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DOC # 20160044333
Amended Restrictive Covenants Page 1 of 82
Russell Shirts Washington County Recorder
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By VIAL FOTHERINGHAM SG, LLP

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Sun River St. George Community Association

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St. George, UT 84770

Record Against Properties Described in:
Exhibit G-1
Exhibit H

CORRECTED SECOND RESTATED

AND AMENDED

DECLARATION OF COVENANTS,

CONDITIONS, AND RESTRICTIONS

FOR

SUN RIVER ST. GEORGE

Age Restriction - Housing for Persons 55 Years of age or older Under HOPA. SUN RIVER ST. GEORGE PROVIDES HOUSING FOR PERSONS 55 YEARS OF AGE OR OLDER AS DEFINED UNDER THE FEDERAL HOUSING FOR OLDER PERSONS ACT AND EIGHTY PERCENT (80%) OF THE OCCUPIED DWELLING UNITS SHALL BE OCCUPIED BY AT ONE PERSON 55 YEARS OF AGE OR OLDER. NO PERSON UNDER AGE 18, AS WELL AS OTHERS FALLING WITHIN THE DEFINED TERM OF FAMILIAL STATUS UNDER FEDERAL LAW, SHALL OCCUPY ANY DWELLING UNIT. HOWEVER, PERSONS UNDER AGE 18 MAY RESIDE AS A VISITOR IN ANY DWELLING UNIT FOR A PERIOD NOT EXCEEDING THIRTY (30) CONSECUTIVE DAYS NOR MORE THAN NINETY (90) DAYS IN ANY CALENDAR YEAR.

THE BOARD SHALL ESTABLISH POLICIES AND PROCEDURES FROM TIME TO TIME AS NECESSARY TO MAINTAIN THE PROPERTIES AS AN AGE RESTRICTED COMMUNITY INTENDED FOR HOUSING PERSONS 55 YEARS OF AGE OR OLDER UNDER STATE AND FEDERAL LAW.

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The Second Restated and Amended Declaration of Covenants, Conditions, and Restrictions for Sun River St. George ("Second Restated and Amended Declaration") was made in connection with a vote of the Association membership on March 9, 2016 to amend Sections 3.4(a) and (b), 4.3, 8.3, 10.2, 10.8(c), 10.14, 10.16, Exhibits C-1 and C-2 of the Corrected First Restated and Amended Declaration of Covenants, Conditions, and Restrictions for Sun River St. George Community Association, Inc.; This CORRECTED Second Restated and Amended Declaration of Covenants, Conditions, and Restrictions for Sun River St. George Community Association, Inc. (hereafter still referred to as the "Second Restated and Amended Declaration"), except in the Recitals where the term "corrected" is used, replaces and substitutes for the Second Restated and Amended Declaration recorded in the records of the Washington County Recorder as Document No. 20160020822 on the 13th day of June, 2016. This CORRECTED Second Restated and Amended Declaration clarifies and resolves the existence of a clerical oversight in Section 10.14. As a result of the oversight, the word "not" in Section 10.14 was inadvertently omitted but has been corrected in this CORRECTED Second Restated and Amended Declaration. Additionally, in Recital 4 of the Second Restated and Amended Declaration when describing the Supplemental Declarations in Recitals A through L, this should have been "Recitals A through M" and has been corrected in this CORRECTED Second Restated and Amended Declaration. Further, since recording of the Second Restated and Amended Declaration, additional Supplemental Declarations have been recorded. These corrections for the additional Supplemental Declarations are recited in Recitals 1.N through 1.P below.

Furthermore, this CORRECTED Second Restated and Amended Declaration also corrects the existence of the clerical oversight throughout the Second Restated and Amended Declaration of using the name "Amended and Restated Declaration" when it should be "Restated and Amended Declaration". This CORRECTED Second Restated and Amended Declaration has changed this clerical error throughout the document.

RECITALS

1. The Declaration of Covenants, Conditions and Restrictions for Sun River has been amended since 2012 as follows:

   A. The Corrected First Restated and Amended Declaration of Covenants, Conditions, and Restriction for Sun River St. George was recorded in the records of the Washington County Recorder's office, Washington County, Utah as Doc # 20120043524, dated December 19, 2012 ("First Amended and Restated Declaration"), which contain Phases 1 through 35, excluding Phases 19 and 32, which had not been recorded as platted phases at that time.

   B. First Amendment to the Corrected First Amended and Restated Declaration of Covenants, Conditions, and Restriction for Sun River St. George was recorded in the records of the Washington County Recorder's office, Washington County,

Utah as Doc # 20130008422, recorded on March 6, 2013 (the "First Amendment").

C. The Supplemental Declaration for Sun River St. George and Neighborhood Designation Phase 32 (Lots 1863 through 1894 - Neighborhood N4; Lots 1862 and 1895 - Neighborhood N5) was recorded in the records of the Washington County Recorder's office, Washington County, Utah as Doc #20130035930, dated September 23, 2013.

D. The Supplemental Declaration for Sun River St. George and Neighborhood Designation Phase 36 (Neighborhood N5) was recorded in the records of the Washington County Recorder's office, Washington County, Utah as Doc #20130041598, dated November 8, 2013.

E. The Supplemental Declaration for Sun River St. George and Neighborhood Designation Phase 19 (Neighborhood N4) was recorded in the records of the Washington County Recorder's office, Washington County, Utah as Doc #20140008587, dated March 25, 2014.

F. The Supplemental Declaration for Sun River St. George and Neighborhood Designation Phase 37 (Lots 1914-1920 and 1935-1941 - Neighborhood N5) was recorded in the records of the Washington County Recorder's office, Washington County, Utah as Doc #20140023180, dated July 13, 2014.

G. The Supplemental Declaration for Sun River St. George and Neighborhood Designation Phase 38 (Lots 1921-1934 - Neighborhood N5) was recorded in the records of the Washington County Recorder's office, Washington County, Utah as Doc #20140028048, dated September 12, 2014.

H. The Supplemental Declaration for Sun River St. George and Neighborhood Designation Phase 44 (Lots 2036-2058 - Neighborhood N6) was recorded in the records of the Washington County Recorder's office, Washington County, Utah as Doc #20140032675, dated October 24, 2014.

I. The Supplemental Declaration for Sun River St. George and Neighborhood Designation Phase 39 (Lots 1942 through 1952 - Neighborhood N5) was recorded in the records of the Washington County Recorder's office, Washington County, Utah as Doc #20150000722, dated January 9, 2015.

J. The Supplemental Declaration for Sun River St. George and Neighborhood Designation Phase 45 (Lots 2059-2082 - Neighborhood N6) was recorded in the records of the Washington County Recorder's office, Washington County, Utah as Doc #20150011441, dated April 8, 2015.

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K. The Supplemental Declaration for Sun River St. George and Neighborhood Designation Phase 46 (Lots 2083-2108 - Neighborhood N6) was recorded in the records of the Washington County Recorder's office, Washington County, Utah as Doc #20150025285, dated July 20, 2015.

L. The Supplemental Declaration for Sun River St. George and Neighborhood Designation Phase 40 (Lots 1953-1961, 1984-1993 - Neighborhood N5) was recorded in the records of the Washington County Recorder's office, Washington County, Utah as Doc #20160000770, dated January 8, 2016.

M. The Supplemental Declaration for Sun River St. George and Neighborhood Designation Phase 47 (Lots 2109-2128 - Neighborhood N6) was recorded in the records of the Washington County Recorder's office, Washington County, Utah as Doc #20160006893, dated March 1, 2016.

N. The Supplemental Declaration for Sun River St. George and Neighborhood Designation Phase 41 (Lots 1962-1983 – Neighborhood N 5) was recorded in the records of the Washington County Recorder's office, Washington County, Utah as Doc #20160012869, dated April 14, 2016.

O. The Supplemental Declaration for Sun River St. George and Neighborhood Designation Phase 49 (Lots 2129-2149 – Neighborhood N 1) was recorded in the records of the Washington County Recorder's office, Washington County, Utah as Doc #20160020492, dated June 9, 2016.

P. The Supplemental Declaration for Sun River St. George and Neighborhood Designation Phase 43a (Lots 2016-2020 – Neighborhood N 5) was recorded in the records of the Washington County Recorder's office, Washington County, Utah as Doc #20160027856, dated August 3, 2016.

Q. The Second Restated and Amended Declaration of Covenants, Conditions, and Restrictions for Sun River St. George was recorded in the records of the Washington County Recorder's office, Washington County, Utah, Doc #20160020822, dated June 13, 2016.

2. The Supplemental Declarations, the Corrected First Amended and Restated Declaration and the Second Restated and Amended Declaration described above are hereby substituted and replaced with this Corrected Second Restated and Amended Declaration.

3. To consolidate the First Amended and Restated Declaration, the Supplemental Declarations, and the Second Restated and Amended Declaration into this Corrected Second Restated and Amended Declaration into a single declaration, the Board has authorized, and the Declarant has consented to, this Corrected Second Restated and

Amended Declaration.

4. This Corrected Second Restated and Amended Declaration replaces and substitutes for the First Amended and Restated Declaration, all the Supplemental Declarations described in Recitals A through P and the Second Restated and Amended Declaration. In the event of a conflict between the By-Laws or the Rules and Regulations for Sun River St. George, this Corrected Second Restated and Amended Declaration shall control.

5. This Corrected Second Restated and Amended Declaration shall be binding on all of the real property described in Exhibit H and to a limited extent the real property described in Exhibit G-1, and any annexation, expansion or supplement thereto from the real property described in Exhibit B.

6. A Signage Monument Easement Agreement was also recorded in the records of the Washington County Recorder as Document No. 20120039417 on November 19, 2012 -- this easement provides access to the Association to a sign on commercial property lying just outside the boundaries of the Association. This Easement remains in place and in effect.

7. A "Second" Third Amendment to the Declaration of Covenants, Conditions and Restrictions of Sun River St. George was recorded in the records of the Washington County Recorder as Document No. 20120039460 on November 19, 2012 ("Second Third Amendment") - this amendment operated to withdraw certain real property from the Declaration.

8. A First Amendment to the Corrected First Amended and Restated Declaration of Covenants, Conditions, and Restriction for Sun River St. George was recorded on March 6, 2013 in the records of the Washington County Recorder's office, Washington County, Utah as Doc # 20130008422. Said Amendment is incorporated into this Corrected Second Restated and Amended Declaration.

9. Nothing herein shall operate to amend, replace or supersede the "Second" Third Amendment, the Signage Monument Easement Agreement, or the First Amendment.

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SECOND RESTATED AND AMENDED

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

Sun River St. George

This SECOND RESTATED AND AMENDED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS ("Second Restated and Amended Declaration") is made this _____ day _______________, 2016, by Sun River St. George Community Association, Inc., a Utah nonprofit corporation (the "Association"). The Recitals are incorporated herein and shall be considered as covenants as well as recitals.

ARTICLE 1
DEFINITIONS

The terms in this Second Restated and Amended Declaration and the Exhibits to this Second Restated and Amended Declaration shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1. "Architectural Review Committee": The committee the Declarant may create at such time as it shall determine in its discretion to review new construction and administer and enforce the architectural controls.

1.2. "Area of Common Responsibility": As defined in section 5.1.

1.3. "Articles of Incorporation" or "Articles": The Articles of Incorporation of Sun River St. George Community Association, Inc., as filed with the State of Utah, Department of Commerce, Division of Corporations and Commercial Code.

1.4. "Association": The Sun River St. George Community Association, Inc., a Utah nonprofit corporation, its successors or assigns.

1.5. "Benefitted Assessment": Assessments levied in accordance with Section 8.7.

1.6. "Base Assessment": Assessments levied on all Lots subject to assessment under Article VIII to fund Common expenses for the general benefit of all Lots.

1.7. "Board of Trustees", "Trustees", or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws.

1.8. "Builder": Any Person which purchases one or more Lots for the purpose of constructing improvements for later sale to consumers or purchases one or more parcels of land within the Properties for further subdivision, development, and/or resale in the ordinary course of such Person's business specifically and without limitation, commercial properties. Builder shall not be construed to be the Declarant.

1.9. "Business" and "Trade": Shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether: (a) such activity is engaged in full or part-time, (b) such activity is intended to or does generate a profit, including business not for profit, or (c) a license is required.

1.10. "By-Laws": The By-Laws of Sun River St. George Community Association, Inc., as they may be amended.

1.11. "Common Area": All real and personal property which the Association owns, leases or otherwise holds possession or use rights in for the common use and enjoyment of the Owners, as shown on the plat. For example without limitation, the Common Area may include recreational facilities, parks, entry features, signage, landscaped medians, street rights-of-way, lakes, ponds, and conservation areas. The term shall include the Exclusive Common Area.

1.12. "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents.

1.13. "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties and as may be described in the Design Guidelines. Such standard may be more specifically determined by the Declarant as long as it owns any property described in Exhibit "A" and thereafter by the Board.

1.14. "Covenant to Share Costs": Any declaration executed by Declarant and recorded in the Public Records of Washington County, Utah, which creates easements for the benefit of the Association and the present and future owners of the real property subject thereto and which obligates the Association and such owners to share the costs of maintaining certain property described in such declaration.

1.15. "Declarant": Sun River St. George Development, L.C., or any successor, successor-in-title, or assign who takes title to any portion of the property described in Exhibit "A" and any property annexed to the Properties as provided in Article VII, for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.

1.16. "Declarant Board Control Period": The period of time during which the Declarant is entitled to appoint a majority of the members of the Board of Trustees as provided in Section 3.3 of the Second Restated and Amended By-Laws.

1.17. "Design Guidelines": The design and construction guidelines and application and review procedures applicable to the Properties promulgated and administered pursuant to Article IX.

1.18. "Development Period": The period of time during which the Declarant is entitled to exercise Development Rights and Special Declarant Rights. The Development Period shall commence upon the recording of this Second Restated and Amended Declaration and shall terminate fifteen (15) years later unless reinstated or extended by agreement between Declarant

and the Association, subject to such terms as the Board may impose upon the subsequent exercise by Declarant of the Special Declarant Rights.

1.19. "Development Rights": The rights reserved in this Second Restated and Amended Declaration by the Declarant to: (a) submit additional property to this Second Amended Declaration as provided in Section 7.1, (b) create Lots, Common Area, or Exclusive Common Areas provided in Section 7.1, (c) to the extent permitted by Utah law, subdivide Lots or convert Lots into Common Area or Exclusive Common Area, and (d) withdraw real estate from the Properties as provided in Section 7.3. Development Rights may be exercised in all or any portion of the Properties at any time within the Development Period. No assurances are made regarding the timing or exercise of such rights.

1.20. "Dwelling Unit": Any building or structure or portion of a building or structure situated upon a Lot and which is intended for use and occupancy as an attached or detached residence for a single family.

1.21. "Exclusive Common Area": A portion of the Common Area intended for the exclusive use or primary benefit of one or more, but less than all, Neighborhoods, as more particularly described in Article II.

