

After recordation, return to:  
Legacy-Fairways, L.L.C.



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**DECLARATION OF EASEMENTS, COVENANTS,  
CONDITIONS AND RESTRICTIONS OF THE  
FAIRWAYS AT WOLF CREEK PRUD  
(PHASE I)**

**A Planned Residential Unit Development  
(Expandable)**

This DECLARATION (the "Declaration") is made this 15 day of ~~February~~ <sup>August</sup>, 2003 by Legacy-Fairways, L.L.C., a Utah limited liability company (the "Declarant"), in its capacity as the owner and developer of The Fairways at Wolf Creek, a Planned Residential Unit Development, in the vicinity of Eden, Weber County, Utah.

**RECITALS**

WHEREAS, Declarant is the owner of certain real property and improvements in the Wolf Creek Resort, in the vicinity of Eden, Weber County, Utah, which is more particularly described on Exhibit A attached hereto and by this reference made a part hereof; and

WHEREAS, Declarant desires to develop the real property and improvements described on Exhibit A attached hereto as a planned residential unit development to be known as The Fairways at Wolf Creek PRUD (Phase I) (hereinafter referred to as the "Project") and to construct buildings thereon which shall consist of duplex type home structures (hereinafter referred to as the "Units") and related amenities thereon, and to sell the Units within the Project to the public; and

WHEREAS, Declarant deems it desirable to establish covenants, conditions and restrictions upon the Project and each and every part thereof which will constitute a general scheme for the use, occupancy, enjoyment and maintenance thereof, all for the purpose of enhancing and protecting the value, desirability and attractiveness of the Project and the Units and enhancing the quality of life within the Project; and

WHEREAS, Declarant deems it desirable for the efficient management of the Project, and the preservation of the value, desirability and attractiveness of the Project to create a corporation to which will be conveyed title to all of the Common Areas of the Project and to which will be delegated and assigned the powers and duties of managing the Project, of maintaining and administering the Common Areas and other portions of the Project specified in this Declaration, of performing the other maintenance required by this Declaration, of

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administering and enforcing these covenants, conditions and restrictions, of collecting and disbursing funds pursuant to the assessments and charges hereafter created, and of performing such other acts as will generally benefit the Project; and

WHEREAS, Declarant has or will cause the The Fairways at Wolf Creek Owners Association, Inc., a Utah nonprofit corporation, to be incorporated under the laws of the State of Utah for the purpose of exercising the above-mentioned powers, duties and functions; and

WHEREAS, Declarant will hereafter hold and convey title to all of the property described on Exhibit A attached hereto and the project subject to the covenants, conditions and restrictions hereinafter set forth;

WHEREAS, Declarant anticipates that the Project created hereby will be the initial phase of a larger project and Declarant reserves the right to add additional property to the Project in accordance with the terms of this Declaration.

### WITNESSETH

NOW, THEREFORE, Declarant hereby declares that all of the property described on Exhibit A attached hereto shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

### ARTICLE I

#### DEFINITIONS

When used in this Declaration each of the following terms shall have the meaning indicated:

- 1.01 Additional Land shall mean the real property described on Exhibit "B" attached hereto and by reference incorporated herein which has not yet been submitted to the provisions of the Declaration, but may hereafter be added in whole or in part to Development as hereafter provided.
- 1.02 Articles shall mean the Articles of Incorporation of the Association, as the same may be amended.
- 1.03 Association shall mean The Fairways at Wolf Creek Owners Association, Inc., a Utah non-profit corporation, and its successors and assigns.

- 1.04 Building shall mean a structure containing one or more Units that has been or shall hereafter be constructed on the Property.
- 1.05 Board shall mean the Board of Directors of the Association.
- 1.06 Bylaws shall mean the bylaws of the Association, as the same may be amended.
- 1.07 Common Areas shall mean (a) any and all common areas as designated on the Plat; (b) any entry feature for the Project; and (c) all other real and personal property and facilities, including easements, paths and walkways which the Association owns, leases, or otherwise holds for the common benefit, use and enjoyment of the Owners.
- 1.08 Declarant shall mean Legacy-Fairways, L.L.C., a Utah limited liability company, and its successors and assigns, if any, as developer of the Project.
- 1.09 Declaration shall mean this "Declaration of Easements, Covenants, Conditions and Restrictions of The Fairways at Wolf Creek (Phase I), a Planned Residential Unit Development" as the same may be supplemented or amended from time to time.
- 1.10 Development shall mean the planned residential unit development known as The Fairways at Wolf Creek PRUD (Phase I) as it exists at any given time.
- 1.11 Limited Common Areas and Facilities shall mean (a) any patio areas located at the front or rear of a Unit, any wood deck areas extending from the rear of the upper level of any Unit, the driveway leading to each Unit and any entry located at the front and rear of each Building to the extent that such features are not within the boundaries of the Unit; (b) any rear yard areas designated at Limited Common Areas on the Plat; and (c) any other areas or features which are identified or described as such on the Plat on in this Declaration.
- 1.12 Owner or Unit Owner shall mean any person who is the owner of record (as reflected by the records in the office of the County Recorder of Weber County, Utah) of a fee or undivided fee interest in any Unit, and any contract purchaser of any Unit. Notwithstanding any applicable theory relating to mortgages, no mortgagee nor any trustee or beneficiary of a deed of trust or trust deed shall be an owner unless such party acquires fee title pursuant to foreclosure or sale or conveyance in lieu thereof. Declarant shall be an Owner with respect to each Unit owned by it. Multiple owners of a particular Unit shall be jointly and severally liable as to all responsibilities of an Owner.
- 1.13 Phase shall mean each separate step in development of The Fairways at Wolf Creek which is initiated through the submission of all or any portion of the Additional Land to the provisions of the Declaration. The term shall also include all improvements which are constructed and all appurtenances, rights, obligations, and legal relationships which come into existence in conjunction with the submissions of all or any portions of the Additional Land to the provisions of the Declaration.

1.14 Plat shall mean and refer to the plat covering the Property entitled "The Fairways at Wolf Creek (Phase I), a Planned Residential Unit Development, Weber County, Utah, prepared and certified to by Gardner Engineering (a duly registered Utah Land Surveyor holding Certificate No. \_\_\_\_\_), executed and acknowledged by Declarant, accepted by Weber County, and filed for record in the office of the County Recorder of Weber County, Utah concurrently with this Declaration.

1.15 Private Amenities shall mean any real property, improvements and/or facilities thereon located within Wolf Creek Resort which persons other than the Association own and operate for recreational and related purposes, on a club membership basis or otherwise, including, without limitation, any non-Association owned golf course(s) and all related and supporting facilities and improvements.

1.16 Project shall mean the planned residential unit development community which shall be known as The Fairways at Wolf Creek, a planned residential unit development, which shall consist of the land, the buildings, improvements and structures, all easements, servitudes, rights and appurtenances belonging thereto, and all chattels, intended for use in connection therewith, which have been or are intended to be submitted to the provisions of this Declaration.

1.17 Property shall mean all land covered by this Declaration, including any Common Areas and Units. Property shall also include any of the Additional Land from and after the time that such Additional Land is submitted to the terms and provisions of this Declaration.

1.18 Restriction and Rules shall mean the Restrictions and Rules as the same may be adopted, supplemented, modified and repealed by the Association.

