLAWS**

- 10.1 **Amendments.** These Bylaws may be modified or amended either (i) by the affirmative vote of a majority of the members of the Association or (ii) pursuant to a written instrument of consent duly executed by a majority of the members of the Association provided all of the written consents are obtained within a ninety-day period.

**ARTICLE XI
COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS**

- 11.1 **Compliance.** These Bylaws are set forth in compliance with the requirements of the Restated Declaration.
- 11.2 **Conflict.** These Bylaws are subordinate to and are subject to all provisions of the Restated Declaration, except in those cases where the provisions of the Bylaws are clearly intended to govern (administrative matters). All of the terms hereof, except where clearly repugnant to the context, shall have the same meaning as they are defined to have in the Restated Declaration.
- 11.3 **Severability.** If any provisions of these Bylaws or any section, sentence, clause, phrase, or work, or the application thereof in any circumstance is held invalid, the validity of the remainder of these Bylaws shall not be affected thereby and to this end, the provisions hereof are declared to be severable.
- 11.4 **Waiver.** No restriction, condition, obligation, or provision of these Bylaws shall be deemed to have been abrogated or waived due to any failure or failures to enforce the same.
- 11.5 **Captions.** The captions contained in these Bylaws are for convenience only and are not part of these Bylaws and are not intended in any way to limit or enlarge the terms and provisions of these Bylaws.
- 11.6 **Construction.** Whenever in these Bylaws the context so requires, the singular number shall refer to the plural and the converse; the use of any gender shall be deemed to include both masculine and feminine, and the term “shall” is mandatory and “may” permissive.
- 11.7 **Conflict.** In the event of any conflict, incongruity or inconsistency between the provisions of these Bylaws and the provisions of the Restated Declaration or any amendments thereto, the latter shall in all instances govern and control. However, the Dispute Resolution requirements of Article VII shall govern all disputes involving the Restated Declaration, Bylaws, and Rules and Regulations.

- 11.8 **Office and Registered Agent.** The Registered Agent of the Association shall be the President or Secretary of the Association and the Registered Office of the Association shall be the office of the President or such other place as shall be designated by him.
- 11.9 **Bylaws Applicability.** All present and future Owners, residents, tenants, renters, lessees, and their guests, licensees, invitees, servants, agents or employees, and any other person or persons who shall be permitted at Riverbend shall be subject to and abide by these Bylaws.

EXHIBIT “C”

MAINTENANCE CHART

MAINTENANCE AND RESPONSIBILITY CHART

The following chart sets forth the division of responsibility for maintenance, repair, and replacement of property between the Riverbend Homeowners Association and the Unit Owners. Please refer to Riverbend CC&Rs for additional explanations.

	EXTERIOR	HOA	OWNER
1.	Maintenance and repair of roof (for damages covered by individual HO6 and HOA Master Insurance Policies see p. 2, *25).	X	
2.	Replacement of roof (shingles, felt and plywood) due to normal wear and tear.	X	
3.	Maintenance, repair, and replacement of the exterior siding of a Unit, including exterior of the garages (but not including studs, insulation or plywood backing unless covered by the HOA's insurance), and including the Unit's fascia and soffit.	X	
4.	Maintenance, repair, and replacement of outside secondary water spigots.	X	
5.	Maintenance, repair, and replacement of driveways, front steps, porches, and individual walkways.		X
6.	Maintenance, repair, and replacement of rain gutters and down spouts.		X
7.	Maintenance, repair, and replacement of concrete foundations and patios and decks.		X
8.	Maintenance, repair, and replacement of exterior doors, hinges, frames, thresholds, locks, and doorbells.		X
9.	Maintenance, repair, and replacement of garage floors, garage doors, and garage door frames.		X
10.	Maintenance, repair, and replacement of windows, shutters, sliding glass doors, French doors, screens, and frames.		X
11.	Maintenance, repair, and replacement of window wells and window well covers.		X
12.	Maintenance, repair, and replacement of all lights attached to the exterior walls (unless used to light the Common Area and not connected to the Unit's power.		X
13.	Maintenance of gas and electricity connections from the meters to the Unit.		X
14.	Maintenance of culinary water system from the outside entry through the foundation throughout the Unit. This includes outside faucets and hose bibs. Any damage caused by this portion of water system is the liability of Unit Owner.		X
15.	Maintenance, repair, and replacement of phone lines, TV cables, air conditioning, and satellite dishes.		X

16.	Maintenance, repair, and replacement of all Unit owner improvements, such as skylights, windows, attic vents, fans, heat tape, ornamental railings, and similar items.		X
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	INTERIOR	HOA	OWNER
17.	All interior painting, decorations, and furnishings from the inside of the unfinished walls and ceilings. This includes all appliances, such as dishwashers, garbage disposals, ranges, refrigerators, microwaves, furnaces, exhaust fans, attic vents, air conditioners, water heaters, and telephone and computer networks.		X
18.	Maintenance, cleaning, and repair of venting and fireplaces.		X
19.	Maintenance, repair, and replacement of the electrical system from the city electric meter to the breaker panel and to all outlets, including switches and light fixtures.		X
20.	Maintenance, repair, and replacement of plumbing fixtures, such as sinks, basins, toilets, and all interior pipes and valves.		X
21.	Repair of cracks or other damage to interior walls, floors, or ceilings caused by normal Unit settling.		X
22.	Repair of damage resulting from static water or seepage of water from any underground source.		X
23.	Repair of damage resulting from surface water.		X
24.	Repair of damage resulting from seepage of water from sprinkler system failures.	X	
25.	Damages under \$10,000 (or the current amount of the Association's insurance deductible) = Individual Owner or Owner's HO6 Insurance Policy Damages over \$10,000 = Riverbend Master Policy Insurance	X	X