1.22. "Familial Status": Shall mean and refer to:

(a) one or more individuals who have not attained the age of 18 years being domiciled with:

(1) a parent or another Person having legal custody of the individual or individuals; and

(2) the designee of the parent or other person having custody, with the permission of the parent or other person;

(b) a parent or other Person in the process of acquiring legal custody of one or more individuals who have not attained the age of 18 years; and

(c) a person who is pregnant.

1.23. "Governing Documents": A collective term including the Second Restated and Amended Declaration, the Second Amended and Restated By-Laws, the Articles, the Design Guidelines, the policies and procedures concerning age restrictions as provided in Section 2.6, and any rules or regulations adopted by the Board.

1.24. "Home Owner": An Owner other than the Declarant or Builder.

1.25. "Lot": A continuous portion of the Properties, whether improved or unimproved, other than Common Area, common property of any Neighborhood Association, and property dedicated to the public, which may be independently owned and conveyed and which is intended to be developed, used, and occupied as a Dwelling Unit. The term shall refer to the land, if any, which is part of the Lot as well as any improvements, including any Dwelling Unit, thereon. The boundaries of each Lot shall be delineated on the Plat, and each Lot shall be identified by the number or address noted on the Plat.

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Prior to recordation of a subdivision plat, a parcel of vacant land or land on which improvements are under construction shall be deemed to contain the number of Lots designated for residential use for such parcel on the applicable preliminary plat or site plan approved by Declarant, whichever is more current. Until a preliminary plat or site plan has been approved, such parcel shall contain the number the Lots set by Declarant in conformance with the Master Plan.

1.26. "Limited Common Areas": shall mean and refer to those Common Areas as referred to herein and designated on the plat as reserved for use of a certain Dwelling Unit to the exclusion of the other Dwelling Units which are or may include the driveways, adjacent yard areas, patios, which lead to or are associated with certain units or both. Limited Common Areas are a subcategory of and are included in Common Areas.

1.27. "Maintenance Association": The Neighborhood Association created pursuant to the certain Declaration of Covenants, Conditions, and Restrictions for Sun River St. George Maintenance Association recorded or to be recorded in the Public Records. The Maintenance Association shall have jurisdiction over the Neighborhood or Neighborhoods submitted to it; provided, however, such jurisdiction shall be concurrent with and subordinate to that of the Association.

1.28. "Master Plan": The master plan for the development of Sun River St. George approved by the City of St. George or Washington County, Utah, as it may be amended from time to time, which plan includes the property described in Exhibit "A"; and all or a portion of the property described in Exhibit "B" that Declarant may from time to time anticipate subjecting to this Second Restated and Amended Declaration. The Master Plan may also include subsequent plans approved by the City of St. George or Washington County, Utah, for the development of all or a portion of the property described in Exhibit "B" which Declarant may from time to time anticipate subjecting to this Second Restated and Amended Declaration. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Second Restated and Amended Declaration, nor shall the exclusion of property to this Second Restated and Amended Declaration, nor shall the exclusion of property described in Exhibit "B" from the Master Plan bar its later annexation.

1.29. "Maximum Lots": The maximum number of Lots the Declarant reserves the right to create as a part of Sun River St. George, in the area described in Exhibit A, is 2,500; provided, however, that nothing in this Second Restated and Amended Declaration shall be construed to require the Declarant or any successor to develop the Maximum Lots. Additional lots may be created on any additional land that Declarant may annex under the provisions of Article VII.

1.30. "Member": A Person entitled to membership in the Association pursuant to Section 3.2.

1.31. "Modifications Committee": The committee established by the Board pursuant to Section 9.2(b) to review applications for modifications to Lots or Dwelling Units.

1.32. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot.

1.33. "Mortgagee": A beneficiary or holder of a Mortgage.

1.34. "Mortgagor": Any person who gives a mortgage.

1.35. "Neighborhood": Each separately developed residential area within the Properties, whether or not governed by the Maintenance Association, in which the Owners of Lots may have common interests other than those common to all Members of the Association. For example, and by way of illustration and not limitation, each townhome development, cluster home development, time-share development, and single-family detached housing development may constitute a separate Neighborhood, or a Neighborhood may be comprised of more than one housing type with other features in common. In addition, each parcel of land intended for development as any of the above shall constitute a Neighborhood, subject to division into more than one Neighborhood upon development.

1.36. "Neighborhood Assessments": Assessments levied against the Lots in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as described in Sections 8.1 and 8.4.

1.37. "Neighborhood Associations": Any owners association having subordinate, concurrent jurisdiction over any Neighborhood or Neighborhoods. The Maintenance Association shall be a Neighborhood Association.

1.38. "Neighborhood Expenses": The actual and estimated expenses incurred or anticipated to be incurred by the Association for the benefit of Owners of Lots within a particular Neighborhood or Neighborhoods, which may include a reasonable reserve for capital repairs and replacements, as the Board may specifically authorize from time to time and as may be authorized herein or in Supplemental Declarations applicable to such Neighborhood(s).

1.39. "Neighborhood Representative": The representative or alternate selected by the Members within each Neighborhood to represent the Neighborhood in Association matters other than those requiring a vote of the membership as described in Section 3.4(b).

1.40. "Owner": One or more Persons, which may include the Declarant, who hold the record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

1.41. "Person": A natural person, a corporation, a partnership, a Trustee, or any other legal entity.

1.42. "Phase": All Lots simultaneously subjected to this Second Restated and Amended Declaration by its execution and recordation by the Declarant and each Supplemental Declaration in the Public Records. The property described on Exhibit "A" to this Second Restated and Amended Declaration shall constitute the first Phase ("Phase I"). A Phase may be developed in smaller areas called "Subphases."

1.43. "Plat": The engineering survey or surveys for all or any portion of the Properties, together with such other diagrammatic information regarding the Properties, as they may be amended and supplemented from time to time and recorded in the Public Records.

1.44. "Properties": The real property described in Exhibit "A," together with such additional property as is annexed to this Second Restated and Amended Declaration. Exhibit

"A" and each of the Supplemental Declarations which subject additional property to the Declaration shall provide a legal description of the Common Area included therein, if any.

1.45. "Public Records": The Office of the County Recorder of Washington County, Utah.

1.46. "Special Assessment": Assessments levied in accordance with Section 8.6.

1.47. "Special Declarant Rights": The rights of Declarant set forth in Article XIII.

1.48. "Supplemental Declaration": A Supplement to this Second Restated and Amended Declaration filed in the Public Records pursuant to Article VII which subjects additional property to this Second Restated and Amended Declaration, identifies any Common Area within the additional property, and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument. The term shall also refer to: (i) an instrument filed by the Declarant pursuant to Section 3.4(c) which designates Voting Groups, and (ii) Tract Declarations.

1.49. "Tract Declaration": A declaration covering one or more tracts of land within the Properties and which contain land use and other designations, covenants, restrictions and easements as provided for in Section 2.7.

1.50. "Vacation Villa": Any dwelling unit owned or operated by Declarant for the purpose of short term periodic rental, or for time-share condominium use or sales. The occupant of such Vacation Villa may be given specified rights of use of Common Area per Section 13.7.

1.51. "Voting Group": One or more Neighborhoods whose Owners vote on a common slate for election of Trustees to the Board of Trustees of the Association, as more particularly described in Section 3.4(b) of this Second Restated and Amended Declaration or, if the context so indicates, the group of Members whose Lots are represented thereby.

ARTICLE II
PROPERTY RIGHTS

2.1. Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to:

(a) the Governing Documents;

(b) any restrictions or limitations contained in any deed conveying such property to the Association;

(c) the right of the Board to adopt rules, regulations or policies regulating the use and enjoyment of the Common Area, including rules restricting use of recreational facilities within the Common Area to occupants of Dwelling Units and their guests, and rules limiting the number of occupants and guests who may use the Common Area, and rules designating certain portions of the Common Area as gardening plots for Owners and occupants and regulating the use thereof. The right to set hours of operation and reasonable restriction of minors for facilities;

(d) the right of the Board to suspend the right of an Owner to use recreational

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facilities pursuant to Section 4.3;

(e) the right of the Association, acting through the Board to dedicate or transfer all or any part of the Common Area;

(f) the right of the Board to impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;

(g) the right of the Board to permit use of any Common Area by non-Owners upon payment of use fees established by the Board;

(h) the right of the Board to create, enter agreements with, and grant easements to tax-exempt organizations under Section 4.14;

(i) the right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for Association obligations;

(j) the rights of certain Owners to the exclusive use of those portions of the Common Area designated "Exclusive Common Area," as more particularly described in Section 2.2; and

(k) the right of the Association to rent or lease any portion of any clubhouse and other recreational facilities within the Common Area on a short-term basis to any Person approved by the Association for the exclusive use of such Person and such Person's family and guests.

Ownership of each Lot shall entitle the Owner thereof to receive a maximum of two membership cards. The cards for each Lot shall be renewed by the Association on an annual basis without charge, provided that all applicable assessments and other charges have been paid. The Board may establish policies, limits and charges with regard to the issuance of additional cards and guest privilege cards, including privileges for multiple owners of lots as described in Paragraph 3.2.

Subject to reasonable Board resolution, any Owner may assign the right to receive membership cards to residents of his or her Dwelling Unit; provided such residents are occupying such Dwelling Unit in compliance with Section 2.6. An Owner who leases his or her Lot shall be deemed to have assigned such rights to the lessee of such Lot, unless the Board adopts a resolution permitting Owners to reserve such rights and such Owner provided the Board with written notice of such reservation. Any Owner may reassign the right to receive membership cards by providing the Association with written notice of such reassignment and surrender previously issued cards.

The Common Areas as identified in a Plat shall be conveyed to the Association prior to or concurrent with the conveyance of the first Lot shown on such Plat to a Homeowner.

2.2. Exclusive Common Area. The Declarant reserves the right to designate certain portions of the Common Area as Exclusive Common Area as long as it may exercise Development Rights. Exclusive Common Area shall be Common Area that is reserved for the exclusive use or primary benefit of a Neighborhood. Exclusive Common Area may include, without limitation, recreational facilities, landscaped rights-of-way and medians, and other portions of the Common Area within a particular Neighborhood or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of Exclusive Common Area shall be assessed as a Neighborhood Assessment in addition to the Base Assessment against the Owners of Lots in those Neighborhoods to which the Exclusive Common Area is assigned.

The Declarant may designate Exclusive Common Area or change such designation by filing a Supplemental Declaration in the Public Records indicating the Exclusive Common Area and the Neighborhood or Neighborhoods to which it is assigned. The Association may permit Owners of Lots in other Neighborhoods to use all or a portion of Exclusive Common Areas assigned to other Neighborhoods upon payment of reasonable use fees or cross-use agreements which shall offset the Neighborhood Expenses attributable to such Exclusive Common Area.

2.3. Limited Common Areas. Each lot Owner is hereby granted an irrevocable and exclusive license to use and occupy the Limited Common Areas appurtenant to certain lots and identified on the official Plats filed on the Properties. The exclusive right to use and occupy each Limited Common Area shall be appurtenant to and shall pass with the title to every Lot with which it is associated. A Lot Owner's exclusive right of use and occupancy of Limited Common Areas reserved for their Lot shall be subject to and in accordance with the Second Restated and Amended Declaration and Second Amended and Restated By-Laws.

2.4. No Partition. Except as permitted in this Second Restated and Amended Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of the whole or any part thereof without the written consent of all Owners and Mortgagees. The Articles shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Second Restated and Amended Declaration.

2.5. Condemnation. If a Lot or portion thereof shall be taken by eminent domain, compensation and the Owner's interests in the Common Area shall be inured to the Association. In addition, if any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of at least sixty-seven percent (67%) if the total votes in the Association and the Declarant's consent during the Development Period) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice. The award made for such taking shall be payable to the Association as Trustee for all Owners to be disbursed as follows:

(a) if the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within sixty (60) days after such taking at least sixty-seven percent (67%) of the total vote of the Association and the Declarant during the Development Period shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 6.1(c) regarding funds for the repair of damage or destruction shall apply; and

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

2.6. "Age Restriction – Housing for Persons 55 Years of Age or Older Under HOPA". SUN RIVER ST. GEORGE PROVIDES HOUSING FOR PERSONS 55 YEARS OF AGE OR OLDER AS DEFINED UNDER THE FEDERAL HOUSING FOR OLDER PERSONS ACT AND EIGHTY PERCENT (80%) OF THE OCCUPIED DWELLING UNITS SHALL BE OCCUPIED BY AT ONE PERSON 55 YEARS OF AGE OR OLDER. NO PERSON UNDER AGE 18, AS WELL AS OTHERS FALLING WITHIN THE DEFINED TERM OF FAMILIAL STATUS UNDER FEDERAL LAW, SHALL OCCUPY ANY DWELLING UNIT. HOWEVER, PERSONS UNDER AGE 18 MAY RESIDE AS A VISITOR IN ANY DWELLING UNIT FOR A PERIOD NOT EXCEEDING THIRTY (30) CONSECUTIVE DAYS NOR MORE THAN NINETY (90) DAYS IN ANY CALENDAR YEAR.

THE BOARD SHALL ESTABLISH POLICIES AND PROCEDURES FROM TIME TO TIME AS NECESSARY TO MAINTAIN THE PROPERTIES AS AN AGE RESTRICTED COMMUNITY INTENDED FOR HOUSING PERSONS 55 YEARS OF AGE OR OLDER UNDER STATE AND FEDERAL LAW.

2.7. Land Use Classifications, Permitted Uses and Restrictions. As portions of Sun River St. George are readied for development, the land use classifications, restrictions, easements, rights-of-way, and other matters, including new or different uses and restrictions thereof and including any number of subclassifications thereof for any special uses, shall be fixed by Declarant in a Tract Declaration which may be recorded on that portion of the Properties being developed. Any such Tract Declaration shall be construed as a supplement to this Second Restated and Amended Declaration and fully a part hereof for all purposes to the same extent as if all the provisions thereof were set forth in this Second Restated and Amended Declaration and vice versa. The land use classifications for lots, parcels, tracts and association land established by a Tract Declaration shall not be changed except as specifically permitted by this Second Restated and Amended Declaration. Contemplated land use classifications are as follows:

(a) Association Use, which may include Common Areas.
(b) Cluster Residential use, which shall consist of Lots with Dwelling Units intended for single family occupancy and may include those types of residential housing arrangements known as patio homes, garden villas, clustered housing and similar arrangements which are detached together with related areas intended for use and enjoyment of the Owners and residents of the Lots in the cluster development.
(c) Commercial Use.
(d) General Office Use.
(e) General Public Use.
(f) Golf Course Use.
(g) Religious Use.
(h) Single Family Residential Use.
(i) Utility Use.

Unless otherwise specifically provided in this Second Restated and Amended Declaration, the definitions and characters of such land use classifications, and specifically permitted and prohibited uses in such Classifications, shall be determined in the Tract Declaration. All Tract Declarations shall be subject to applicable zoning laws.