1.19 Supplemental Declaration shall mean an recorded instrument which subjects Additional Land to this Declaration.

1.20 Unit shall mean and refer to as any separately numbered individual building pad and the home built or constructed thereon (it is acknowledged that such homes will be constructed as duplexes adjacent to another home and Unit) as designated on the Plat.

## ARTICLE II

### SUBMISSION OF PROPERTY AND RESERVATION OF RIGHTS

2.01 Submission. The Property which initially is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration consists of the following described real property located in Weber County, State of Utah, and more particularity described on Exhibit "A" attached hereto and by reference incorporated herein. The Property shall be subject to all liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; all mineral reservations

of record and rights incident thereto; all instruments of record which affect the Property or any portion thereof, including, without limitation, any mortgage (and nothing in this paragraph shall be deemed to modify or amend such mortgage); all visible easements and rights-of-way; all easements and rights-of-way, encroachments, or discrepancies shown on or revealed by the Plat or otherwise existing; an easement for each and every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the Property at such time as construction of all Development improvements is complete; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cable, wires, utility lines, and similar facilities.

2.02 Wolf Creek Resort Declaration. The Property is subject to the Wolf Creek Resort Master Association, Inc.'s Master Declaration of Covenants, Conditions and Restrictions, Articles of Incorporation and By-Laws (recorded in the Weber County Records \_\_\_\_\_, 2002, as amended). If there is a conflict between the this Declaration and the Wolf Creek Resort Master Association, Inc.'s Master Declaration of Covenants, Conditions and Restrictions, Articles of Incorporation or By-Laws, the Wolf Creek Resort Master Documents shall control, except to the extent that this Declaration shall establish a higher or stricter standard or requirement.

2.03 Reservation to Declarant Declarant hereby reserves to itself, its successors and assigns, such easements and rights of ingress and egress over, across, through, and under the Property and any improvements (other than the Buildings) now or hereafter constructed thereon as may be reasonably necessary for Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration), or any contractor of Declarant: (i) to construct and complete the homes on the Units and the other improvements described in this Declaration or in the Plat recorded concurrently herewith, and to do all things reasonably necessary or proper in connection therewith; (ii) to improve portions of the Property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all the Owners as Declarant may reasonably determine to be appropriate; and (iii) to conduct such marketing sales, management, promotional, or other activities designed to facilitate or accomplish the management of the Common Areas or the sale of the Units. This reservation, unless sooner terminated in accordance with their terms, expire ten (10) years after the date on which this Declaration is filed for record in the office of the County Recorder of Weber County, Utah.

2.04 Covenants to Run with Land. This Declaration and all the provisions hereof are declared to be and shall constitute covenants which run with the land or equitable servitudes and shall be binding upon and inure to the benefit of Declarant and any and all parties who have acquired or hereafter acquire any interest in a Unit or in the Common Areas, their respective grantees, transferees, mortgagees, tenants, heirs, devisees, personal representatives, successors and assigns. Each present and future Owner, mortgagee, tenant, or occupant of a Unit shall be subject to and shall comply with the provisions of this Declaration and the provisions of any rules and regulations contemplated by this Declaration. Each party acquiring any interest in a Unit thereby consents to and agrees to be bound by all of the provisions of this Declaration.

2.05 Transfer of Common Areas. Declarant shall transfer and convey the Common Areas to

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the Association on or before the date of conveyance of the first Unit to an Owner.

### ARTICLE III

#### DESCRIPTION OF UNITS AND COMMON AREAS

3.01 Description of Buildings and Units The Buildings in the Development consist of nine (9) separate one (1) or two (2) story buildings, containing two (2) Units each for a total of eighteen (18) Units. The Plat identifies, describes, and locates the Units and each Unit is identified by a specific address. The Buildings will be constructed within the envelopes of the Units as shown on the Plat and each Unit shall include the part of the Building that lies within the boundaries of the Unit as shown on the Plat. The Plat and this Declaration also describe any Limited Common Areas which are reserved for the exclusive use of one or more of the Units, and the Common Areas to which each Unit has immediate access.

3.02 Description of the Common Areas. The Plat and this Declaration contain a description of the Common Areas of the Project.

3.03 Description of Limited Common Areas. The Plat and this Declaration contain a description of the Limited Common Areas of the Project. Any Limited Common Areas identified on the Plat are identified with the same numbers or other designations as the Units. Each Limited Common Area is part of or appurtenant to, is reserved for the exclusive use of, and may not be severed from the Unit bearing the same number or other designation.

### ARTICLE IV

#### MEMBERSHIP, VOTING RIGHTS IN, AND BY-LAWS OF THE ASSOCIATION

4.01 Membership and Classes Every Owner upon acquiring title to a Unit shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership of such Unit ceases for any reason, at which time his membership in the Association with respect to such Unit shall automatically cease and the successor Owner shall become a member. Membership in the Association shall be mandatory and shall be appurtenant to and may not be separated from the ownership of a Unit. There shall be two classes of membership, Class A and Class B.

(a). Class A Members shall consist of all Owners, with the exception of the Declarant (until termination of the Class B Membership as hereafter provided).

(b). The Class B Member shall be the Declarant. The Class B Membership shall cease to exist and shall be converted to Class A Membership on the happening of the following events, whichever occurs first:

(i) The date which is seven (7) years after the date of the recording of this Declaration;

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(ii) Ninety (90) days after the date that the total votes outstanding in the Class A Membership shall equal the total votes outstanding in the Class B Membership; or

(iii) The date the Declarant shall relinquish or surrender to the Association, in writing, its Class B Memberships (which shall not mean that the Declarant shall have to relinquish or surrender the Unit to which such Class B Memberships are appurtenant).

Upon the lapse or surrender of the Class B Memberships, as provided in this Section 4.01(b), Declarant shall be and thereafter remain a Class A member as to each and every Unit which Declarant holds the interest otherwise required for Class A membership.

4.02 Voting Rights. The voting rights of the Members on all matters and issues shall be as follows::

(a) Class A. Each Class A Member shall be entitled to one (1) vote for each Unit in which such member holds the interest required for such Class A membership.

(b) Class B. The Class B Member shall be entitled to three (3) votes for each Unit which it owns.

4.03 Multiple Ownership Interests. In the event there is more than one Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine between or among themselves, but in no event shall more than the total number of votes appurtenant to such Unit be cast with respect to any issue. A vote cast at any Association meeting or by written consent by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the entire vote attributable to the Unit concerned unless an objection is made at the meeting or in writing by another Owner of the same Unit, in which event no vote will be counted with respect to such Unit except to determine the presence or absence of a quorum.

4.04 Records of Ownership. Every Owner shall promptly cause to be duly filed of record the conveyance document (or in the case of contract buyer, a copy of the sales contract or notice of interest) to him or her of his or her Unit and shall file a copy of such conveyance document with the Secretary of the Association, who shall maintain a record of ownership of the Units. The Association may at any time obtain and rely on information from the Utah County Recorder regarding the Owners of Units.

4.05 Place of Meeting. Meetings of the association shall be held at such suitable place convenient to the Owners as may be designated by the Secretary of the Association in the notice thereof.

4.06 Annual Meetings. Annual meetings of the membership of the Association shall be held in

the month of June of each year beginning in the year 2004 on such day and time as is set forth in the notice therefore provided, that after the first such annual meeting, a month other than June may be chosen if it is deemed by the membership to be more convenient. At such annual meetings there shall be elected directors of the Board, as needed, pursuant to the provisions of this Declaration and the By-laws and such other business of the Association properly placed before each meeting.