	GROUNDS	HOA	OWNER
26.	Maintenance of lawn and replacement of original trees and shrubs.	X	
27.	All flowers on an Owner's patio or porch		X
28.	Maintenance, repair, and replacement of private roadways, parking lots, playground, curbs, and gutters.	X	
29.	Maintenance, repair, and replacement of a Unit's driveway and the individual walkways servicing one Unit.		X
30.	Maintenance and utilization of sprinkler system within the Association.	X	
31.	Snow removal: private roadways, parking lots, and common area walkways.	X	

32.	Snow removal: driveways and individual walkways.	X	
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	OTHER	HOA	OWNER
33.	Garbage collection.		X
34.	Maintenance and repair of water system from the city water meter to the entrance to the exterior wall of each Unit.		X
35.	Any damage to a Unit or common area not otherwise covered by insurance, or caused by an Owner or a contractor hired by an Owner.		X
36.	Any damage in, on, or to a Unit is the sole responsibility of the Owner, except as otherwise stated herein.		X
37.	Private Roadways	HOA	

EXHIBIT “D”

FINE SCHEDULE

1 st Offense	2 nd or more Offense within 365 days	<h2 style="text-align: center;">RULES and FINES</h2> <p>The following activities are prohibited:</p>
\$50	\$100	<ul style="list-style-type: none"> • Parking on private streets within the HOA • Parking in restricted areas, such as fire lanes • Parking in areas other than approved parking areas • Parking visitor or resident vehicles overnight in approved areas without displaying designated Unit parking permit • Parking resident vehicles in approved areas at times other than designated on parking signs • Parking recreational vehicles or boats on Unit property for more than 2 days prior to or immediately following use of said vehicle or boat (cleaning, loading, and unloading) • Parking in a manner that blocks access to another Unit's driveway • Violating any parking rule contained in the Restated Declaration, Bylaws, or Association rules • Driving faster than safety and conditions permit on private roads within Association • Performing maintenance or mechanical work on vehicles (including motorcycles and ATVs) in Unit Owner's driveway or Association parking areas in violation of the provisions found in Article XI of the Restated Declaration • Leaving trash, garbage, or clutter on Unit Owner's driveway, patio or doorstep in an unsightly, unclean, or unsanitary condition • Obstructing common area sidewalks in such a manner as to restrict ingress or egress from Units or parking areas • Causing damage to any common areas (lawns, sidewalks, sprinkler system, trees, shrubs), Unit Owner's roof or gutters, or Association parking areas • Leaving trash, fireworks remnants, or personal belongings such as bicycles, scooters, toys, clothing, or equipment in parking lots, streets, or common areas • Creating noise within a Unit or lot that can be heard in another Unit or lot, or in the common areas, such that the noise is: (1) offensive to the senses, (2) disruptive to the comfortable enjoyment and lifestyle of other residents, or (3) an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life

1 st Offense	2 nd or more Offense within 365 days	<h2 style="text-align: center;">RULES and FINES</h2> <p>The following activities are prohibited:</p>
\$50	\$100	<ul style="list-style-type: none"> • Maintaining pet(s) in a Unit or lot in violation of the Association Bylaws, Restated Declaration, or CC&Rs • Failing to clean up after pets in common areas • Allowing pets to leave droppings in other residents' flowers, bushes • Allowing pets to freely roam outside Unit without a leash • Allowing pets in large common area or playground area • Maintaining pets in such a way that they can be heard in another lot, or that the sound or smell created by pet is: (1) offensive to the senses, (2) disruptive to the comfortable enjoyment and lifestyle of other residents, or (3) an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life • Performing any construction, or making changes or additions outside a Unit without written authorization from the Architectural Review Committee or Board • Violating the Association's Pool Rules
	\$20	<ul style="list-style-type: none"> • Loss of visitor & resident parking permits, and/or failure to render said permits and HOA Resident Packet to HOA Board upon vacating residence

** The cumulative fine for a continuing violation may not exceed \$1,000.00 per month.

EXHIBIT “E”

Record Retention Schedule

Record Retention Schedule

Description of Record	Retention Period
Articles of Incorporation	Permanent
Declaration of Covenants, Conditions, and Restrictions (and amendments)	Permanent
Corporate or Association Bylaws	Permanent
Deeds, Plats, Maps	Permanent
Resolutions adopted by the Board of Directors relating to the characteristics, qualifications, rights, limitations, and obligations of members or any class or category of members (U.C.A §16-6a-1601 (5)(c))	Permanent
Minutes of all meetings Board of Directors	Permanent
Minutes of all annual and special meetings of members	Permanent
Record of all actions taken by the members or Board of Directors without a meeting	Permanent
A record of all actions taken by a committee of the Board of Directors in place of the Board of Directors on behalf of the nonprofit corporations	Permanent
Record of all waivers of notices of meetings of members and of the Board of Directors or any committee of the board of directors	Permanent
Architectural Modifications- Approved and Disapproved	Permanent
Architectural Guidelines (current and past)	Permanent
Association or Community Rules	Current and last 6 Years
Ownership/Membership Records	Current and Past 6 Years
All written communications to members generally as members	6 years
A list of the names and address of current directors and officers	Current and past 4 Years
A copy of the most recent annual report delivered to the division under Section (U.C.A §16-6a-1607)	Current and Past 4 Years
Financial records and statements, including invoices, tax returns, checks, etc.	4 years