2.8 Rental Cap. A person wishing to rent/lease their home shall make prior application to the Board of Trustees for approval to do so. At no time may more than five percent (5%) of the total number of homes in the community be rented or leased; provided, however, that the Board of Trustees may, at their discretion, allow an additional two percent (2%) for hardship situations. The definition of hardship is to be judged on a case by case basis and at the discretion of the Board of Trustees. In the event that the total number of rented/leased homes in the community reaches or exceeds five percent (5%), the Association shall create a list of those who desire to rent/lease their homes. Names shall be added to the list on a first come, first added basis. If the renter/lessee defaults on the lease or rental agreement as stated in Article 10.12, the Board of Trustees may have the authority to enforce eviction. If the total number of rentals/leases are above the five percent (5%) cap at the time this amendment is approved by the Community Association, those who are currently renting may continue until the current renter/lessee leaves or discontinues the rental/lease agreement. Upon such event, the owner of the home shall be added to the end of the then existing list of persons wishing to rent/lease their home. Any new rental/lease agreement must be approved by the Board of Trustees or an authorized representative of the Board. If a home that is being rented/leased is sold, an existing rental/lease agreement may continue until the rental/lease agreement term expires. All rental/lease agreements must be approved by the Board of Trustees and must meet the restriction as set forth in Article 10.12 of the Second Restated and Amended Declaration and contain all of guidelines of Exhibit B of the Housing for Older Person Act. Notwithstanding anything to the contrary in this Section 2.8, the rent/lease cap set forth in this Section 2.8 shall not be applicable to any Lots that are subject to a Mortgage that is insured and/or guaranteed by the Federal Housing Administration, and Lots that are subject to a Mortgage that is insured and/or guaranteed by the Federal Housing Administration shall not be included in calculations to determine the percentage of homes in the community that area rented or leased.

ARTICLE III
MEMBERSHIP AND VOTING RIGHTS

3.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility; the primary entity responsible for compliance with and enforcement of the Governing Documents; and be responsible for administering, monitoring compliance with, and enforcing the Design Guidelines after such time as the Declarant transfers such authority to the Association. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of Utah.

3.2. Membership. Every Owner shall be a Member of the Association. If a Lot is owned by more than one Person (such as tenants in common, joint-tenants, time-share ownership), all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation, such as reasonable fees as may be established in Section 2.1, and the restrictions on voting set forth in Section 3.4(c) and in the By-Laws. All such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by an officer, director, partner or

Trustee, or by any other individual having apparent authority as designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

3.3. Voting. The Association shall have one class of membership composed of all Owners. Each Owner shall have one equal vote for each Lot in which it holds the interest required for membership under Section 3.2, provided there shall be only one vote per Lot and no vote shall be exercised for any property which is exempt from assessment under Section 8.13.

The Special Declarant Rights, including the right to approve, or withhold approval of, actions proposed under this Second Restated and Amended Declaration, the Second Amended and Restated By-Laws and the Articles during the Declarant Board Control Period, are specified in the relevant sections of this Second Restated and Amended Declaration, the Second Amended and Restated By-Laws, and the Articles. The Declarant may appoint a majority of the members of the Board during the Declarant Board Control Period, as specified in Section 3.3 of the By-Laws.

Members may vote directly or by proxy as provided in the By-Laws. The Board shall determine whether votes shall be cast in person or by mail from time to time. If there is more than one Owner of a particular Lot, a vote cast at any Association meeting by any of such co-owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless written objection is made prior to said meeting, or verbal objection at said meeting, by another co-Owner of the same Lot. In the event objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

3.4. Neighborhoods, Neighborhood Representatives, and Voting Groups

(a) Neighborhoods. Every Lot shall be located within a Neighborhood. The Lot within a particular Neighborhood may be subject to additional covenants. In addition, if required or permitted by law, the Lot Owners may be members of a Neighborhood Association.

Any Neighborhood may, upon the affirmative vote, written consent, or a combination thereof, of Owners of a majority of Lots within the Neighborhood, request that the Association provide an increased level of service or special services for a benefit of Lots in such Neighborhood. The cost of such services shall be assessed as a Neighborhood Assessment pursuant to Article VIII. The Neighborhood Representative shall communicate all such requests to the Board.

Each Neighborhood shall hold meetings twice each year or as required by the Board. All Owners in the Neighborhood shall be entitled to attend Neighborhood meetings. The Neighborhood Representative shall preside over Neighborhood meetings and shall place such issues on the agenda as the Board may determine. The presence of at least fifteen percent (15%) of the Owners in a Neighborhood shall constitute a quorum at any Neighborhood meetings.

Exhibit "A" to this Second Restated and Amended Declaration, and each Supplemental Declaration filed to subject additional property to this Second Restated and Amended Declaration, shall initially assign the property described therein to a specific neighborhood (by name or other identifying designation), which Neighborhood may be then existing or newly created. During the Development Period, the Declarant may unilaterally amend this Second

Restated and Amended Declaration or any Supplemental Declaration from time to time to redesignate Neighborhood boundaries; provided, two or more existing Neighborhoods shall not be combined without the consent of Owners of a majority of the Lots in each of the affected Neighborhoods. After such time Owners may redesignate Neighborhoods boundaries upon the affirmative vote of a majority of Owners in each affected Neighborhood.

(b) Neighborhood Representative. Each Neighborhood shall elect a Neighborhood Representative and an alternate who shall act in the Neighborhood Representative's absence. Neighborhood Representatives shall preside over meetings of the Neighborhood and shall be responsible for communication between the Owners in the Neighborhood and the Board. They also shall attend such meetings or fulfill other duties as the Board may request. The alternate may attend meetings of the Neighborhood Representatives but shall not represent the Neighborhood except in the absence of the Neighborhood Representative.

In the odd years, the Board shall call for the election of Neighborhood Representatives and alternates in odd numbered Neighborhoods. In the even years, the Board shall call for the election of Neighborhood Representatives and alternates, in even numbered Neighborhoods. Owners in each Neighborhood shall elect their Neighborhood Representatives and alternates on the day and in such manner as the Board designates. Any Owner in the Neighborhood may nominate Owners in the Neighborhood or declare himself or herself as a candidate in accordance with procedures established by the Board. The Owner of each Lot shall be entitled to cast one equal vote for each Lot which he/she owns in the Neighborhood. The term of office shall be for a two-year period for both the Neighborhood Representatives and alternates.

Neighborhood Representatives and alternate candidates must be full-time residents. In a Neighborhood, when more than two (2) candidates are running for the office of Representative, the one with the majority of votes becomes the Representative, the next highest alternate. When only two (2) candidates are running in a Neighborhood, the candidates may designate, by agreement, the position for which each is running. Neighborhood Representatives and alternates may run for unlimited, consecutive terms.

Any Neighborhood Representative may be removed, with or without cause, upon the vote or written petition of a majority of the votes attributable to Lot in the appropriate Neighborhood. Additionally, the Board may remove a Neighborhood Representative in its discretion. In the event that a Neighborhood is not represented by a Neighborhood Representative or an alternate, the Board may appoint a replacement to fulfill the unexpired portion of such term.

(c) Voting Groups. The Declarant may designate Voting Groups consisting of one or more Neighborhoods for the purpose of electing Trustees to the Board, in order to promote representation on the Board for various groups having dissimilar interests and to avoid a situation in which Owners representing similar Neighborhoods are able, due to the number of Lots in such Neighborhoods, to elect the entire Board, excluding representation of others. Following termination of the Declarant Board Control Period, the number of Voting Groups within the Properties shall not exceed one less than the total number of Trustees to be elected pursuant to the Second Amended and Restated By-Laws. If Voting Groups are established, Owners within each Voting Group shall vote on a separate slate of candidates for election to the Board, with each Voting Group being entitled to elect the number of Trustees specified in Section 3.5 of the By-Laws.

(d) The Declarant shall establish Voting Groups, if at all, not later than the date of expiration of the Declarant Board Control Period by filing with the Association and in the Public records, a Supplemental Declaration identifying each Voting Group by legal description or other means such that the Neighborhoods within each Voting Group can easily be determined. Such designation may be amended from time to time by the Declarant, acting alone, at any time prior to the expiration of the Declarant Board Control Period. After expiration of the Declarant Board Control Period, the Board shall have the right to file or amend such Supplemental Declaration upon the vote of at least six of the seven Trustees. Neither recordation nor amendment to this Second Restated and Amended Declaration, and no consent or approval of any Person shall be required except as stated in this paragraph. Until such time as Voting Groups are established, all of the Properties shall constitute a single Voting Group. After a Supplemental Declaration establishing Voting Groups has been filed, any and all portions of the Properties which are not assigned to a specific Voting Group shall constitute a single Voting Group.

ARTICLE IV
RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1. Common Area. The Association, subject to the rights of the Owners set forth in this Second Restated and Amended Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, furnishings, equipment, and other personal property of the Association used in connection with the Common Area), and shall keep it in a good, clean, attractive, and sanitary condition, order, and repair, pursuant to this Second Restated and Amended Declaration and the Second Amended and Restated By-Laws and consistent with the Community-Wide Standard. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under this Second Restated and Amended Declaration, the cost of which shall be a Common Expense.

4.2. Personal Property and Real Property for Common Use. The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees, may convey to the Association improved or unimproved real estate, or interests in real estate, located within the properties described in Exhibit "A" and such other land annexed into the Properties, personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association.

4.3. Rulemaking and Enforcement.

(a) Rulemaking. The Association, through the Board, may make and enforce reasonable rules governing the use of the Properties, consistent with the rights and duties established by the Governing Documents. Such rules shall be binding upon all Owners, occupants, invitees, and licensees, if and until and unless overruled, canceled, or modified in a regular or special meeting of the Association by the vote of a majority of the total vote in the Association.

(b) Enforcement. The Board, may impose sanctions for violation of the Governing Documents, after notice and a hearing in accordance with the procedures set forth in Section 3.24

of the Second Amended and Restated By-Laws. The Board shall establish a range of penalties for violations of the Governing Documents, with violation of the Second Restated and Amended Declaration, unsafe conduct, and harassment or intentionally malicious conduct treated more severely than other violations. Such sanctions may include, without limitation

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

(ii) suspending an Owner's right to vote;

(iii) suspending a 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 Lot;

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

(v) levying Benefitted Assessments to cover costs incurred in bringing a Lot into compliance in accordance with Section 8.7(b).

In addition, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations in accordance with any applicable ordinance) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedures set forth in the Second Amended and Restated By-Laws.

All remedies set forth in the Governing Documents are cumulative of any remedies available at law or in equity. In any action to enforce the provisions of 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.

The Association shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed as a waiver of the right to enforce such provision at a later time under other circumstances or stop the Association from enforcing any other covenant, restriction or rule.

4.4. Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically

provided in the Governing Documents, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.5. Governmental, Educational, and Religious Interests. For so long as the Declarant owns any property described in Exhibits "A" or "B", the Declarant may designate sites within the Properties for government, education or religious activates and interests, including without limitation, fire, police, and utility facilities, schools and educational facilities, houses of worship, parks and other public facilities, the sites may include Common Area, in which case the Association shall take whatever action is required with respect to such site to permit such use, including dedication or conveyance of the site, if so directed by Declarant.

4.6. Indemnification. The Association shall indemnify every officer, Trustee, 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 of Trustees) to which he or she may be a party by reason of being or having been an officer, Trustee, or committee member, except that such obligation to indemnify shall be limited to those actions under this Section and as may be limited by Utah law.

The officers, Trustees, 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 Trustees 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 Trustees may also be Members of the Association). The Association shall indemnify and forever hold each such officer, Trustee 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, as a Common Expense, maintain adequate general liability and officers' and Trustees' liability insurance to fund this obligation, if such insurance is reasonably available.

4.7. Dedication of Common Area. The Association may dedicate portions of the Common Area to Washington County, Utah, or to any other local, state, or federal governmental or quasi-governmental entity.

4.8. Security. It is the goal of all Owners, including Declarant, to have a safe and healthy environment. However, no written or oral representations regarding the safe and secure nature of Sun River St. George shall be construed in whole or in part as guarantees thereof, it being recognized that circumstances beyond the control of the Declarant, the Association, the Maintenance Association, and any Neighborhood Association may arise. The Association, the Maintenance Association, and any Neighborhood Association may maintain or support certain activities within the Properties designed to make the Properties safer than they otherwise might be; provided however, that the Association shall not be obligated to maintain or support such activities.

Neither the Association, the management company of the Association, the Maintenance Association, any Neighborhood Association, nor the Declarant shall in any way be considered insurers or guarantors of security within the Properties. None of them shall 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 fire protection system,

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entry gate, patrol, burglar alarm system or other security system or measures, including any mechanism or system for limiting access to the Properties, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in any case prevent loss or provide the detection or protection for which the system is designed or intended.

Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Lot that the Association, its Board of Trustees, and committees, the Maintenance Association, any Neighborhood Association, the Declarant and the management company are not insurers. All Owners and occupants of any Lot and all tenants, guests, and invitees, of any Owner assume all risks for loss or damage to Persons, to Lots, and to the contents of Lots and further acknowledge that the Association, its Board and committees, the management company of the Association, the Maintenance Association, any Neighborhood Association, and the Declarant have made no representations or warranties, nor has any Owner, occupant, or any tenant, guest, or invitee of any Owner, relied upon any representations, whether expressed or implied, relative to any entry gate, patrolling of the Properties, any fire protection system, burglar alarm system, or other security systems recommended or installed or any security measures undertaken within the Properties.

4.9. Powers of the Association Relating to Neighborhoods. No action of any Neighborhood Association, including the Maintenance Association, shall become effective or be implemented until and unless the Association shall have been given written notice of such proposed action and shall not have disapproved of the proposed action or unless such action is in strict compliance with guidelines set by the Board. The Association shall have ten (10) days from receipt of the notice to disapprove any proposed action. The Association may disapprove any action taken or contemplated by any Neighborhood Association, including the Maintenance Association, which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standard.

The Association also may require specific action to be taken by any Neighborhood Association, including the Maintenance Association, to fulfill its obligations and responsibilities under this Second Restated and Amended Declaration or any other applicable covenants. Without limiting the generality of the foregoing, the Association may: (a) require specific maintenance or repairs or aesthetic changes to be effectuated by any Neighborhood Association and (b) require that a proposed Neighborhood budget include the cost of such work.

Any action specified by the Association in a written notice pursuant to the foregoing paragraph shall be taken within the reasonable time frame set forth in such written notice. If any Neighborhood Association fails to comply with such requirements, the Association shall have the right to take such action.

To cover the Association's administrative expenses in connection with the foregoing and to discourage failure to comply with the requirements of the Association, the Association shall assess to collect from the Lots in such Neighborhood their pro rata share of any expenses incurred in taking such action in the manner provided in Section 8.4.

4.10. Assumption of Risk. The Association may, but shall not be obligated to, maintain or support certain activities within the Properties designed to promote the health, safety and welfare of the Owners and occupants of Lots. Notwithstanding anything contained in the Governing Documents or any other document binding the Association, neither the Association, the Board, the Association's management company, the Maintenance Association, any Neighborhood Association, nor the Declarant shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Owner or occupant of any property of any such Persons. Each Owner and occupant of a Lot and each tenant, guest and invitee of any Owner or occupant shall assume all risks associated with the use and enjoyment of the Properties, including all recreational facilities, if any.