4.07 Special Meetings. The President shall call a special meeting of the Owners as directed by a resolution of the Board or on a petition signed by Owners holding at least thirty percent (30%) of the total votes of the Association and having been presented to the Secretary. No business shall be transacted at a special meeting except as stated in the notice therefore unless consented to by fifty percent (50%) or more of the Owners present, either in person or by proxy.

4.08 Notice of Meetings. The Secretary shall mail a notice of each annual or special meeting stating the purpose thereof as well as the time and place of the meeting to each Owner of record at least ten (10), but not more than twenty (20), days prior to such meeting. The mailing of notice by prepaid U.S. Mail or by delivery in person shall be considered notice served.

4.09 Quorum. Owners present at any membership meeting duly called pursuant to notice shall constitute a quorum at all meetings, both annual and special; provided, however, that such Owners collectively be entitled to cast at least fifty percent (50%) of the total Association votes eligible to vote.

4.10 Adjourned Meetings. If any meeting of Owners cannot be organized because a quorum is not present, the Owners who are present either in person or by proxy may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called at which time the requirements for a quorum shall be reduced by one-half that required in Section 4.09.

4.11 Officers. The Association shall have a President, a Vice President and a Secretary/Treasurer all of whom shall be elected by and from the Board. The Board may appoint an Assistant Secretary and Assistant Treasurer. Only the offices of Secretary and Treasurer may be filled by the same person. The officers shall be elected by the Board in an organizational meeting of the Committee immediately following each annual meeting of Owners at which the new Board has been elected.

4.12 Initial Composition of Board. Declarant alone shall have the right to select the initial Board of Directors which may be composed of between three (3) and nine (9) Directors, none of whom need be Owners. The initial board shall be three (3) directors. Such right of the Declarant to appoint the Board shall remain in Declarant for so long as it shall have Class B Memberships or until Declarant voluntarily waives such right, in whole or in part, in writing and requests the Association to elect members of the Board in accordance with the Association's Bylaws set forth in Section 4.13, whichever event shall first occur. Notwithstanding the foregoing, from and after the date which is thirty (30) days after the conveyance of twenty-five percent (25%) of the Units to Class A Members, the Class A Members shall be entitled to elect one director. From and after



the date which is thirty (30) days after the conveyance of fifty percent (50%) of the Units to Class A Members, the Board shall be increased to include at least 5 board members and the Class A Members shall be entitled to elect forty percent (40%) of such directors. From and after the date which is thirty (30) days after the conversion of the Class B Memberships, the Class A Members shall be entitled to elect sixty percent (60%) of such directors.

4.13 Board of Directors: Composition. Election. Vacancies. The Association, through its Board of Directors, is responsible for the enforcement of the provisions of this Declaration and, in general, the preservation of the residential quality and character of the Development to the benefit and general welfare of the Owners. Subject to the provisions of Section 4.12, the Board shall be composed of not less than five (5) Directors, each of whom shall be an Owner (or an officer, director, or agent of a non-individual Owner). The Directors shall be elected for two year terms and in such fashion as to provide that approximately half of the Directors shall be elected each year. As Directors' terms expire, they shall nonetheless continue to serve on the Board until their successors are elected. Vacancies on the Board shall be filled by the remaining Directors from among the Owners and such appointees shall serve until the next annual meeting of Owners when their successors shall be elected for the unexpired term of the Director they were appointed to replace.

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

## ARTICLE V

### DUTIES AND POWERS OF THE ASSOCIATION

5.01 Duties of the Association. Without limiting any other duties which may be imposed upon the Association by this Declaration, the Association, working through its Board, shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Property:

(a) The Association shall accept all Owners as members of the Association.  
(b) Upon the majority vote of Association members, the Association shall accept title to any additional Common Areas which in the future may be conveyed to it, whether by Declarant or by others.

(c) The Association shall ensure architectural control compliance within the Development pursuant to the applicable provisions of this Declaration.

(d) The Association shall work to ensure that the Development is in complete compliance with the provisions of this Declaration and to which the Development and its Owners are also subject.

(e) The Association shall be responsible for maintaining and repairing the following areas of the Project:

(i) all Common Areas within the Development, including the landscaping on any Common Areas and any entry feature; provided, however, that the Association shall not have the obligation to maintain any driveways or patios or other similar improvement which are Limited Common Areas because they are not located in or on the Unit itself;

(ii) all portions of landscaping within the public rights-of-way within or abutting the Project;

(iii) all front yard landscaping of the Units; provided that such front yard landscaping shall be the same as originally installed by the Declarant, and the exterior surfaces and roofs of the Buildings (hereafter collectively referred to as the "Exterior Maintenance"); provided, however, Exterior Maintenance shall not include any broken glass, windows or doors; and

(iv) the landscaping on all Limited Common Areas located to the rear of any Units provided that they remain in the same natural condition as when the Unit was completed by the Declarant.

5.02 Powers and Authority of the Association. The Association shall have the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) The Association shall have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Board, or

to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.

(b) In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of Common Areas and Limited Common Areas or Exterior Maintenance as required hereunder or in exercising any of its rights hereunder, the Association shall have the power and authority to obtain, contract and pay for, or otherwise provide for.

(i) Construction, maintenance, operation, and repair of the Common Areas and Limited Common Areas and the Exterior Maintenance on such terms and conditions as the Board shall deem appropriate;

(ii) Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of the Association, the members of the Board and the Owners;

(iii) The services of architects, engineers, attorneys and certified public accountants and such other professional or non-professional services as the Board may deem desirable;

(iv) Fire, police and such other protection services as the Board may deem desirable for the benefit of the Owners or any of the Property; and

(v) Such materials, supplies, services and labor as the Board may deem necessary.

5.03 Association Rules. The Board from time to time, subject to and not inconsistent with the provisions of this Declaration, may adopt, amend, repeal and enforce reasonable Restrictions and Rules governing all matters concerning the use and enjoyment of the Property and the conduct of Owners and their invitees within the Development. No rule or action of the Association or Board shall unreasonably impede Declarant's right to develop the Project.

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

5.04 Compliance and Enforcement.

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(a) Every Member and occupant of a Unit shall comply with this Declaration, and the By-laws and Restrictions and Rules of the Associations. The Board may impose sanctions for violation thereof after such notice and a hearing in accordance with the procedures set forth in the By-Laws. Such sanctions may include, without limitation:

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

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

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

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

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

(vi) levying Specific Assessments to cover costs incurred by the Association to bring a Unit into compliance with this Declaration.

(b) In addition, the Board may take the following enforcement procedures to ensure compliance with this Declarations without the necessity of compliance with the procedures set forth in the By-Laws:

(i) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); or

(ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

(c) In addition to any other enforcement rights, if a Member fails properly to perform his or her maintenance responsibility, the Association may Record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Association

against the Unit and the Member as a Specific Assessment. Except in an emergency situation, the Association shall provide the Member reasonable notice and an opportunity to cure the problem prior to taking such enforcement action. All remedies set forth in this Declaration shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

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

(i) the Association's position is not strong enough to justify taking any or further action; or

(ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

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

**5.05 Limitation of Liability.** No member of the Board acting in good faith shall be personally liable to any Owner, guest, lessee or any other person for any error or omission of the Association, its representatives and employees, the Board or any committee of the Board.