Neither the Association, the Board, the Association's management company, the Maintenance Association, any Neighborhood Association, nor the Declarant shall be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence or malfunction to utility lines or utility sub-stations adjacent to, near, over, or on the Properties. Each owner and occupant of a Lot and each tenant, guest, and invitee, of any Owner or occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence of utility lines or utility sub-stations and further acknowledges that the Association, the Board, the management company of the Association, the Maintenance Association, any Neighborhood Association, the Declarant or any successor Declarant have made no representations or warranties, nor has any owner or occupant, or any tenant, guest, or invitee of any Owner or occupant relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations.

No provision of the Governing Documents shall be interpreted as creating a duty of the Association, the Board, the Association's management company, the Maintenance Association, any Neighborhood Association, nor the Declarant to protect or further the health, safety or welfare of any Person(s), even if the funds of the Association are used for any such purpose.

Each Owner (by virtue of his or her acceptance of title to his or her Lot) and each other Person having an interest in or lien upon, or making any use of, any portion of the Properties (by virtue of accepting such interest or lien or making such use) shall be bound by this Section and shall be deemed to have waived any and all rights, claims, demands and causes of action against the Association, the Association's management company and the Declarant, their Trustees, officers, committee and Board members, employees, agents, contractors, subcontractors, successors and assigns arising from or connected with any matter for which the liability has been disclaimed.

4.11. Provision of Services. The Association may provide services and facilities for the Members of the Association and their guests, lessees, and invitees. The Association shall be authorized to enter into contracts or other similar agreements with other entities, including Declarant, to provide such services and facilities, which may be funded as a Common Expense. In addition, the Board shall be authorized to charge additional use and consumption fees of services and facilities. By way of example, some services and facilities which may be provided include landscape maintenance, pest control service, cable television service, security, caretaker, fire protection, utilities, and similar services and facilities. The Board, without the consent of the Owners, shall be permitted to modify or cancel existing services or facilities provided, if any, or to provide additional services and facilities. Nothing contained herein is a representation as to what services and facilities will or will not be provided by the Association.

4.12. Change of Use of Common Area. During the Declarant Board Control Period without the approval or consent of the Members, and thereafter, with the consent of a majority of the Owners' votes, and the consent of Declarant (so long as Declarant owns any property described in Exhibits "A" or "B"), the Board shall have the power and right to terminate such service or to change the use of portions of the Common Area. Any such change shall be made by Board resolution stating that: (a) the present use or service is no longer in the best interest of the Owners, (b) the new use is for the benefit of the Owners, (c) the new use is consistent with any deed restrictions and zoning regulations restricting or limiting the use of the Common Area, and (d) the new use is consistent with the then effective Master Plan.

Notwithstanding the above, if the Board resolution states that the change will not have an adverse effect on the Association and the Owners, the Board may give notice of the change to all Owners. The notice shall give the Owners a right to object within thirty (30) days of the notice. If less than ten percent (10%) of the Members submit written objections, the change shall be deemed approved, and a meeting shall not be necessary.

4.13. View Impairment. Neither the Declarant nor the Association guarantees or represents that any view over and across the open space from adjacent Lots will be preserved without impairment. Neither the Declarant nor the Association shall have the obligation to relocate, prune, or thin trees or other landscaping except as set forth in Article V. The owner of the open space shall have the right, in its sole and absolute discretion, to add trees and other landscaping to the open space from time to time subject to applicable law, the Second Restated and Amended Declaration, and the Design Guideline, if applicable. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

4.14. Relationship with Tax-Exempt Organizations. The Association may create, enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to non-profit, tax-exempt organizations for the benefit of the Properties, the Association, its Members and residents. The Association may contribute money, real or personal property or services to any such entity. Any such contribution shall be a Common Expense of the Association and included as a line item in the Association's annual budget.

For the purposes of this Section, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code ("Code"), such as but not limited to entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4), as the Code may be, amended from time to time.

4.15. Recycling Programs. The Board may establish a recycling program and recycling center within the Properties, and in such event all occupants of Dwelling Units shall support such program by recycling. To the extent reasonably practical, the Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation, and any income received by the Association as a result of such recycling efforts shall be used to reduce Common Expenses.

4.16. Merger. The Association has the right to merge and consolidate with another common interest community, under the terms of Utah law.

ARTICLE V
MAINTENANCE

5.1. Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

(a) all Common Area;

(b) all private streets;

(c) all perimeter walls or fences constructed by the Declarant surrounding the Properties or which separate a Lot from the Common Area or any golf course, regardless of whether such wall or fence is located on the Common Area or on a Lot; provided that Owners shall be responsible for maintaining the interior surface of the perimeter wall or fence located on such Owner's Lot as provided in Section 5.2. A perimeter wall or fence shall not be a party wall or party fence as set forth in Section 5.5;

(d) landscaping, street lights and signage within public rights-of-way abutting the Properties, entry features, and neighborhood monumentations;

(e) landscaping and other flora within any public utility easements and scenic easements within the Common Area (subject to the terms of any easement agreement relating thereto);

(f) any additional property included within the Area of Common Responsibility as may be dictated by this Second Restated and Amended Declaration, any Supplemental Declaration, any Covenant to Share Costs, any plat of any portion of the Properties, or any contract or agreement for maintenance thereof entered into by the Association; and

(g) any property or facility owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its members and identified by written notice from the Declarant to the Association until Declarant revokes such privilege by written notice to the Association.

The Association shall also have the right and power, but not the obligation, to take such actions and adopt such rules as may be necessary for control, relocation and management of wildlife, snakes, rodents, pests, range cattle, or Gila monsters within the Area of Common Responsibility. Also included are areas of threatened or endangered plants or animals.

The Association may assume maintenance responsibility for property within any Neighborhood, in addition to any property which the Association is obligated to maintain by this Second Restated and Amended Declaration or any Supplemental Declaration, either by agreement with the Neighborhood Association or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard. All costs of such maintenance shall be assessed as a Neighborhood Assessment against the Lots within the Neighborhood to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

The Association may also maintain other property which it does not own, including, without limitation, property dedicated to public use, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard and if otherwise permitted by applicable law.

Except as otherwise specifically provided herein, all costs for maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense allocated among all Lots as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the Persons responsible for such work pursuant to this Second Restated and Amended Declaration, other recorded covenants, or agreements with such Persons. All costs associated with maintenance, repair and replacement of Exclusive Common Area shall be a Neighborhood Expense assessed as a Neighborhood Assessment against the Lots within the Neighborhood(s) to which the Exclusive Common Area is assigned.

5.2. Owner's Responsibility. Each Owner shall install landscaping per the Design Guidelines as follows: Front yards; within ninety (90) days of close of escrow, Rear yards; within one hundred twenty (120) days of close of escrow. Noncompliance is subject to fines or the Association may install such landscaping and charge Owner.

Each Owner shall maintain his or her Lot, Dwelling Unit, and all other improvements comprising the Lot in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Lot.

Each Owner shall also be responsible for maintaining the interior surface of any perimeter wall or fence, unless such maintenance is assumed by the Association or a Neighborhood Association pursuant to a Supplemental Declaration or additional covenants applicable to such Lot or Neighborhood.

In addition to any other enforcement rights, if an Owner fails to perform properly his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred in accordance with Section 8.7. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3. Neighborhood's Responsibility. Upon Board resolution, the Owners of Lots within each Neighborhood shall be responsible for paying through Neighborhood Assessments, the costs of operating, maintaining and insuring certain portions of the Area of Common Responsibility within or adjacent to such neighborhood. This may include, without limitation, the costs of maintaining sidewalks in the public right-of-way, any signage, entry features, property in a right-of-way, and open space between the Lots and adjacent public roads and private streets within the Neighborhood, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association. All Neighborhoods which are similarly situated shall be treated the same. As an alternative, the Board may resolve that such maintenance shall be performed by the applicable Neighborhood Association, if any.

All maintenance required of a Neighborhood Association under this Second Restated and Amended Declaration or any additional covenants or agreements shall be performed consistent

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with the Community-Wide Standard. If any Neighborhood Association fails to perform such maintenance, the Association may perform it and assess the costs against all Lots within such Neighborhood as provided in Section 8.7.

5.4. Standard of Performance. Maintenance, as used in this Article, shall include, without limitation, repair and replacement as needed as well as such other duties, which may include irrigation, as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants, as determined by the Board.

Portions of the Properties are environmentally sensitive and/or may provide greater aesthetic value than other portions of the Properties. The Board may establish a higher Community-Wide Standard for such areas and require additional maintenance for such areas to reflect the nature of such property.

Notwithstanding anything to the contrary contained herein, neither the Association, nor any Owner nor any Neighborhood Association shall be liable for property damage or personal injury occurring on, or arising out of the condition of, property which it does not own unless and only to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.5. Party Walls and Similar Structures. A party wall is any wall or fence built as a part of the original construction on the Lots, other than a perimeter wall or fence as provided in Section 5.1:

(a) any part of which is built upon or straddling the boundary line between two adjoining Lots, between a Lot and the Common Area, or between a Lot and any golf course; or

(b) which is constructed within four feet of the boundary line between adjoining Lots, between a Lot and the Common Area, or between a Lot and any golf course, has no windows or doors, and is intended to serve as a privacy wall for the benefit of the adjoining Lot; or

(c) which, in the reasonable determination of the Board, otherwise serves and/or separates two adjoining Lots, or a Lot and a Common Area, or a Lot and a golf course, regardless of whether constructed wholly within the boundaries of one Lot, shall constitute a party wall or party fence (herein referred to as "party structures").

The owners of the property served by a party structure (the "Adjoining Owners") shall own that portion of the party structure lying within the boundaries of their respective properties, and shall have an easement for use and enjoyment and, if needed, for support, in that portion, if any, of the party structure lying within the boundaries of the adjoining property. Each Adjoining Owner shall be responsible for maintaining property insurance on that portion of any party structure lying within the boundaries of such Owner's Lot, as more particularly provided in Section 6.2, and shall be entitled to all insurance proceeds paid under such policy on account of any insured loss.

With respect to party structures between Lots, the responsibility for the repair and maintenance of party structures and the reasonable cost thereof shall be shared equally by the Adjoining Owners; provided, however, any Owner that is solely responsible for damage to a

party structure shall be responsible for its repair. To the extent damage to a party structure from fire, water, soil settlement, or other casualty is not repaired out of the proceeds of insurance, any Adjoining Owner may restore it. If other Adjoining Owners, thereafter, use the party structure, they shall contribute to the restoration cost in equal shares without prejudice to any Owner's right to larger contributions from other users under any rule of the law. Any Owner's right to contribution from another Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title. Any dispute arising concerning a party structure shall be handled in accordance with the provisions of Article XIV.

ARTICLE VI
INSURANCE AND CASUALTY LOSSES

6.1. Association Insurance.

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

(i) blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements within the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(ii) commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for the damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least $1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonable prudent person would obtain, the Association shall obtain such additional coverages or limits;

(iii) workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Trustees and officers liability coverage;

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

compensation; and

(vi) such additional insurance as the Board, in its best business judgment, determines advisable.

In addition, the Association may, upon request of a Neighborhood Association, and shall, if so specified in a Supplemental Declaration applicable to the Neighborhood, obtain and maintain property insurance on the insurable improvements within any Neighborhood which comply with Section 6.1(a)(i). Any such policies shall provide for a certificate of insurance to be furnished to the Neighborhood Association, if any, and to the Owner of each Lot insured.

Premiums for all insurance on the Area of Common Responsibility shall be in Common Expenses and shall be included in the Base Assessment, except that: (i) premiums for property insurance obtained on behalf of a Neighborhood shall be charged to the Owners of Lots within the benefitted Neighborhood as a Neighborhood Assessment; and (ii) premiums for insurance on Exclusive and Limited Common Areas may be included in the Neighborhood Assessment of the Neighborhood(s) benefitted unless the Board of Trustees reasonably determines that other treatment of the premiums is more appropriate.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the St. George area. All Association policies shall provide for a certificate of insurance to be furnished to each Member insured and to the Association.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1(a). In the event of an insured loss, the deductible shall be treated as a Common Expense or a Neighborhood Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with Section 3.24 of the Second Amended and Restated By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Lots pursuant to Section 8.7.

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in the State of Utah which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(ii) be written in the name of the Association as Trustee for the benefitted parties. Policies on the Common Areas shall be for the benefit of the Association and its Members. Policies secured on behalf of a Neighborhood shall be for the benefit of the Owners of Lots within the Neighborhood and their Mortgagee, as their interest may appear;

(iii) not be brought into contribution with insurance purchased by Owners, occupants, or their mortgagees individually;

(iv) contain an inflation guard endorsement;

(v) include an agreed amount endorsement, if the policy contains a co-insurance clause;

(vi) provide that each Lot Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Area or membership in the Association;

(vii) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or an account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and

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

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

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

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

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

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

(v) a cross liability provision; and

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

(c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair, or reconstruction, as used in this

paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless at least eighty (80%) of the total votes in the Association, and the Declarant, during the Development Period, decide within sixty (60) days after the loss not to repair or reconstruct. If the damage is to Exclusive Common Area, eighty percent (80%) of the Owners to which such Exclusive Common Area is assigned must vote not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be distributed equally among all Lot Owners, if such proceeds are for Common Area, or among Lot Owners in a Neighborhood, if such proceeds are for Exclusive Common Area.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Trustees may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 6.1(a).

6.2. Owner's Insurance. By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Lot, less a reasonable deductible, unless either the Maintenance Association or any other Neighborhood Association for the Neighborhood in which the Lot is located or the Association carries such insurance (which they may, but are not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Benefitted Assessment against the benefitted Lot and the Owner thereof pursuant to Section 8.7.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IX. Alternatively, the Owner shall clear the Lot and maintain the Lot in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

The requirements of this Section shall apply to any Neighborhood Association responsible for common property within the Neighborhood in the same manner as if the Neighborhood Association was an Owner and the common property was a Lot. Additional recorded covenants applicable to any Neighborhood may establish more stringent requirements for insurance and more stringent standards for rebuilding or reconstructing structures on the Lots within such Neighborhood and for clearing and maintaining the Lots in the event the structures are not rebuilt or reconstructed.

ARTICLE VII
ANNEXATION AND WITHDRAWAL OF PROPERTY

7.1. Annexation Without Approval of Membership. During the Development Period, the Declarant may unilaterally subject to the provisions of this Second Restated and Amended Declaration all or portions of the real property described in Exhibit "B" until all property described in Exhibit "B" has been subjected to this Second Restated and Amended Declaration. The Declarant reserves the right, but not the obligation, to annex additional property not described in Exhibits "A" or "B".