**5.06 Provision of Services.** The Association may provide, or provide for, services and facilities for the Members and/or their Units, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may include the costs thereof in the Association's budget as a Common Expense and assess it as part of the Annual Assessment if provided to all Units. By way of example, such services and facilities might include landscape maintenance, pest control service, cable television service, security, caretaker, transportation, fire protection, utilities, and similar services and facilities. Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board shall be

permitted to modify or cancel existing contracts for services in its discretion, unless the provision of such services is otherwise required by this Declaration. Non-use of services provided to all Members or Units as a Common Expense shall not exempt any Member from the obligation to pay assessments for such services.

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

## ARTICLE VI

### DUTIES AND OBLIGATIONS OF OWNERS

6.01 Landscaping Within one (1) year after the date of conveyance of any Unit, the owner thereof shall landscape the rear and side areas of the Unit. Such landscaping must be approved by the Architectural Control Committee as hereafter provided, but shall include lawns and at least thirty percent (30%) of such area shall be planted.

6.02 Maintenance and Repairs. Except for the maintenance to be performed by the Association, each Owner shall at his own cost and expense maintain his Unit and any improvements, constructed thereon in good repair at all times and in conformity with this Declaration, the Restrictions and Rules, and the architectural control provisions set forth in Article XI. Each Owner shall be responsible for snow removal from the driveway and sidewalks appurtenant to such Owner's Unit, to maintain any Limited Common Areas such as patios or decks appurtenant to such Unit, and to maintain any landscaped Limited Common Areas which have been improved by the Owner. In the event of the damage or destruction of any residential improvement on a Unit, the Owner of the Unit on which such improvement is situated shall either rebuild the same within a reasonable time or shall raze the remains thereof so as to prevent the unsightly appearance and dangerous condition of a partially destroyed Unit in the Development. The rebuilding or modification of any residence exteriors or parts thereof must be submitted to and approved by the Architectural Control Committee pursuant to its procedures.

6.03 Insurance. Each Owner shall obtain and maintain in force such homeowner hazard or casualty and liability coverage as is customary in projects such as the Development and which is consistent with each Owner's individual circumstances, mortgage requirements, etc. In the event the Association shall obtain any such insurance with respect to a Unit or Units such insurance shall be a special assessment to the Owner(s) of such Unit(s).

6.04 Assessments and Rules Observance. Each Owner shall be responsible for the prompt payment of any assessments provided for in this Declaration and for the observance of the rules and regulations promulgated by the Association from time to time.

6.05 Transfer of Interests. Except for obligations already accrued, an Owner who, for other

than purposes of security, transfers all of his interests in his Unit to another, either voluntarily or by operation of law, shall be relieved of all obligations under this Declaration, following such transfer.

**6.06 Safety and Security.**

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

**ARTICLE VII**

**ASSESSMENTS**

**7.01 Agreement to Pay Assessments.** The Declarant for each Unit within the Development, and for and as the Owner of the Property and every part thereof, hereby covenants and each Owner of any Units by the acceptance of a deed, contract, or other instrument of conveyance and transfer therefor, whether or not it be so expressed in said deed, contract, or other instrument, shall be deemed to covenant and agree with each other Owner and with the Association to pay to the Association all assessments made by the Association for the purposes provided in this Declaration, any special assessment for capital improvements and other matters as provided in this Declaration. Such assessments shall be fixed, established, and collected from time to time as provided in this Article VIII..

7.02 Annual Assessments. Annual Assessments shall be computed by the Board of Directors of the Association and assessed against all Units in the Development based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Common Areas. Such estimated expenses may include, without limitation, the following: expenses of management; real property taxes and special assessments on the Common Areas if not assessed to the Units, real property taxes and special assessments levied by governmental authorities against the Units until the same are separately assessed; premiums for all insurance that the Association is required or permitted to maintain hereunder; utility fees for Common Areas; repairs and maintenance of the Common Areas, including any Limited Common Areas which the Association is required to maintain hereunder and the Exterior Maintenance of the Units; wages for Association employees, including fees for a Manager (if any); legal and accounting fees; any deficit remaining from a previous period; creation of a reasonable contingency reserve, major maintenance reserve, and/or surplus or sinking fund; creation of an adequate reserve fund for maintenance repairs and replacement of those Common Areas and the Exterior Maintenance of the Units that must be replaced on a periodic basis, where such reserve is to be funded by monthly payments rather than extraordinary special assessment; and any other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration. Such shall constitute the Common Expense, and all funds received from assessments under this Section 7.02 shall be part of the Common Expense Fund. Notwithstanding the foregoing, the Association may allocate the Exterior Maintenance as a Specific Assessment to the Units on which such maintenance is performed.

7.03 Rate and Date of Assessment. The Common Expenses shall be apportioned and assessed to all Owners at a uniform rate which shall be in proportion to the square footage of each Unit in the Development to the total square footage of all Units in the Development. For purposes of determining the square footage of each and all Units, the following style or design shall be deemed to have the following square footages: Pineview - 2150 square feet, Horizon - 2540 square feet, Skyline - 2945 square feet, and Spring Creek - 3540 square feet.

7.04 Declarant's Option to Fund Budget Deficits. For any period of time for which Declarant has Class B Memberships, Declarant may satisfy its obligation, if any, for assessments on Units which it owns but are not rented by Declarant either by paying such assessments in the same manner as any other Member, notwithstanding this provision, or by paying the difference between the amount of assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Unless Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. Regardless of Declarant's election, Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. In addition, Declarant may, but shall not be obligated to, reduce the Assessments for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant hereunder to fund the Common Expenses), which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion.



Any such subsidy shall be disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

7.05 Annual Budget. Annual assessments shall be made on a calendar year basis; provided however that the first annual assessment shall be for the balance of the calendar year remaining after the date fixed by the Association as the date of commencement of the Assessments. The Association shall give written notice to each Owner as to the proposed budget and the amount of the annual assessment (hereinafter "Annual Assessment") with respect to his or her Unit not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the calendar year. The budget shall itemize the estimated cash requirements for such fiscal year, anticipated receipts, reserves, and any deficit or surplus from the prior operating period. The budget shall serve as the supporting document for the Annual Assessments for the upcoming calendar year and the major guideline under which the Development shall be operated during such annual period.

7.06 Payment. The obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the month in which Declarant conveys the Unit to a Member, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first Annual Assessment, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit. Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Members with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Annual Assessment shall be due and payable in advance on the first day of each fiscal year. If any Member is delinquent in paying any assessments or other charges levied on his or her Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately. Each installment shall bear interest at the rate of eighteen (18) percent per annum from the date it becomes due and payable if not paid within (30) days after such date. In addition, in the event that any installment of the Annual Assessment is not paid within thirty (30) days of the date such installment becomes due, the Association may, at its option, and upon thirty (30) days' prior written notice to the Owner accelerate the due date for all remaining Annual Assessment installments for the calendar year and all accrued but unpaid interest thereon. The failure of the Association to give timely notice of any Annual Assessment as provided herein shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay such assessment or any other assessment; but the date when the payment shall become due in such case shall be deferred to date thirty (30) days after notice of such assessment shall have been given to the Owner in the manner provided in this Declaration.

7.07 Inadequate Funds. In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Association

may levy additional assessments in accordance with the procedure set forth in Section 7.08 below, except that the vote therein specified shall be unnecessary.

7.08 Special Assessments. In addition to the Annual Assessments authorized by this Article, the Board of Directors on behalf of the Association may, levy, at any time and from time to time, upon the affirmative vote of at least fifty-one percent (51%) of the members of the Association, special assessments (hereinafter "Special Assessments"), payable over such periods as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Development or improvements thereon or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration (including without limitation Common Expenses). This Section shall not be construed as an independent source or authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other sections or articles hereof. Any amounts assessed pursuant hereto shall be assessed to Owners on the same basis as set forth in Section 7.03 (Namely in proportion to the square footage of the Units in the project). Notice in writing of the amount of each such Special Assessment and the time for payment thereof shall be given promptly to the Owners. No payment shall be due less than thirty (30) days after such notice shall have been given. All unpaid portions of any Special Assessment shall bear interest at the rate of eighteen percent (18%) per annum from the date such portions become due if not paid within thirty (30) days after such date.

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

- (a) To cover Exterior Maintenance of the Units;
- (b) To cover the costs, including overhead and administrative costs, of providing services to Units upon request of a Member pursuant to any menu of special services which may be offered by the Association. Specific Assessments for special services may be levied in advance of the provision of the requested service; and
- (c) To cover costs incurred in bringing the Unit into compliance with this Declaration, or costs incurred as a consequence of the conduct of the Member or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests.

7.10 Lien for Assessments. All sums assessed to a Unit pursuant to the provisions of this Article VII, together with interest thereon as provided herein, shall be secured by a lien on such Unit in favor of the Association. To evidence a lien for sums assessed pursuant to this Article VII, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner, and a description of the Unit. Such a notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the office of the County Recorder of Weber County, State of Utah. No notice of lien shall be recorded until there is a delinquency in

payment of the assessment. Such lien may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed under the laws of the State of Utah. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, the costs and expenses of filing the notice of lien and all reasonable attorneys' fees. Such costs, expenses, and attorney's fees shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments which shall become due during the period of foreclosure, and all such assessments shall be secured by the lien being foreclosed. The Association shall have the right and power to bid an amount equal to its existing lien at any foreclosure sale, and to acquire, hold, convey, lease, rent, mortgage or use the Unit the same as the Owner. A release of lien shall be executed by the Association and recorded in the office of the County Recorder of Weber County, Utah, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien.

7.11 Subordination of Liens to First Mortgages. The lien of the assessments provided herein shall be subordinate to the lien of any first Mortgage given in the first instance to a bank, savings and loan association, insurance company or other institutional lender ("Mortgagee"); and the holder of any such Mortgage or purchaser who comes into possession of or becomes the Owner of a Unit by virtue of the foreclosure of such first Mortgage or the exercise of a power of sale under such first Mortgage, or by deed in lieu of foreclosure, shall take free of such assessment lien as to any assessment installment which accrues or becomes due prior to the date the Mortgage was recorded; provided, that to the extent there are any proceeds of the sale on foreclosure of such first Mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such first Mortgage, the lien shall apply to such excess. No sale or transfer of a Unit in connection with any foreclosure of a first Mortgage shall relieve any Unit from the lien of any assessment installment thereafter becoming due.

7.12 Certificate of Payment of Assessments. Upon payment of a reasonable fee and upon written request of any Owner or any Mortgagee, prospective Mortgagee, or prospective purchaser of a Unit, the Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Unit; the amount of the current yearly assessment and the portion thereof which has heretofore been paid; credit for advanced payments or prepaid items, including, but not limited to, prepaid insurance premiums; and such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within thirty (30) days, all unpaid assessments which become due prior to the making of such request shall be subordinate to the lien of a Mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such request, both the lien for such unpaid assessments and the personal obligations of the purchaser shall be released automatically if the statement is not furnished within the thirty (30) days provided herein and thereafter an additional written request is made by such purchaser and is not complied with within ten (10) days, and the purchaser subsequently acquires the Unit.

7.13 Notice to and Payment by Mortgagee of Unpaid Assessments. The Association shall report to any Mortgagee or other encumbrancer of a Unit any unpaid assessments remaining unpaid for longer than ninety (90) days after the same shall have become due; provided, however, that such Mortgagee or encumbrancer first shall have furnished to the Association written notice of such encumbrance and a request for notice of unpaid assessments. A Mortgagee or other encumbrancer holding a lien on a Unit may pay, but shall not be required to pay, any amounts secured by the lien created by this Notice, and upon such payment such shall be subrogated to all rights of the Association with respect to such lien, including priority.

7.14 Personal Obligation of Owner. The amount of any Annual or Special Assessment shall be the personal obligation of the Owner to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his or her Unit or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment for unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.

7.15 Personal Liability of Purchaser. Subject to the provision of Section 7.12 a purchaser of a Unit shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Unit up to the time of the grant or conveyance; provided, however, that the provisions of this Section shall not prejudice the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

7.16 Exempt Property. The following property shall be exempt from payment of Annual and Special Assessments:

- (a) All Common Area and such portions of the property owned by Declarant as are included in the Common Area;
- (b) Any property dedicated to and accepted by any governmental authority or public utility; and
- (c) All undeveloped or unimproved land owned by Declarant.

## ARTICLE VIII

### EASEMENTS

8.01 Easement Concerning Common Areas. Each Unit shall have appurtenant thereto a nonexclusive right and easement of use and enjoyment in and to the Common Areas and an exclusive right and easement of use and enjoyment in and to the Limited Common Areas appurtenant to such Unit, for their intended purposes. Such right and easement shall be

appurtenant to and shall pass with title to each Unit and shall in no event be separated therefrom.

8.02 Limitations on Easements in Common Area. Each Unit's easement with respect to the Common Areas are subject to:

- (a) This Declaration and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The Board's right to:
  - (i) adopt rules regulating use and enjoyment of the Common area, including rules limiting the number of guests who may use the Common area;
  - (ii) suspend the right of a Member to use recreational facilities within the Common Area (a) for any period during which any charge against such Member's Unit remains delinquent, and (b) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of this Declaration after notice and a hearing pursuant to the By-Laws;
  - (iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;
  - (iv) permit use of any recreational facilities situated on the Common Area by persons other than Members, their families, lessees, and guests upon payment of use fees established by the Board and designate other areas and facilities within the Common Area as open for the use and enjoyment of the public;
  - (v) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and
  - (vi) The rights of certain Members to the exclusive use of those portions of the Common Area designated "Limited Common Areas," as described in this Declaration.

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

8.03 Easements of Encroachment. Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units or any Unit and any Private

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

#### 8.04 Easements for Utilities, Etc.

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

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

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

(iii) access to read utility meters.

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

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

8.05 Easements to Serve Additional Property. Declarant reserves for itself and its duly authorized agents, successors, assigns, and mortgages, an easement over the Common Area for the purposes of enjoyment, use, access, and development of any adjacent property owned by Declarant including the Additional Land, whether or not such property is subject to this

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

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

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

## ARTICLE IX

### CONVEYANCES

9.01 Form of Conveyancing: Leases. Any deed, lease, mortgage, deed of trust, purchase contract or other instrument conveying or encumbering title to a Unit shall describe the interest or estate involved substantially as follows:

Unit No. \_\_\_\_\_, The Fairways at Wolf Creek (Phase I) as recorded in the office of the Weber County Recorder as Entry No. \_\_\_\_\_, in Book \_\_\_\_\_, Page \_\_\_\_\_, SUBJECT to the "Declaration of Easements, Covenants, Conditions and Restrictions of The Fairways at Wolf Creek (Phase I), A Planned Residential Unit Development" recorded in the office of the Weber County Recorder as Entry No. \_\_\_\_\_, in Book \_\_\_\_\_, at Page \_\_\_\_\_, (as said Declaration may have heretofore been amended or supplemented),

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TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described, and as provided for, in said Declaration of Easements, Covenants, Conditions and Restrictions (as said Declaration may have heretofore been amended or supplemented).