During the Development period, Declarant may unilaterally subject to the provisions of this Second Restated and Amended Declaration all or any portion of the real property described in Exhibit "B," or additional property not described in Exhibits "A" or "B". Annexation of property may not result in the overburdening of any existing recreational facilities or substantial increases in Base Assessments, unless the possibility of such increases in Base Assessments was disclosed to each Owner prior to the purchase of his or her Lot.

Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibits "A" or "B" or such other additional property subjected to the Second Restated and Amended Declaration, and that such transfer is memorialized in a written, recorded instrument executed by Declarant. Nothing in this Second Restated and Amended Declaration shall be construed to require the Declarant or any successor to annex or develop any of the property set forth in Exhibit "B" in any manner whatsoever.

Annexation shall be accomplished by filing in the Public Records a Supplemental Declaration describing the property being annexed. Such Supplemental Declaration shall not require the consent of the Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. All Lots subject to this Second Restated and Amended Declaration, whether initially described in Exhibit "A" or annexed pursuant to a Supplemental Declaration, shall have equal voting rights and an equal, pro rata share of liability for Base Assessments.

7.2. Annexation With Approval of Membership. The Association may annex any real property to the provisions of this Second Restated and Amended Declaration with the consent of the owner of such property, the affirmative vote of sixty-seven percent (67%) of the total votes in the Association, and the consent of the Declarant during the Development Period.

Such annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property, and by the Declarant, if the Declarant's consent is required. Any such annexation shall be effective upon recording in the Public Records.

7.3. Withdrawal of Property. The Declarant reserves the unilateral right during the Development Period to amend this Second Restated and Amended Declaration to withdraw any portion of the Properties from the coverage of this Second Restated and Amended Declaration whether originally described in Exhibit "A" or added by Supplemental Declaration; provided, no property described on a particular Plat shall be withdrawn after a Lot shown on the Plat has been conveyed by Declarant to any Person other than an affiliate of the Declarant or a Builder. Such a withdrawal shall reduce the Maximum Lots subject to the Second Restated and Amended Declaration, the number of votes in the Association and the Lots subject to assessment. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant. If the property is Common Area, the Association shall consent to such withdrawal upon the request of the Declarant.

7.4. Additional Covenants and Easements. During the Development Period, the Declarant may unilaterally subject any portion of the property submitted to this Second Restated and Amended Declaration to additional covenants and easements; including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through Neighborhood Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Second Restated and Amended Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

7.5. Amendment. This Article shall not be amended without the prior written consent of Declarant during the Development Period.

7.6. Phasing of Construction. In addition to and not in lieu of the rights provided in this Article, and subject to any applicable regulations of any governing jurisdiction, and subject to the Declarant's prior written approval, any Builder or Declarant shall have the right to develop their Lots in Subphases, which include less than all Lots in a Phase.

ARTICLE VIII
ASSESSMENTS

8.1. Creation of Assessments. The Association may levy assessments against each Lot -- or where one Dwelling Unit is situated upon more than one Lot, upon such combined Lots as if the same were a single Lot (such Lots for the purposes of Assessments shall be deemed as and defined as a "Lot") -- for Association expenses as the Board may specifically authorize from time to time. There shall be four types of assessments: (a) Base Assessments to fund Common Expenses for the general benefit of all Lots; (b) Neighborhood Assessments for Neighborhood Expenses benefitting only Lots within a particular Neighborhood or Neighborhoods; (c) Special

Assessments as described in Section 8.6; (d) Benefitted Assessments as described in Section 8.7; (e) emergency assessments as provided in 8.11; and (f) government assessments as provided in Section 8.8. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest (computed from the due date of such assessment at the rate established by the Board, but not to exceed the maximum rate then allowed by law), a late charge in such amount as the Board may establish by resolution, costs, including lien fees and administrative costs, and reasonable attorney's fees, shall be a charge and continuing lien upon each Lot against which the assessment is made until paid, as more particularly provided in Section 8.9. The foregoing items also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable with the grantor for any assessments and other charges due at the time of conveyance. No first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid Assessments which accrued prior to such acquisition of title.

Assessments shall be paid in such manner and by such dates as the Board may establish. Unless the Board otherwise provides, the Base Assessment and any Neighborhood Assessment for each Lot shall be due and payable in advance each year on the anniversary of the date that the Owner of such Lot first obtained title to the Lot. If a Lot is owned by more than one Person and such Persons did not obtain title to the Lot on the same date, the Board, in its sole discretion, shall set the due date for payment of assessments for such Lot. If any Owner is delinquent in paying any assessments or other charges levied on his or her Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

The Association shall, upon request by an Owner, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid and any delinquent amount. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

No Owner may exempt himself from liability for Assessments by non-use of Common Area, abandonment of his or her Lot or Dwelling Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or off-set shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses. The payment of assessments may be reduced or abated by the agreed value of any such services or materials provided in accordance with any such contract or agreement with the Association.

8.2. Declarant's Obligation for Assessments. Until the Association establishes a budget and levies assessments, the Declarant shall pay the Association's Common Expenses. After Assessments commence as provided in Section 8.10, the Declarant's obligations may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

8.3. Computation of Base Assessment. At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses to be incurred during the coming year pursuant to the requirements of section 3.21(f) of the Second Amended and Restated By-Laws. The budget shall include a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 8.5, but shall not include expenses incurred during the Declarant Board Control Period for initial development, original construction, installation of infrastructure original capital improvements, or other original construction costs unless approved by a majority of the Home Owners.

Base Assessments shall be levied equally against all Lots and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the total funds to be generated through the levy of Base Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year.

During the Development Period, the Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy, which may be treated as either a contribution or an advance against future Assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall send a copy or summary of the budget and notice of the amount of the Base Assessment for the following year to each Owner within thirty (30) days after the adoption of such proposed budget and set a date for an Owners' Meeting to consider ratifying the budget no less than thirty (30) nor more than sixty (60) days from the date of adoption of the budget by the Board. Such budget and Assessment shall become effective unless disapproved at a meeting by at least fifty-one percent (51%) of the total votes in the Association. A quorum is not required for the budget meeting to be valid.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget in determined, the budget in effect for the immediately preceding year shall continue for the current year.

8.4. Computation of Neighborhood Assessments. At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated Neighborhood Expenses for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year pursuant to the requirements of Section 3.21(f) of the Second Amended and Restated By-Laws. The Board shall be entitled to set such budget only to the extent that: (a) the Governing Documents specifically authorize the Board to assess certain

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costs as a Neighborhood Assessment, or (b) the Association expects to incur expenses to provide additional services for a Neighborhood. Any Neighborhood may request that additional services or a higher level of services be provided by the Association, and in such case, any additional costs shall be added to the Neighborhood budget. Such budget shall include a capital contribution establishing a reserve fund for repair and replacement of capital items maintained as a Neighborhood Expense, if any, within the Neighborhood.

Neighborhood Expenses shall be allocated equally among all Lots within the Neighborhood benefitted thereby and levied as a Neighborhood Assessment. If specified in the Supplemental Declaration applicable to such Neighborhood or if so directed by petition signed by a majority of the Owners within the Neighborhood, any portion of the assessment intended for exterior maintenance of structures, insurance on Dwelling Units or other structures, or replacement reserves which pertain to particular structures shall be levied on each of the benefitted Lots in proportion to the benefit received. Such proportion shall be specified in the Supplemental Declaration applicable to such Neighborhood, or if not so specified, shall be approved by a majority of the Owners within the Neighborhood, and Declarant, as long as Declarant owns any property within such Neighborhood.

The Board shall cause a copy of such budget and notice of the amount of the Neighborhood Assessment for the coming year to be delivered to each Owner of a Lot in the Neighborhood with the budget and notice for Base Assessments and a meeting shall be held as provided in Section 8.3 for Owners within such Neighborhood. Such budget and assessment shall become effective unless disapproved by Owners of a majority of the Lots in which the Neighborhood Assessment applies. This right to disapprove shall only apply to those line items in the Neighborhood budget which are attributable to services requested by the Neighborhood.

If the proposed budget for any Neighborhood is disapproved or if the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

8.5. <u>Reserve Budget and Capital Contribution</u>. The Board shall annually prepare reserve budgets for both general and neighborhood purposes which take into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. Such reserve budgets may also anticipate making additional capital improvements and purchasing additional capital assets. The Board shall include in Base Assessments and Neighborhood Assessment reserve contributions in amounts sufficient to meet these projected needs.

The Board may adopt resolutions regarding the expenditure of reserve funds, including policies designating the nature of assets for which reserve funds may be expended. Such policies may differ for general Association purposes and for each Neighborhood. So long as the Declarant owns any property described in Exhibits "A" or "B", neither the Association nor the Board shall adopt, modify, limit or expand such policies without the Declarant's prior written consent.

8.6. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted, subject to the limitations of Section 8.11. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.7. Benefitted Assessments. The Board may levy Benefitted Assessments against particular Lots for expenses incurred or to be incurred by the Association, as follows:

(a) to cover the costs, including overhead and administrative costs, or providing benefits, items, or services to the Lot or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize (which might include, without limitation, landscape maintenance, caretaker service, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and

(b) to cover costs incurred in bringing the Lot into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing, in accordance with Section 3.24 of the Second Amended and Restated By-Laws, before levying any Benefitted Assessment under this subsection (b). This also includes any fines levied by the Board.

The Association may also levy a Benefitted Assessment against the Lots within any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Governing Documents, provided the Board gives prior written notice to the Owners of Lots in, or the Neighborhood Representative from, the Neighborhood and an opportunity for such Owners or Neighborhood Representative to be heard before levying any such assessment.

8.8. Government Assessments. In addition to assessments authorized herein, the Association shall levy such assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to streets or other common areas, Exclusive Common Areas, Limited Common Areas or Areas of Common Responsibility from the activities of the City of St. George (the "City") in maintaining, repairing or replacing utility lines and facilities thereon, it being acknowledged that the ownership of utility lines, underground or otherwise is in the City up to and including the meters for individual units, and that they are installed and shall be maintained to City specifications.

8.9 Lien for Assessments. The Board may elect to file a claim of lien against the Lot of the delinquent Owner by recording a notice ("Notice of Lien") in the Public Records setting forth: (a) the amount of the claim or delinquency, (b) the interest and costs of collection which have accrued thereon, (c) the legal description of the Lot against which the lien is claimed, and (d) the name of the Owner thereof. Such Notice of Lien shall be signed and acknowledged by an officer of the Association or duly authorized agent of the Association. The lien shall continue until the amounts secured thereby and all subsequently accruing amounts are fully paid or

otherwise satisfied (including attorney's fees). The lien shall be prior to any other lien arising thereafter, except for liens which, by law, are deemed prior to liens of a nature similar to such assessment liens. When all amounts claimed under the Notice of Lien and all other costs and assessments which may have accrued subsequent to the Notice of Lien have been fully paid or satisfied, the Association shall execute and record in the Public Records a notice releasing the lien upon payment by the Owner of a reasonable fee as fixed by the Board to cover the cost of preparing and recording the release of lien. Unless paid or otherwise satisfied, the lien may be foreclosed in a like manner as a mortgage.

The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and covey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first Mortgage shall extinguish the liens to any installments of such assessments due prior to such sale or transfer, except as provided in this Section. Assessments in excess of the super-priority amount provided in this Section shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under Section 8.3, including such acquirer, its successors and assigns.

8.10. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Lot on the first day of the month following: (a) the month in which the Lot is made subject to this Second Restated and Amended Declaration, or (b) the month in which the Board first determines a budget and annual Base Assessment and Neighborhood Assessments, if any, levied on each Lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.

8.11. Limitation on Increases of Assessments. Notwithstanding any provision to the contrary, and except for assessment increases necessary for emergency situations or to reimburse the Association pursuant to Section 8.7, the Board may not impose a Base Assessment, Neighborhood Assessment, or Benefitted Assessment that is more than twenty percent (20%) greater than each of those assessments for the immediately preceding fiscal year nor impose a Special Assessment which in the aggregate exceeds five percent (5%) of the budgeted Common Expenses or Neighborhood Expenses, as the case may be, for the current fiscal year, without a majority vote of a quorum of Owners of the Lots which are subject to the applicable assessment at a meeting of the Association.

For purposes of this Section, "quorum" means the owners of more than fifty percent (50%) of the Lots which are subject to the applicable assessment. In addition, the term "Base Assessment" or "Neighborhood Assessment" shall be deemed to include the amount assessed against each Lot plus a pro rata allocation of any amounts the Association received through any subsidy or maintenance agreement, if any, in effect for the year immediately preceding the year for which the assessment is to be increased.

An emergency situation is any one of the following:

(a) an extraordinary expense required by an order of a court;

(b) an extraordinary expense necessary to repair or maintain the Properties or any part of them for which the Association is responsible where a threat to personal safety on the Properties is discovered; or

(c) an extraordinary expense necessary to repair or maintain the Properties or any part of them for which the Association is responsible which could not have been reasonably foreseen by the Board in preparing and distributing the budget pursuant to Section 8.3. However, prior to the imposition or collection of such an assessment, the Board shall pass a resolution containing written findings as to the necessity of the extraordinary expense involved and why the expense was not or could not have been reasonably foreseen in the budgeting process. Such resolution shall be distributed to the Members with the notice of such assessment.

8.12. Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or release of any Owner from obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Neighborhood Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

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

(a) All Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1;

(b) Any property dedicated to and accepted by any governmental authority or public utility;

(c) Property owned by the Maintenance Association or any other Neighborhood Association for the common use and enjoyment of its members, or owned by the members of a Neighborhood Association as tenants-in-common; and

(d) Any property used for religious purposes.

In addition, the Declarant and/or the Association shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for Section 501(c) status under the Internal Revenue Code as long as such Persons own property subject to this Second Restated and Amended Declaration for the purposes listed in Section 501(c).

8.14. Non-Judicial Foreclosures. The Declarant and each Lot Owner hereby conveys and warrants pursuant to Utah Code Ann. Sections 57-1-20 and 57-8a-402 to the Association's attorney with power of sale, the lot and all improvements to the lot for the purpose of securing payment of assessments under the terms of the Second Restated and Amended Declaration. The Association, through its Board, may appoint a successor trustee from time to time by recording an appointment of "Successor Trustee" in the records of the Washington County Recorder. The

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Association and the Trustee shall have all powers and rights of nonjudicial Trust Deed foreclosure provided for by Utah Code Ann. Section 57-1-19, *et. seq.*

ARTICLE IX
ARCHITECTURAL STANDARDS

9.1. General. No improvements, exterior alterations, posting of anything or planting or removing landscaping shall take place except in compliance with this Article, the Design Guidelines and upon approval of the appropriate committee under Section 9.2.

(a) Any Owner may remodel, paint or redecorate the interior of his or her Dwelling Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Lot visible from outside the structures on the Lot shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications.

(b) This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Area by or on behalf of the Association if approved by the Declarant as long as it has the unilateral right to annex property to this Second Restated and Amended Declaration, nor to improvements by the Maintenance Association or any Neighborhood Association on property owned by such entity if approved by the Declarant.