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit.

## ARTICLE X

### USE RESTRICTIONS

10.01 Use of Common Area. The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Units and residential improvements set forth herein.

10.02 Residential Use. The Property is restricted to residential use pursuant to applicable existing provisions of Weber County Ordinances and each Unit and Owner are subject to the existing uses and restrictions imposed thereby and no Unit or residence constructed thereon shall be used, occupied, or altered in violation of such ordinances or so as to create a nuisance or to interfere with the rights of any other Owner.

## ARTICLE XI

### ARCHITECTURAL CONTROL

11.01 Architectural Control Committee. The Board of Directors of the Association shall appoint a three-member Architectural Control Committee (the "Committee"), the function of which shall be to ensure that all improvements and landscaping within the Development harmonize with existing surroundings and structures. If such a Committee is not appointed, the Board itself shall perform the duties required of the Committee.

11.02 Submission to Committee. No residential improvement, accessory of, or addition thereto nor any landscaping shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any such Improvements, accessories or additions nor any substantial change in the landscaping shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Committee.

11.03 Standard. No minimum standards for construction shall be set forth herein although the Committee may adopt basic guidelines for the benefit and aid of Owners to prepare plans and specifications. In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee, in its sole discretion and best judgment, shall ensure that all improvements, materials, construction, landscaping, and alterations on Units within the Development are in keeping with a definite, though undefined standard, and that once established, future construction shall conform to and harmonize with existing surroundings and structures. Any structure



hereafter constructed on any Unit in replacement of the structure previously located thereon shall be constructed in substantially the same configuration, location, materials and architectural style and be approximately the same size (conforming, nevertheless, to minimum sizes set forth herein) as the prior structure; and if the plans and specifications therefor meet such criteria, the Committee must approve the same.

11.04 Approval Procedure. Any plans and specifications submitted to the Committee shall be approved or disapproved by it in writing within thirty (30) days after submission; provided, however, that plans and specifications for any replacement structure to be constructed in substantially the same configuration, location and architectural style and to be of substantially the same size as its predecessor shall be approved or disapproved within ten (10) days after submission. In the event the Committee fails to take any action within such specified periods, it shall be deemed to have approved the material submitted except in those respects that such material is not in conformity with the provisions of this Declaration, as to which respects it shall be deemed disapproved.

11.05 Construction. Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall proceed diligently to completion. If reasonably necessary to enable such improvement, construction, landscaping, or alteration, the person or persons carrying out the same shall be entitled to temporarily use and occupy portions of the Common Areas in the vicinity of the activity provided that they shall promptly restore such areas to their prior condition when the use thereof is no longer required.

11.06 Liability for Damages. Neither the Committee nor any member thereof shall be held liable for damages by reason of any action, inaction, approval, or disapproval taken or given without malice by such member or the Committee with respect to any request made pursuant to this Article X.

## ARTICLE XII

### INSURANCE

12.01 Hazard Insurance. The Association shall procure and maintain, from a company or companies holding a general policyholder's rating of B or better or a financial rating of Class VI or better from Best's Insurance Reports, a policy or policies of hazard insurance in an amount or amounts equal to or exceeding the full replacement value (exclusive of the value of land, foundations, excavation and other items normally excluded from coverage) of the improvements to the Common Areas, including common personal property and supplies owned by the Association, with either a Replacement Cost Endorsement or a Guaranteed Replacement Cost Endorsement and an Agreed Amount Endorsement or its equivalent, an Inflation Guard Endorsement, if available, and such other endorsements as the Association shall deem necessary. The Association shall not provide nor be required to provide hazard or liability insurance for any of Owner's improvements or personal property. Such policy or policies shall provide for deductibles which shall not be greater than the lesser of Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the face amount of the policy. Such insurance policy or policies shall name

the Association as insured and shall afford protection against loss or damage by fire and other hazards that are normally covered by the standard extended coverage endorsement, and by vandalism, malicious mischief, and such other risks as are normally covered by the standard "all risk" or Cause of Loss-Broad Form policy of insurance. The Policy shall provide that it may not be canceled or substantially modified by the insurer unless it gives at least thirty (30) days' prior written notice thereof to each insured.

**12.02 Liability Insurance.** The Association shall procure and maintain from a company or companies holding a general policyholder's rating of B or better or a financial rating of Class VI or better from Best's Insurance Reports a policy or policies (herein called the "Policy") of public liability insurance to insure the Association, the Board, the Manager and employees of the Association and the Owners against claims for bodily injury and property damage arising out of the operation, maintenance and use of the Common Areas, any activities thereon, and any conditions of the Common Areas under a Comprehensive General Liability form of policy. Such insurance shall be for such limits as the Association may decide, but not less than \$1,000,000 for personal injury and property damage arising out of a single occurrence which coverage shall include protection against water damage liability, liability for non-owned and hired automobiles, liability for the property of others and such other risks as shall customarily be covered with respect to property similar in construction, location and use to the Common Areas. The Policy shall contain an endorsement which shall preclude the insurer from denying the claim of any Owner because of the negligent acts of the Association or other Owners and a cross-liability endorsement pursuant to which the rights of the named insureds, as between themselves, are not prejudiced. The Policy shall provide that it may not be canceled or substantially modified by the insurer unless it gives at least thirty (30) days' prior written notice thereof to each insured.

**12.03 Fidelity Insurance.** The Association may procure and maintain from a company or companies holding a general policyholder's rating of B or better or a financial rating of Class VI or better from Best's Insurance Reports a policy or policies of blanket fidelity insurance to protect against dishonest acts on the part of any trustee, officer, manager, agent, employee or other person who administers, handles, or is otherwise responsible for the funds of the Association. Such policy or policies shall name the Association as the obligee, shall provide coverage for the maximum sum of funds, including reserves, which will be in the possession or custody of the Association at any time the policy is in force, but in no event less than three (3) months assessment on all Units, plus reserves. The policy or policies shall provide that they may not be canceled or substantially modified by the insurer unless it gives at least thirty (30) days' prior written notice thereof to each insured. The policy shall contain a waiver of any defense for persons who serve without compensation. In the event the Association shall engage the services of a management agent who shall administer, handle or be responsible for the funds of the Association, then the Association shall require such management agent to provide a policy or policies of fidelity insurance which shall provide the same insurance coverage as required of the Association by this Section.

**12.04 Worker's Compensation.** The Association shall carry worker's compensation and employer's liability insurance and other similar insurance with respect to all employees of the

Association in the amounts and in the forms now or hereafter required by law.

12.05 **Additional Insurance.** The Association may also procure such additional insurance which shall insure the Common Areas, the Association or the Owners and others against such additional risks as the Association shall deem advisable.