(c) No improvements, alterations, repairs, excavation, grading, landscaping of any nonresidential property within Sun River St. George, or the improvements located thereon, from its natural or Declarant improved state existing as of completion of Declarant's constructions thereon or improvements thereto shall be made or done without prior approval of the Architectural Review Committee except as otherwise expressly provided in this Second Restated and Amended Declaration. Other than as constructed by Declarant, no building, fence, wall, structure, or landscaping shall be commenced, erected, planted, maintained, improved, altered, or made without the prior written approval of the Architectural Review Committee. All subsequent additions to or changes or alterations in any building, fence, wall, structure, or landscaping, including exterior color scheme, and all changes in the grade of Lots shall be approved by Declarant or Architectural Review Committee. No changes or deviations in or from the plans and specifications once approved by the Architectural Review Committee shall be made without prior written approval of the Architectural Review Committee. All original construction as well as any modifications or additions thereto as shall be constructed by Declarant shall be exempt from the provisions of this paragraph.

(d) This Article may not be amended without the Declarant's written consent as long as the Declarant owns any land subject to this Second Restated and Amended Declaration or subject to annexation to this Second Restated and Amended Declaration.

(e) To the extent that the City of St. George ordinances or any local government ordinance, building code or regulation requires a more restrictive standard than the standards set forth in the Design Guidelines or the Second Restated and Amended Declaration, the local government standards shall prevail. To the extent that any local government standard is less restrictive than the Design Guidelines or the Second Restated and Amended Declaration, the Second Restated and Amended Declaration and Design Guidelines (in that order) shall prevail.

9.2. Architectural and Design Review. Responsibility for administration of the Design Guidelines, as defined below, and review of all applications for construction and modifications under this Article shall be handled by the two committees as described in subsections (a) and (b). The reviewing committees may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. The Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget as a Common Expense.

(a) Architectural and Design Review. Until the earlier of (i) the date upon which Owners own ninety percent (90%) of the Maximum Lots, or (ii) twenty-five (25) years after the conveyance of the first Lot to an Owner, the Architectural Review Committee ("ARC") shall exercise architectural review under this Article. Upon termination of the ARC all obligations and functions of the ARC will automatically transfer to the Modifications Committee. So long as Declarant, any affiliate of the Declarant, or any Builder owns any Lot primarily for development and/or sale, the Declarant retains the right to appoint all members of ARC, who shall serve at the discretion of the Declarant. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Members of the ARC appointed by the Declarant need not be Members of the Association. Upon surrender or termination of such right, the Board of Trustees may appoint the members of the ARC, who shall be members of the Association and shall serve and may be removed at the discretion of the Board of Trustees, or it may dissolve the ARC, in its discretion, and transfer all its jurisdiction to the Modifications Committee established under Section 9.2(b).

The ARC shall have exclusive jurisdiction over all original construction, improvements, landscaping or placement of anything on any Lots within the Properties. The ARC may, in its sole discretion, delegate all or a portion of its reserved rights under this Article to the Modifications Committee to review modifications to existing structures. Any such delegation shall be in writing, specifying the scope of responsibilities delegated, and shall be subject to: (i) the right of ARC to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) the right of ARC to veto any decision which it determines, in its sole discretion, to be inappropriate or inadvisable for any reason. Until the rights of the ARC are surrendered or terminated in accordance with this Section 9.2(a), the jurisdiction of the Modifications Committee shall be limited to such matters as are specifically delegated to it.

(b) Modifications Committee. The Board of Trustees shall establish a Modifications Committee ("MC") to consist of at least three and no more than five persons, all of whom shall be appointed by and shall serve at the discretion of the Board. The MC shall have jurisdiction over modifications or alterations made on or to existing structures as may be delegated to it by the ARC, and shall assume exclusive jurisdiction over original construction on all such Lots upon termination of the ARC's jurisdiction as specified in subsection (a) above. Until its jurisdiction is terminated or surrendered, the ARC shall have the right to veto any action taken by the MC which the ARC determines, in its sole discretion, to be inconsistent with the Design Guidelines.

9.3. Guidelines and Procedures. The Declarant shall prepare Design Guidelines which shall apply to all construction activities within the Properties. The ARC shall adopt such Design

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Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Design Guidelines shall apply to construction and modifications commenced after the date of such amendment only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; the Design Guidelines may be amended to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

The Design Guidelines may contain general provisions applicable to all the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon the location, unique characteristics, intended use, the Master Plan, and any other applicable zoning ordinances. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern in considering applications hereunder. The Design Guidelines are not the exclusive bases for decisions of the reviewing committee and compliance with the Design Guidelines does not guarantee approval of any application.

The Association shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Properties and all such Persons shall conduct their activities in accordance with such Design Guidelines. At the Declarant's discretion, such Design Guidelines may be recorded in the Public Records, in which event the recorded version, as it may unilaterally be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

All structures and improvements constructed upon a Lot shall be constructed in strict compliance with the Design Guidelines in effect at the time the plans for such improvements are submitted to and approved by the appropriate Committee, unless a variance has been granted in writing pursuant to Section 9.6. So long as the reviewing committee has acted in good faith, its findings and conclusions with respect to appropriateness of, applicability of, or compliance with the Design Guidelines and this Second Restated and Amended Declaration shall be final.

9.4. Submission of Plans and Specifications.

(a) Prior to commencing any activity within the scope of Section 9.1, an Owner shall submit application for approval of the proposed work to the appropriate reviewing committee with a copy to the Declarant if the reviewing committee is the MC. Such application shall be in the form required by the reviewing committee and shall include plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening thereof and other features of proposed construction, as applicable. The Design Guidelines shall set forth the procedures and any additional information for submission of the Plans. Before the Owner may begin the proposed activity, the application must be approved by the reviewing committee in accordance with the procedures described below.

(b) In reviewing each submission, the reviewing committee may consider whatever factors it deems relevant to compliance with the Community-Wide Standard. The reviewing committee may require relocation of native plants within the construction site or the installation of an irrigation system for the landscaping including the natural plant life on the Lot as a condition of approval of any submission.

The reviewing committee shall, within the period specified in the Design Guideline, advise the party submitting the same, in writing, at an address specified by such party at the time of submission, of: (i) the approval of Plans, or (ii) the segments or features of the Plans which are deemed by such committee to be inconsistent or not in conformity with this Second Restated and Amended Declaration and/or the Design Guidelines, the reasons for such findings, and suggestions for the curing of such objections. In the event the reviewing committee fails to advise the submitting party by written notice within the period specified in the Design Guidelines of either the approval or disapproval and suggestions for curing the objections of the committee of the Plans, approval shall be deemed to have been given. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U.S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the submitting party.

(c) If construction does not commence on a project for which Plans have been approved within one hundred twenty (120) days of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the Plans to the reviewing committee for reconsideration. If construction is not completed on a project for which plans have been approved within the period set forth in the Design Guidelines or in the approval, such approval shall be deemed withdrawn, and such incomplete construction shall be deemed to be in violation of this Article.

9.5. No Waiver of Future Approvals. Each Owner acknowledges that the members of the reviewing committee will change from time to time and that interpretation, application and enforcement of the Design Guidelines may vary accordingly. Approval of proposals, plans and specification, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

9.6. Variance. The reviewing committee may authorize variances in writing from its guidelines and procedures, but only: (a) in accordance with duly adopted rules and regulations, (b) when unique circumstances dictate, such as unusual topography, natural obstructions, hardship or aesthetic or environmental considerations, and (c) when construction in accordance with the variance would be consistent with the purposes of the Second Restated and Amended Declaration and compatible with existing and anticipated use of adjoining properties. Inability to obtain, or the terms of, any governmental approval, or the terms of any financing shall not be considered a hardship warranting a variance. Notwithstanding the above, the ARC or the MC may not authorize variances without the written consent of the Declarant, as long as it owns any portion of the Properties or has a right to annex any property described in Exhibit "B."

9.7. Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the Declarant, the Association, the Board, the ARC or the MC, or any member of the foregoing, shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, the ARC or the MC, or member of any of the foregoing, shall be held liable for any injury, damages, or loss arising out to the manner or quality of approved construction on or modifications to any Lot.

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9.8. Enforcement. Any construction, alteration or other work done in violation of this Article or the Design Guidelines shall be deemed to be nonconforming. Upon written request from the Declarant, the ARC, the MC, or the Board, Owners shall, as their own cost and expense and within such reasonable time frame as set forth in such written notice, cure such nonconformance to the satisfaction of the requester or restore the property, Lot and/or Dwelling Unit to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Declarant, or its designees, the Association or its designees, shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the rate established by the Board (not to exceed the maximum rate then allowed by law), may be assessed against the benefitted Lot and collected as a Benefitted Assessment unless otherwise prohibited in this Second Restated and Amended Declaration.

All approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Lot, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work by the deadline set forth in the approval, the Declarant or the Association shall be authorized, after notice to the Owner of the Lot and an opportunity to be heard in accordance with the Second Amended and Restated By-Laws, to enter upon the Lot and remove or complete any incomplete work and to assess all costs incurred against the Lot and the Owner thereof as a Benefitted Assessment unless otherwise prohibited in this Second Restated and Amended Declaration.

All acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner. Any contractor, subcontractor agent, employee, or other invitee of any Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines may be excluded from the Properties, subject to the event, notice and hearing procedures contained in the Second Amended and Restated By-Laws. In such event, neither the Declarant, the Association, its officers, or Trustees shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Association and the Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the reviewing committee.

ARTICLE X
USE RESTRICTIONS

The Properties shall be used only for residential, recreational, and related purposes as further described in Paragraph 2.7 (which may include, without limitation, offices for any management agent or agents retained by the Association or business offices for the Declarant or the Association consistent with this Second Restated and Amended Declaration and any Supplemental Declaration). Any Supplemental Declaration or additional covenants imposed on the property within any Neighborhood may impose stricter standards than those contained in this Article and the Association shall have standing and the power to enforce such standards.

10.1. Signs. No sign shall be erected within the Properties without the written consent of the Board, except those required by law and those permitted by the Design Guidelines. This restriction shall not apply to signs installed by Declarant. If permission is granted to any Person

to erect a sign within the Properties, the ARC shall have the right to restrict the size, color, lettering and placement of such sign. The Board and the Declarant shall have the right to erect signs as they, in their discretion, deem appropriate.

10.2. Vehicles and Parking. The term "vehicles," as used in this Section, shall include, without limitation automobiles, trucks, watercraft, trailers, motorcycles, ATV's, campers, vans, airplanes, recreational vehicles, and machines similar to the foregoing.

No vehicle may be left upon any portion of the Properties except in a garage, driveway, parking pad, or other area designated by the Board; however, guests and invitees of Owners, and residents loading or unloading vehicles or trailers may park in the street as long as it does not impede the flow of traffic for up to five (5) hours at a time. Commercial vehicles, recreational vehicles, mobile homes, trailers, campers, boats or other watercraft, or other oversized vehicles, stored vehicles, and unlicensed vehicles or inoperable vehicles shall not be parked within the Properties other than in enclosed garages; provided, however, that any of the above vehicles may be temporarily kept or stored completely in a driveway or completely on a parking pad on a Lot for not more than 24 hours within each calendar month. This Section shall not apply to emergency vehicle repairs. A stored vehicle shall be considered one which has not been operated or moved in 2 weeks.

10.3. Occupants Bound. All provisions of the Governing Documents shall also apply to all occupants, guests, and invitees of any Lot. Every Owner shall cause all occupants of his or her Lot to comply with the foregoing, and every Owner shall be responsible for all violations and losses to the Common Area caused by such occupants, notwithstanding the fact that such occupants of a Lot are fully liable and may be sanctioned for any violation.

10.4. Animals and Pets. No animals of any kind, including livestock and poultry, shall be raised, bred, or kept on any portion of the Properties, except that for each Lot there shall be permitted up to a total of two dogs or two cats or one dog and one cat, no more than two birds, and a reasonable number, as determined by the Board, of other usual and common household pets, subject to compliance with applicable local codes. Pets which are permitted to roam free, or, in the sole discretion of the Association, endanger the health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Lots or the owner of any portion of the Properties shall be removed upon request of the Board. If the Owner fails to honor such request, the pet may be removed by the Board. The Board may adopt reasonable rules designed to minimize damage and disturbance to other Owners and occupants, including rules requiring damage deposits, waste removal, leash controls, noise controls, pet occupancy limits based on size and facilities of the Lot and fair share use of the Common Area; provided, however, any rule prohibiting the keeping of ordinary household pets shall apply prospectively only and shall not require the removal of any pet which was being kept on the Properties in compliance with the rules in effect prior to the adoption of such rule. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents an actual threat to the health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance. No pets shall be kept, bred or maintained for any commercial purpose. No monkeys, snakes, pigs, iguanas, or ferrets shall be permitted in any Lot or Dwelling Unit.

Notwithstanding the above, Owners shall be responsible for the removal and proper disposal of waste from their pets deposited on any and all lots, Common Areas or golf course within Sun River St. George.

10.5. Quiet Enjoyment. Nothing shall be done or maintained on any part of a Lot which emits foul or obnoxious odors outside the Lot or creates noise or other conditions which tend to disturb the peace, quiet, safety, comfort, or serenity of the occupants and invitees of other Lots.

No noxious, illegal, or offensive activity shall be carried on upon any portion of the Properties, which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or the occupants and invitees of other Lots.

10.6. Unsightly or Unkempt Conditions. All portions of a Lot outside of enclosed structures shall be kept in a clean and tidy condition at all times. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other portion of the Properties. Woodpiles or other material shall be stored in a manner so as not to be visible from outside the Lot and so as not to be attractive to rodents, snakes, and other animals and to minimize the potential danger from fires. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other portion of the Properties. No activities shall be conducted upon or adjacent to any Lot or within improvements constructed thereon which are or might be unsafe or hazardous to any Person or property. No open fires shall be lighted or permitted on the Properties, except in a contained outdoor fireplace or barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

10.7. Nuisances. No Owner shall engage in any activity which materially disturbs or destroys the vegetation, wildlife, or air quality within the Properties or which result in unreasonable levels of sound or light pollution.

10.8. Prohibited Conditions. The following conditions, structures, or activities are prohibited within the Properties unless prior approval in writing is obtained pursuant to Article IX:

(a) Exterior antennas, aerials, satellite dishes, or other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind unless completely contained within the Lot so as not to be visible from outside the Lot or otherwise approved pursuant to Article IX; provided, the Declarant and the Association shall have the right, without obligation, to erect or install and maintain such apparatus for the benefit of all or a portion of the Properties;

(b) Walls, dog runs, animal pens, or fences of any kind on any Lot except as approved in accordance with Article IX;

(c) Garage doors shall remain closed at all times except when entering and exiting the garage, or when someone is working in the garage. A garage door lifted no more than six (6) inches to allow for ventilation is considered closed;

(d) Excessive exterior lighting on any Lot. The Board shall in its sole discretion determine whether any exterior lighting is excessive;

(e) Tents, shacks, or other structures of a temporary nature on any Lot except as approved in accordance with Article IX or as may be authorized by the Declarant during initial

construction within the Properties. Temporary structures used during the construction or repair of a Dwelling Unit or other improvements shall be removed immediately after the completion of construction or repair; and

(f) Storage of furniture, fixtures, appliances, machinery, equipment or other goods and chattels not in active use on the Common Area or any portion of a Lot which is visible from outside the Lot, except as approved in accordance with Article IX.