12.06 **General Requirements.** Each policy of insurance obtained by the Association shall be written by insurers licensed in the State of Utah. If reasonably possible, each policy of insurance to be obtained by the Association shall provide:

(a) a waiver of the insurer's right of subrogation against the Association, Owners, and their respective trustees, directors, officers, agents, employees, invitees and tenants;

(b) that it cannot be canceled, suspended or invalidated due to the conduct of any Owner or Owners, but only due to the conduct of the Association, and then only after the Association shall have failed to cure or correct the defect within a reasonable time after a written demand to so cure or correct; and

(c) that any "no other insurance" clause shall not apply to any insurance maintained individually by any Owner.

12.07 **Owners' Insurance.** Each Owner shall obtain insurance at his or her own expense, providing coverage on Owner's Unit, Owner's personal property and Owner's personal liability and covering such risks as Owner may deem appropriate. Each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies of the Association, the other Owners, and the trustees, directors, officer, servants, employees, agents, invitees or tenants of any of them, if such insurance can be obtained in the customary practice without substantial additional premium charge for the waiver of rights of subrogation.

### ARTICLE XIII

#### MORTGAGEE PROTECTION

13.01 **Amendment.** No amendment to this Declaration shall affect the rights of any Mortgagee interested under a Mortgage which is in effect at the time of the amendment or any successor or assign thereof, unless such Mortgagee has consented in writing to such amendment.

13.02 **Notice of Matters Affecting Security.** The Association shall give written notice to any Mortgagee of a Unit requesting such notice whenever:

(a) there is any material default by the Owner of the Unit subject to the Mortgage in performance of any obligation under this Declaration or the Articles of the Association which is not cured within ninety (90) days after default occurs; or

(b) damage to the Common Areas from any one occurrence exceeds \$10,000.00; or

(c) there is any condemnation or taking by eminent domain of any material portion of the Common Areas.

13.03 Notice of Meetings. Upon request of a Mortgagee, the Association shall give to such Mortgagee of a Unit notice of all meetings of the Association. Each Mortgagee shall have the right to designate in writing a representative to attend all such meetings.

13.04 Right to Examine Association Records. Any Mortgagee, upon request, have the same right to inspect the books and records of the Association and receive financial statements as the Owner of the Unit securing the Mortgage.

13.05 Right to Pay Common Area Taxes and Charges. Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Common Areas and may pay overdue premiums on insurance policies pertaining to the Common Areas, or secure new insurance coverage pertaining to the Common Areas on the lapse of a policy; and Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

13.06 Insurance and Condemnation Proceeds. No provision of this Declaration shall be deemed to grant any Owner any rights in or to a distribution of insurance proceeds or a condemnation award for the loss to or the taking of a Unit or the Common Areas which are prior to the rights of the Mortgagee under its respective Mortgage to such distribution of insurance proceeds or condemnation award.

#### ARTICLE XIV

#### ENVIRONMENTAL AREAS AND ISSUES

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

14.02 Conservation Areas. Any portions of the Common Area designated as a conservation area shall be maintained and preserved by the Association in accordance with the rules and regulations of all applicable governmental agencies. The Association shall not, and it shall not

allow any person to, undertake or perform any activity of improvements to a conservation area, or remove any native vegetation, without the prior approval of such agencies. No excavation, placement of debris, dumping, construction, or other activity shall be permitted in a conservation area.

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

## ARTICLE XV

### PARTY WALLS AND OTHER SHARED STRUCTURES

15.01 General. Each wall, fence, driveway or similar structure built as a part of the original construction on the Units which serves and /or separates any two adjoining Units shall constitute a party structure. 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 wilful acts or omissions shall apply thereto.

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

## ARTICLE XVI

### RESORT ACTIVITIES; DISCLAIMERS

16.01 View Impairment. Declarant, the Association, or the owner of any Private Amenity or other golf course, does not guarantee or represent that any view over and across the Private Amenity or other golf course from Units adjacent thereto will be preserved without impairment. Owners of Private Amenities and/or golf courses shall have no obligation to prune or thin trees or other landscaping, and shall have the right, in their sole and absolute discretion, to add trees

and other landscaping thereto from time to time. In addition, the owner of any golf course may, in its sole and absolute discretion, change the location, configuration, size and elevation of the tees, bunkers, fairways, greens, and the golf course itself, from time to time. Any such additions or changes may diminish or obstruct any view from the Units and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

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

**16.03 Additional Golf Course Provision: Disclaimer.** All persons, including without limitation all Unit Owners, are hereby advised that no representations, warranties or commitments have been or are made by the Declarant or any other person with regard to the present or future development, ownership, operations or configuration of, or right to use, any golf course or related facilities within, near or adjacent to the Project. No purported representation, warranty or

commitment, written or oral, in such regard shall ever be effective without an amendment hereto executed by the Declarant. Further, the ownership, operation or configuration of, or rights to use, any such golf course or related facilities may change at any time and from time to time for reasons including, but not limited to: (a) the purchase or assumption of operation of any such golf course or related facilities by an independent person; (b) the conversion of any such golf course or related facilities to an equity club or similar arrangement whereby members of such golf course or an entity owned or controlled thereby become the owner(s) and/or operator(s) of such golf course or related facilities (and, perhaps, such members become the only persons entitled to use such golf course or related facilities); (c) the conveyance, pursuant to contract, option or otherwise, of such golf course or related facilities to one or more affiliates, shareholders, employees or independent contractors of the Declarant; or (d) the conveyance of any such golf course or related facilities, or portion thereof, to the Association. As to any of the foregoing or any other alternative, no consent of the Association or any Member shall be required to effectuate such transfer (except for the consent of the Association in the event of a transfer to the Association). No Member or its tenants or visitors shall have any ownership interest in, or right to use, any such golf course or relate facilities solely by virtue of: (i) his, her or its Association membership; or (ii) his, her or its ownership, use or occupancy of any Unit, or portion thereof.

## **ARTICLE XVII**

### **EXPANSION**

**17.01 Option to Expand** The Declarant hereof expressly reserves the option and right to expand The Fairways at Wolf Creek (Phase I), a planned residential unit development by the addition of all or any part of the Additional Land as hereafter provided, at such time or times as Declarant, in the exercise of its sole discretion, shall determine. Such addition shall be made by recording a supplemental Plat and a supplement and amendment to this Declaration, which expansion shall be made subject to the provisions of this Article.

**17.02 Consent of Unit Owners or Mortgagees Not Required**. The consent of Unit Owners in the Project or mortgagees shall not be required for such expansion and the Declarant may proceed with such expansion at its sole option.

**17.03 Expiration of Right to Expand** This option to expand the Project shall expire ten (10) years after the recording of this Declaration, however, the Declarant may, at any time prior to the expiration of such period, terminate its option to expand by recording with the Weber County Recorder and executed and notarized document terminating this option to expand.

**17.05 Location of Improvements**. Declarant makes no assurances as to the locations of any improvements that may be made on any portions of the Additional land added to the Project.

**17.06 No Assurance of Compatibility with Structures in Phase One**. Although Declarant intends to erect structures on portions of the Additional Land added to the Project that will be

compatible with the structures on the land originally within the Project, Declarant makes no assurances as to whether Units that may be erected on the Additional Land will be compatible with or identical to Units in Phase I, except that all such structures will be consistent with the original improvements in terms of quality of construction. Declarant hereby reserves the right to select the design and configuration of any improvements erected on any portion of the Additional Land added to the Project that in the judgment of the Declarant may be required to achieve the best development of the Project. Any portion of the Additional Land which is hereafter added to the Project may be used for any purpose permitted by the prevailing zoning regulations.