10.9. Subdivision of Lot and Time-Sharing. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Board; provided, however, the Declarant, its successors and assigns hereby expressly reserve the right unilaterally to subdivide, change the boundary line of, and replat any Lot(s) owned by Declarant, its successors and assigns during the Development Period, to the extent allowed by Utah law.

No Lot shall be made subject to any type of timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years. However, the Declarant hereby reserves the right for itself and its assigns to operate such a program with respect to Lots which it owns.

10.10. Firearms. The discharge of firearms within the Properties is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

10.11. Wetlands, Lakes, and Other Water Bodies. All wetlands, lakes, ponds, and streams within the Properties, if any, shall be aesthetic amenities only, and no other active use of lakes, ponds, streams, or other bodies of water within the Properties or within any golf course, except that the Association and its agents shall have the exclusive right and easement to retrieve golf balls from bodies of water within the Common Areas. The Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, streams or other bodies of water or adjacent to the Properties.

10.12. Business Use. Except in areas designated in a Tract Declaration for commercial or other purposes, no Business, Trade, garage sale, moving sale, rummage sale, or similar activity may be conducted in or from any Dwelling Unit, except that an Owner or occupant residing in a Dwelling Unit may conduct business activities within the Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling Unit; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve regular visitation of the Dwelling Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents in the Properties, as may be determined in the sole discretion of the Board.

This Section shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Lots which it owns within the Properties, including the operation of a timeshare or similar program.

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Notwithstanding, the Association may organize for the benefit of its Members, a community-wide garage sale, crafts sale or other similar activity one or more times each year at the community center or other Common Area as determined by the Board.

The leasing of a Dwelling Unit shall not be considered a Business or Trade within the meaning of this subsection. "Leasing," for purposes of this Second Restated and Amended Declaration, is defined as regular, exclusive occupancy of a Dwelling Unit by any person other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. Dwelling Units may be leased only in their entirety. No fraction or portion may be leased. No structure on a Lot other than the primary residential Dwelling Unit shall be leased or otherwise occupied for residential purposes, except that any Lot comprised of more than one acre of land may make residential use of such a structure for an ancillary use such as in-law suite or nanny suite, but not for independent leasing. There shall be no subleasing of Dwelling Units or assignment of leases unless prior written approval is obtained from the Board. All leases shall be in writing. Lease agreements must require the lessee to comply with all Governing Documents and provide that non-compliance with any provisions thereof shall constitute a default under the lease agreement.

No transient tenants may be accommodated in a Dwelling Unit, and all leases shall be for an initial term of no less than thirty (30) days, except: (a) with the prior written consent of the Board or (b) as initially authorized by Declarant in a Supplemental Declaration for Lots located within certain Neighborhoods. The Owners may not amend this provision to prohibit leasing of Dwelling Units within certain Neighborhoods authorized by Declarant for rental to transient tenants and for a term less than thirty (30) days until: (a) seventy-five percent (75%) of the Lots within a particular Neighborhood are owned by Home Owners; and (b) such amendment is approved by the vote of Owners, other than the Declarant, holding seventy-five percent (75%) of the votes, within that particular Neighborhood.

Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Lot Owner within ten (10) days of execution of the lease. The Owner must make available to the lessee copies of the Governing Documents. The Board may adopt reasonable rules regulating leasing and subleasing.

10.13. Occupancy. Dwelling Units shall not be occupied by more than two persons per bedroom in the Dwelling Unit. For the purposes of this provision, "occupancy" shall be defined as staying overnight in the Dwelling Unit more than thirty (30) days in any ninety (90) day period.

10.14. Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot, except in covered containers of a type, size and style which are approved in accordance with Article IX or as required by the applicable governing jurisdiction. Such containers shall be maintained so as to not be visible from the center of the street directly in front of the home unless they are being made available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

10.15. Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot, unless such facility cannot be seen from outside the Lot.

10.16. Other Accouterments. The following will not be allowed in an area visible from outside the lot; statues, wagon wheels, flag poles, lawn jockeys, fountains, plaster or plastic ducks, or wind activated devices which produce sound. Also prohibited are any devices which produce sound in excess of 50 decibel between dusk-dawn and 55 decibel between dawn-dusk measured at the back of curb on violator's front yard and at the edge of the violator's backyard.

ARTICLE XI
EASEMENTS

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

11.2. Easements for Utilities, Etc.

(a) There are hereby reserved to the Declarant during the Development Period, and granted to the Association, and the designees of each (which may include, without limitation, governmental entities and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties (but not through a structure) to the extent reasonably necessary to install, replace, repair, and maintain cable television systems, master television antenna systems, security and similar systems, roads, walkways, bicycle pathways, trails, lakes, ponds, wetlands, drainage systems, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas, and electricity. The Declarant and/or the Association may assign these rights to any local utility supplier, cable company, security company or other company providing a service or utility to the Properties subject to the limitations, herein.

This easement shall not entitle the holders of such easement to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing Dwelling Unit on a Lot, and any damage to a Lot resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

Declarant specifically grants to the local utility suppliers easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the Dwelling Unit on any Lot, nor shall any utilities be installed or relocated on the Properties,

except as approved by the Board or Declarant.

(b) There is hereby reserved to the Declarant during the Development Period, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described in Exhibits "A" or "B".

11.3. Easements to Serve Additional Property. During the Development Period, the Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purpose of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Second Restated and Amended 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 vehicular traffic connected with development of permanent access to such property or any portion thereof benefitting from such easement and is not made subject to this Second Restated and Amended Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such Property.

11.4. Easements for Golf Courses.

(a) The Declarant hereby grants an easement on every Lot and the Common Area and the common property of any Neighborhood Association permitting golf balls unintentionally to come upon such Common Area, Lots or common property of a Neighborhood and for golfers in a reasonable manner to come upon the Common Area, common property of a Neighborhood, or the exterior portions of a Lot to retrieve errant golf balls; provided, however, if any Lot is fenced, walled, or signed, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement: the Declarant; the Association or its Members (in their capacity as such); the management company of the Association; any Builder or contractor (in their capacities as such); any officer, director or partner of any of the foregoing, or any officer or director of any partner, golf course owner, management, operator or staff of the foregoing.

(b) The Declarant hereby declares that the Properties immediately adjacent to any golf course located on the Common Areas are hereby burdened with a non-exclusive easement for over spray of water, materials used in connection with fertilization, weed, and pest control, and effluent from any irrigation system serving such golf course. Under no circumstances shall the Association or the Declarant be held liable for any damage or injury resulting from such over spray or the exercise of this easement.

11.5. Easements for Cross-Drainage. The Declarant hereby reserves for itself and grants to the Association that every Lot and the Common Area shall be burdened with easements for natural drainage of storm water runoff from other portions of the Properties; provided no Person shall alter the natural drainage on any Lot to increase materially the drainage of storm water

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onto adjacent portions of the Properties without the consent of the Owner(s) of the affected property, the Board, and the Declarant as long as it owns any property described in Exhibits "A" or "B" to the Second Restated and Amended Declaration.

11.6. Right of Entry. The Declarant hereby grants to the Association an easement of access and right, but not the obligation, to enter all portions of the Properties, including each Lot, for emergency, security, and safety reasons. Such right may be exercised by the authorized agents of the Association, its Board, officers, or committees, and by all police officers, fire fighters, ambulance personnel, and similar personnel in the performance of their duties. Except in emergencies, entry into a Dwelling Unit shall be only during reasonable hours and after notice to and permission from the Owner thereof. This easement includes the right to enter any Lot or Dwelling Unit to cure any condition which increases the risk of fire or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but does not authorize entry into any Dwelling Unit without permission of the Owner, except by emergency personnel acting in their official capacities.

11.7. Easements for Maintenance and Enforcement. The Declarant hereby grants to the authorized agents of the Association a perpetual easement and right to enter all portions of the Properties, including each Lot or Dwelling Unit to: (a) perform its maintenance responsibilities under Article V, and (b) make inspections to ensure compliance with the Governing Documents. Except in emergencies, entry into a Dwelling Unit shall be only during reasonable hours and after notice to and permission from the Owner. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owner's property, and any damage shall be repaired by the Association at its expense.

11.8. Rights to Storm Water Runoff, Effluent and Water Reclamation. Declarant hereby reserves for itself and its designees all rights to ground water, surface water, storm water runoff, and effluent located or produced within the Properties, and each Owner agrees, by acceptance of a deed to a Lot, the Declarant shall retain all such rights. Such right shall include the reservation of an easement over the Properties for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff, and effluent. This Section 11.8 may not be amended without the consent of the Declarant or its successor, and the rights created in this Section 11.8 shall survive termination of this Second Restated and Amended Declaration.

ARTICLE XII
MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots in the Properties. The provisions of this Article apply to both this Second Restated and Amended Declaration and to the Second Amended and Restated By-Laws, notwithstanding any other provisions contained therein.

12.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

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

(b) Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Second Restated and Amended Declaration or Second Amended and Restated By-Laws relating to such Lot or the Owner or occupant which is not cured within sixty (60) days;

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

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

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

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

12.4. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

12.5. HUD/VA Approval. During the Declarant Board Control Period, the following actions shall require the prior approval of the U.S. Department of Veterans Affairs ("VA") and/or the U.S. Department of Housing and Urban Development ("HUD"), and the approval of not less than two-thirds (2/3) of the total Association votes, if either VA or HUD is insuring or guaranteeing the Mortgage on any Lot, as applicable: (a) annexation of additional property to the development, except for annexation by Declarant under Section 7.1 pursuant to mergers, consolidations, or dissolution of the Association; (b) mortgaging of Common Area; (c) dedication of Common Area to any public entity; and (d) material amendment of this Second Restated and Amended Declaration or the Second Amended and Restated By-Laws. Notwithstanding anything to the contrary in this Section, the Association, acting through the Board, may grant easements over the Common Area for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area, without the approval of the membership.

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ARTICLE XIII
SPECIAL DECLARANT RIGHTS

13.1. Special Declarant Rights. The Declarant reserves the following Special Declarant Rights during the Development Period, which may be exercised, where applicable, anywhere within the Properties:

(a) to complete any improvements indicated on Plats, development plans filed with the Second Restated and Amended Declaration, or the Master Plan;

(b) to exercise a Development Right reserved in Section 1.19 and Article VII;

(c) to maintain sales offices, management offices, signs advertising on the property described in Exhibits "A" and "B," as set forth in Section 13.3;

(d) to use easements through the Common Area for the purpose of making improvements within the property described on Exhibits "A" and "B"; and

(e) to appoint and remove any Trustee or officer of the Association as provided in Articles III and IV of the Second Amended and Restated By-Laws.

13.2. Transfer of Special Declarant Rights.

(a) Assignment. The Declarant may assign any Special Declarant Rights, Development Rights, or other special rights and obligations of the Declarant set forth in this Second Restated and Amended Declaration or the Second Amended and Restated By-Laws to any affiliate of the Declarant or a Builder, or Declarant may allow any affiliate of the Declarant or a Builder to exercise such rights on behalf of the Declarant. The method of exercising such rights shall be subject to the agreement of the parties thereto, which shall not require recordation in the Public Records.

(b) Transfer. Any or all of the Special Declarant Rights identified in this Section, Development Rights, or any of the other special rights and obligations of the Declarant set forth in this Second Restated and Amended Declaration or the Second Amended and Restated By-Laws may be transferred in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has under this Second Restated and Amended Declaration or the Second Amended and Restated By-Laws. No such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

13.3. Models, Sales Offices and Management Offices. During the Development Period, the Declarant and Builders authorized by Declarant may maintain and carry on upon any Lot owned by Declarant or any portion of the Common Area such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Lots, including, but not limited to, business offices, signs, model units, marketing trails, or sales offices. The Declarant and authorized Builders shall have easements for access to and use of such facilities. The Declarant's or Builder's unilateral right to use the Common Area for purposes stated in this paragraph shall not be exclusive and shall not

unreasonably interfere with use of such Common Area by Owners unless leased pursuant to a lease agreement with the Association providing for payment of reasonable rent.

13.4. Construction of Improvements. The Declarant and its employees, agents and designees shall also have a right and easement during the Development Period 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.

13.5. Other Covenants Prohibited. During the Development Period, no Person shall record any declaration of covenants, condition and restrictions, or declaration of condominium or similar instrument affecting any portion of the Properties 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 by the Declarant and recorded in the Public Records.

13.6. Master Planned Community. Each Owner, by accepting title to a Lot and becoming an Owner, and each other Person, by acquiring any interest in the Properties, acknowledges awareness that Sun River St. George is a master planned community, the development of which is likely to extend over many years, and agrees not to protest or otherwise object to: (a) zoning or changes in zoning or to uses of, or changes in density of, the Properties (other than within said Owner's Neighborhood) during the Development Period, or (b) changes in any conceptual or master plan for the Properties, including, but not limited to, the Master Plan (other than within said Owner's Neighborhood); provided, such revision is or would be lawful (including, but not limited to, lawful by special use permit, variance or the like and is not inconsistent with what is permitted by the Second Restated and Amended Declaration.

13.7. Vacation Villas. The Declarant may, in its discretion, construct residential improvements for temporary occupancy or time-share condominiums in or adjacent to the Properties and designate such improvements as "Vacation Villas." Vacation Villas located outside of the Properties shall not be Lots or Dwelling Units, and their owners shall not be Members of the Association; provided, however, such Vacation Villas shall have access to the Common Area and facilities in consideration of the payment of such fees or a cross-use agreement as provided by a contract or a Covenant to Share Costs.

Owners of Vacation Villas located within the Properties shall be Members of the Association. The Declarant may transfer or lease Vacation Villas and make Vacation Villas available for use by guests selected in its discretion. Occupants of the Vacation Villas shall have a non-exclusive easement for use, access, and enjoyment in and to the Common Area, including but not limited to any recreational facilities with the Common Area. The Board shall assign activity or use privilege cards to the Declarant on behalf of all owners of Vacation Villas for the purpose of exercising such easement. Vacation Villas shall remain Vacation Villas until the Declarant otherwise provides in written notice to the owner of such Vacation Villa and to the Association.