## ARTICLE XVIII

### ADDITIONAL RIGHTS RESERVED TO DECLARANT

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

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

18.03 Right to Develop. Declarant and its employees, agents and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area as it deems appropriate in its sole discretion. Every Person that acquires any interest in the Project acknowledges that the Project is a planned residential unit development, the development of which is likely to extend over several years, and agrees not to protest, challenge, or otherwise object to the making, constructing and installing of improvements necessary to complete the Project.

18.04 Right to Approve Additional Covenants. As long as Declarant owns property subject to this Declaration, no person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Project without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed and recorded by Declarant.



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

**18.06 Exclusive Right to Use Name of Development.** No person shall use the name "The Fairways at Wolf Creek" or any derivative of such name or in logo or depiction in any printed or promotional material without Declarant's prior written consent.

**18.07 Easement to Inspect and Right to Correct.** Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the property within the Project, including Units, and a perpetual nonexclusive easement of access throughout the Project to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Unit Owner and no entry into a dwelling shall be permitted without the consent of the Unit Owner. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

**18.08 Termination of Rights.** The rights contained in this Article shall not terminate until the earlier of (a) 10 years from the date this Declaration is recorded, or (b) recording by Declarant of a written statement that all sales activity has ceased.

## **ARTICLE XIX**

### **MISCELLANEOUS**

**19.01 Notices.** Any notice required or permitted to be given to any Owner under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Owner at the latest address for such person, as reflected in the records of the Association at the time of delivery or mailing. Any notice required or permitted to be given to the Association may be given by delivering or mailing the same to any officer or Trustee of the Association. Any notice required or permitted to be given to the Architectural Control Committee may be given by delivering or mailing the same to the Association or any member of the Architectural Control Committee.

**19.02 Amendment.** Except as provided below, this Declaration may be amended by, but only by, an instrument recorded in the offices of the Weber County Recorder, Utah, which is executed

by Owners (including Declarant) who collectively hold at least seventy-five percent (75%) of the total outstanding votes in the Association. In addition, such right of amendment shall be subject to the following qualification: (1) No amendment to any provision of this Declaration which has the effect of diminishing or impairing any right, power, authority, privilege, protection, or control accorded to Declarant (in its capacity as Declarant), shall be accomplished or effective unless the instrument through which such amendment is purported to be accomplished is consented to in writing by Declarant or by such Association, as the case may be; and. (2) Nor to relinquish responsibility for ownership of common area.

19.03 Consent In Lieu of Vote. In any case in which this Declaration requires for authorization or approval of a transaction the assent or affirmative vote of a stated percentage or number of votes outstanding in the Association or of the Owners, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners entitled to cast at least the stated percentage or number of all membership votes then outstanding in the Association, unless a higher percentage or a greater number is required by law. The following additional provisions shall govern any application of this Section:

(a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Owner.

(b) The total number of votes required for the applicable authorization or approval shall be determined as of the date on which the last consent is signed.

(c) Any change in ownership of a Unit which occurs after a consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose.

(d) Unless the consent of all Owners whose memberships are appurtenant to the same Unit are secured, the consent of none of such Owners shall be effective.

19.04 Interpretation. The captions which precede the Articles and Sections of this 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, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, which shall remain in full force and effect. The laws of the State of Utah shall govern the validity, construction and enforcement of this Declaration.

19.05 Enforcement of Declaration. The Association or any Owner shall have the right to exercise or seek any remedy at law or in equity to interpret, to enforce compliance with or to obtain redress for violation of this Declaration as provided herein. The prevailing party in an action for the interpretation of, the enforcement of or to obtain redress for violation of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorney's fees.

19.08 Duration. This Declaration shall remain in effect for 50 years with an automatic extension for successive periods of 10 years each unless an instrument signed by a majority of the then Unit Owners has been recorded within the year preceding any such automatic extension, agreeing to terminate this Declaration. Termination of this Declaration may be made by recording with the Weber County Recorder, a written termination which is executed by all parties required by Section 18.02 and all of the mortgages of each Unit.

19.09 Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat shall take effect upon its being filed for record in the office of the County Recorder of Weber County, Utah.

EXECUTED by Declarant as of the day and year first above written.

DECLARANT:

Legacy-Fairways, L.L.C., a Utah limited liability company

By: *Justin McQuinn*

Title: *President*



Exhibit B:

A parcel

*22-017-0001 - PT.*

Beginning at a point which is N 00°20'47" E 623.18 ft. along the Section line from the west quarter corner of sec. 22, T7N, R1E, SLB&M and N 90°00'00" E 514.76 ft. (Basis of bearing N 00°20'47" E 2,678.81 ft. between said West quarter corner and the Northwest corner of said sec. 22); Thence as follows:

- N 16°10'15" W 207.24 ft. Thence;
- N 35°17'41" E 669.63 ft. Thence;
- N 16°31'41" E 408.64 ft. Thence;
- S 73°28'19" E 183.10 ft. Thence;
- S 29°38'50" W 85.15 ft. Thence;
- S 12°41'49" E 133.82 ft. Thence;
- S 65°25'06" E 341.23 ft. Thence;
- S 11°35'26" W 678.68 ft. Thence;
- S 54°01'25" W 284.52 ft. Thence;
- N 80°24'49" W 559.78 ft.

To the point of beginning.

Area: 688,993 sq.ft. - 15.82 acres;

and

A parcel

*22-017-0001 - PT.*

Beginning at a point which is N 00°20'47" E 400.01 ft. along the Section line from the west quarter corner of sec. 22, T7N, R1E, SLB&M (Basis of bearing N 00°20'47" E 2,678.81 ft. between said West quarter corner and the northwest corner of said sec. 22); Thence as follows:

- N 00°20'47" E 1703.17 ft. to a non-tangent to the right; Thence;
- Northeasterly 520.84 ft. Along said curve (R=1460.00, Delta=20°26'23", T=263.22, CH=518.08, CHB= N 81°52'12" E) Thence;
- S 87°54'37" E 302.48 ft. Thence;
- S 03°20'53" W 166.90 ft. to a non-tangent curve to the left; Thence;
- Southwesterly 211.11 ft. Along said curve (R=168.00, Delta=71°59'49", T=122.05, CH=197.49, CHB= S 57°20'59" W) Thence;
- S 21°21'04" W 269.33 ft. Thence;
- S 34°43'01" W 121.50 ft. Thence;
- S 55°14'14" W 226.49 ft. Thence;
- S 04°04'29" W 785.51 ft. Thence;
- N 86°01'15" W 98.86 ft. Thence;

S 18°46'41" W 78.02 ft. to a tangent curve to the left; Thence;  
Southeasterly 46.38 ft. along said curve (R=70.00, Delta=37°57'47", T=24.08,  
CH=45.54, CHB= S 00°12'12" E) Thence;  
S 19°11'06" E 19.91 ft. to a tangent curve to the right; Thence;  
Southeasterly 58.79 ft. along said curve (R=230.00, Delta=14°34'16", T=29.40,  
CH=58.33, CHB= S 11°53'58" E) Thence;  
S 04°36'50 E 28.97 ft. Thence;  
S 85°23'10" W 5.49 ft. Thence;  
S 78°24'08" W 60.00 ft. along the north boundary of Fairway Oaks Subd.; Thence;  
N 89°14'39" W 73.37 ft. along the north boundary of Fairway Oaks Subd.

To the point of beginning.

Area: 688,528 sq.ft. 15.81 acres

E# 1966151 BK2424 PG1127