13.8. Equal Treatment. So long as the Declarant owns any property described in Exhibits "A" or "B", neither the Association nor any Neighborhood Association shall, without the prior written consent of the Declarant, adopt any policy, rule or procedure that:

(a) limits the access of the Declarant, its successors, assigns and/or affiliates or their personnel and/or guests, including visitors, to the Common Areas of the Association or to any property owned by any of them;

(b) limits or prevents the Declarant, its successors, assigns and/or affiliates or their personnel from advertising, marketing or using the Association or its Common Areas or any property owned by any of them in promotional materials;

(c) limits or prevents purchasers of new residential housing constructed by the Declarant, their successors, assigns and/or affiliates in Sun River St. George from becoming Members of the Association or enjoying full use of its Common Area, subject to the membership provisions of this Second Restated and Amended Declaration and the Second Amended and Restated By-Laws;

(d) discriminates against or singles out any group of Association members or prospective members or the Declarant [this provision shall expressly prohibit the establishment of a fee structure (i.e., assessments, Special Assessments and other mandatory fees or charges other than Benefitted Assessments, chartered club dues, and use fees) that discriminates against or singles out any group of Association members or the Declarant, but shall not prohibit the establishment of Benefitted Assessments];

(e) impacts the ability of the Declarant, its successors, assigns and/or affiliates, to carry out to completion its development plans and related construction activities for Sun River St. George, as such plans are expressed in the Master Plan, as such may be amended and updated from time to time. Policies, rules or procedures affecting the provisions of existing easements established by the Declarant and limiting the establishment by the Declarant of easements necessary to complete Sun River St. George shall be expressly included in this provision. Easements that may be established by the Declarant shall include but shall not be limited to easements for development, construction and landscaping activities and utilities; or

(f) impacts the ability of the Declarant, its successors, assigns and/or affiliates to develop and conduct customer service programs and activities in a customary and reasonable manner.

Neither the Association nor any Neighborhood Association shall exercise its authority over the Common Areas (including, but not limited to, any gated entrances and other means of access to the Properties or the Exhibit "B" property) to interfere with the rights of the Declarant set forth in this Second Restated and Amended Declaration or to impede access to any portion of the Properties or the Exhibit "B" property over the streets and other Common Areas within the Properties.

13.9. <u>Rights to Use Common Area for Special Events</u>. As long as the Declarant owns any property described in Exhibits "A" or "B," the Declarant shall have the right to use all Common Area, including any golf courses or other recreational facilities, to sponsor special events for charitable, philanthropic, political, or marketing purposes as determined by the Declarant in its sole discretion. After the Declarant Board Control Period, Declarant shall continue to have the right to use all Common Areas for up to eight (8) days each year to sponsor events. Any such event shall be subject to the following conditions:

(a) the availability of the facilities at the time a request is submitted to the Association;

(b) the Declarant shall pay all costs and expenses incurred and shall indemnify the Association against any loss or damage resulting from the special event; and

(c) the Declarant shall return the facilities and personal property owned by the Association and used in conjunction with the special event to the Association in the same condition as existed prior to the special events.

The Declarant shall have the right to assign the rights contained in this Section 13.9 to charitable organizations or foundations selected by the Declarant. The Declarant's right to use the Common Area for special events shall be enforceable by injunction, by any other remedy in law or equity, and by the terms of this Second Restated and Amended Declaration.

13.10. Amendment. This Article shall not be amended without the prior written consent of the Declarant so long as the Declarant owns any property described in Exhibits "A" or "B." The rights contained in this Article shall terminate concurrently with termination of the Development Period. Thereafter, the Declarant and Builders may continue to use the Common Areas for purposes stated in this Article pursuant to a rental or lease agreement between the Declarant and/or such Builder and the Association which provides for rental payments based on the fair market rental value of any such portion of the Common Areas.

ARTICLE XIV
DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

14.1. Agreement to Avoid Litigation. The Declarant, the Association, its officers, Trustees, and committee members, all Persons subject to this Second Restated and Amended Declaration, any Builder, and any Person not otherwise subject to this Second Restated and Amended Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described in Sections 14.2 ("Claims") shall be resolved using the procedures set forth in Section 14.3 in lieu of filing suit in any court.

14.2. Claims. Unless specifically exempted below, all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Governing Documents, or the rights, obligations and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on the Properties shall be subject to the provisions of Section 14.3. The following claims are exempt from this Article XIV:

(a) Any suit by the Association against any Bound Party to enforce the provisions of Article VIII (Assessments);

(b) Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article IX (Architectural Standards) and Article X (Use Restriction);

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

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

(e) Any suit which otherwise would be barred by an applicable statute of limitations.

14.3. Mandatory Procedures.

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

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

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

(iii) Claimant's proposed remedy; and

(iv) that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation and Mediation.

(i) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation.

(ii) If the Parties do not resolve the Claim within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) additional days to submit the Claim to mediation under the auspices of an independent agency providing dispute resolution services in Utah.

(iii) IF CLAIMANT DOES NOT SUBMIT THE CLAIM TO MEDIATION WITHIN NINETY (90) DAYS AFTER TERMINATION OF NEGOTIATIONS, OR DOES NOT APPEAR FOR THE MEDIATION, CLAIMANT SHALL BE DEEMED TO HAVE WAIVED THE CLAIM, AND RESPONDENT SHALL HAVE BEEN RELEASED AND DISCHARGED FROM ANY AND ALL LIABILITY TO CLAIMANT ON ACCOUNT OF SUCH CLAIM; PROVIDED NOTHING HEREIN SHALL RELEASE OR DISCHARGE RESPONDENT FROM ANY LIABILITY TO ANY PERSON OTHER THAN THE CLAIMANT.

(iv) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the parties. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process, or within

such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

(v) Within five (5) days of the Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(c) Arbitration.

(i) IF THE PARTIES DO NOT AGREE IN WRITING TO A SETTLEMENT OF THE CLAIM WITHIN FIFTEEN (15) DAYS OF THE TERMINATION OF MEDIATION, THE CLAIMANT SHALL HAVE FIFTEEN (15) ADDITIONAL DAYS TO SUBMIT THE CLAIM TO ARBITRATION IN ACCORDANCE WITH THE RULES OF THE AMERICAN ARBITRATION ASSOCIATION. IF NOT TIMELY SUBMITTED TO ARBITRATION OR IF THE CLAIMANT FAILS TO APPEAR FOR THE ARBITRATION PROCEEDING, THE CLAIM SHALL BE DEEMED ABANDONED, THE RESPONDENT SHALL BE RELEASED AND DISCHARGED FROM ANY AND ALL LIABILITY TO CLAIMANT ARISING OUT OF SUCH CLAIM; PROVIDED, NOTHING HEREIN SHALL RELEASE OR DISCHARGE RESPONDENT FROM ANY LIABILITY TO PERSONS OTHER THAN CLAIMANT.

(ii) This subsection (c) is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Utah. If and to the extent that the Properties are subject to California law and regulated by the Requirements of the California Department of Real Estate ("DRE") as a condition to offering Lot in the State of California, and if required by DRE arbitration shall be non-binding and either party may reject the arbitrator's decision and sue in any court of competent jurisdiction. Otherwise, the arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Utah.

14.4. Allocation of Costs of Resolving Claims.

(a) Subject to 14.4(b), each Party shall bear its own costs, including any attorneys fees incurred, and each Party shall share equally all charges rendered by the Mediators, the Arbitrators and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

(b) Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add Claimant's Post Mediation Costs to the Award, such costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than any Respondent's Settlement Offer shall award to such Respondent its Post Mediation

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Costs.

14.5. Enforcement of Resolution. After resolution of any claim, if any Party fails to abide by the terms of any agreement or binding Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 14.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

ARTICLE XV
GOLF COURSE

15.1. Assumption of Risk and Indemnification. Each Owner, by its purchase of a Lot in the vicinity of any golf course, hereby expressly assumes the risk of noise, personal injury or property damage caused by maintenance and operation of any such golf course, including, without limitation: (a) noise from maintenance equipment (it being specifically understood that maintenance typically takes place around sunrise or sunset), (b) noise caused by golfers, (c) use of pesticide, herbicides and fertilizers, (d) use of effluent in the irrigation of the golf course, (e) reduction in privacy caused by constant golf traffic on the golf course or the removal or pruning of shrubbery or trees on the golf course, (f) errant golf balls, golf clubs, and golf carts and (g) design of the golf course.

Each such Owner agrees that neither Declarant, the Association, a Builder nor any of Declarant's affiliates or agents, golf course owner, management, operator, or staff of the foregoing shall be liable to Owner or any other Person claiming any loss or damage, including, without limitation, indirect destruction of property, trespass, loss of enjoyment or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of Owner's Lot to the golf course, including, without limitation, any claim arising in whole or in part from the negligence of Declarant, any of Declarant's affiliates or agents or the Association. The Owner hereby agrees to indemnify and hold harmless Declarant, Declarant's affiliates and agents and the Association, golf course owner, management, operator, and staff of the foregoing against any and all claims by Owner's visitors, tenants and others upon such Owner's Lot.

15.2. View Impairment. Neither the Declarant nor the Association guarantees or represents that any view over any golf course from adjacent Lots will be preserved without impairment. No provision of this Second Restated and Amended Declaration shall be deemed to create an obligation of the Association or the Declarant to relocate, prune, or thin trees or other landscaping except as provided in Article V. The owner of the golf course, if any, may, in its sole and absolute discretion, change the location, configuration, size and elevation of the tees, bunkers, fairways and greens on such golf course from time to time. Any such additions or changes to such golf course may diminish or obstruct any view from the Lots and any express or implied easements for view purpose or for the passage of light and air are hereby expressly disclaimed. Any such addition or change to any golf course may not adversely affect drainage flow across the Properties.

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ARTICLE XVI
GENERAL PROVISIONS

16.1. Term. Unless otherwise provided by Utah law, in which case such law shall control, this Second Restated and Amended Declaration shall run and have perpetual duration. This Second Restated and Amended Declaration may be terminated only by an instrument signed by Owners of at least eighty percent (80%) of the total Lots within the Properties, which instrument it records in the Public Records in accordance with Utah law. Nothing in this Section shall be construed to permit termination of any easement created in this Second Restated and Amended Declaration without the consent of the holder of such easement.

16.2. Amendment. Prior to the conveyance of the first Lot to a Home Owner, Declarant may unilaterally amend this Second Restated and Amended Declaration. After the conveyance of any Lot to a Home Owner, other than amendments which may be executed unilaterally by the Declarant during the Development Period in the exercise of its Development Rights, or amendments executed by the Association, this Second Restated and Amended Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of sixty-seven percent (67%) of the total of those who vote, provided that, at least forty percent (40%) of the total votes in the Association are cast and with the consent of the Declarant during the Development Period.

Without limiting the generality of the foregoing paragraph, the Declarant may unilaterally amend this Second Restated and Amended Declaration if such amendment is necessary: (i) to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee mortgage loans on the Lots; (iv) to enable any reputable private insurance company to insure mortgage loans on the Lots; or (v) to satisfy the requirements of any local, state or federal governmental agency for the development; marketing, and sale of Lots. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent in writing.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Amendments to this Second Restated and Amended Declaration shall be prepared, executed, recorded in the Public Record and certified by the President of the Association.

No Amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant during the Development Period.

If an Owner consents to any amendment to this Second Restated and Amended Declaration or the Second Amended and Restated By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within one year of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Second Restated and Amended Declaration.

16.3. Severability. Invalidation of any provision of this Second Restated and Amended Declaration, in whole or in part, or any application of a provision of this Second Restated and Amended Declaration by judgment or court order shall in no way affect other provisions or applications.

16.4. Cumulative Effect: Conflict. The provisions of this Second Restated and Amended Declaration shall be cumulative with any additional covenants and restrictions applicable to the Maintenance Association and any Neighborhood, and the Association may, but shall not be required to, enforce such additional covenants and restrictions, provided, however, in the event of a conflict between or among this Second Restated and Amended Declaration and such covenants or restrictions, and/or the provisions of any articles of incorporation or by-laws of a Neighborhood, By-Laws, rules and regulations, policies, or practices adopted or carried out pursuant hereto, this Second Restated and Amended Declaration, the Second Amended and Restated By-Laws, Articles, and use restrictions and rules of the Association shall prevail over those of the Maintenance Association or any Neighborhood. The foregoing priorities shall apply, but not be limited to, the lien for assessments created in favor of the Association. Nothing in this section shall preclude any Supplemental Declaration or other recorded covenants and restrictions applicable to any portion of the Properties from containing additional restrictions or provisions which are more restrictive than the provisions of this Second Restated and Amended Declaration, and the Association shall have the standing and authority to enforce the same.

16.5. Use of the Words "Sun River St. George". No Person shall use the words "Sun River St. George" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the terms "Sun River St. George" in printed or promotional matter where such term is used solely to specify that particular property is located within Sun River St. George and the Association shall be entitled to use the words "Sun River St. George" in its name.

16.6. Sun River St. George Marks. Any use by the Association of names, marks or symbols of Sun River St. George Development, L.C. or any of its affiliates (collectively "Sun River St. George Marks") shall inure to the benefit of Sun River St. George Development, L.C. and shall be subject to Sun River St. George Development, L.C.'s periodic review for quality control. The Association shall enter into license agreements with Sun River St. George Development, L.C., terminable with or without cause and in a form specified by Sun River St. George Development, L.C. in its sole discretion, with respect to permissive use of certain Sun River St. George Marks. The Association shall not use any Sun River St. George Mark without Sun River St. George Development, L.C.'s prior written consent.

16.7. Compliance. Every Owner and occupant of any Lot shall comply with this Second Restated and Amended Declaration, the Second Amended and Restated By-Laws, and the rules of the Association. Failure to comply shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, by the Association or, in a proper case, by aggrieved Lot Owner(s).

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16.8. <u>Notice of Sale or Transfer of Title</u>. Any Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Lot, including assessment obligations until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

16.9. <u>Attorneys' Fees</u>. In the event of an action instituted to enforce any of the provisions contained in the Governing Documents, and except as provided in Article XIV, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs, including administrative and lien fees, of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Benefitted Assessment with respect to the Lot(s) involved in the action.

16.10. <u>Headings</u>. The headings in this Second Restated and Amended Declaration are for reference only and shall not be used to limit or expand the provisions of this document.

The undersigned, having been duly sworn, hereby avers as follows:

I, David Patten, as President of Sun River St. George Community Association, Inc. ("Association") who executed the Second Restated and Amended Declaration of Covenants, Conditions, and Restrictions ("Second Restated and Amended Declaration"), which was recorded on June 13, 2016 as Entry No. 20160020822, hereby confirms the existence of a clerical oversight in Section 10.14 Trash Containers and Collection.

As the result of the oversight, the word "not" in Section 10.14 was inadvertently omitted, which was approved by membership.

(Continues on Next Page)

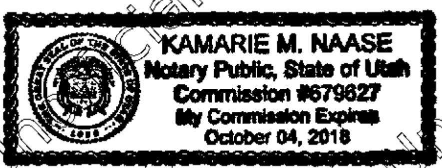
Utah Code Ann. Sec. 57-3-106(9) permits minor typographical or clerical errors in a document of record, such as the one described herein, to be corrected by the recording of an affidavit or other appropriate instrument. This Corrected Second Restated and Amended Declaration shall serve as such instrument.

By: ______________________
Its: President

STATE OF UTAH,)
:ss.
County of Washington.)

On this 17th day of November, 2016, before me personally appeared David Patten, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he/she is the President of Sun River St. George Community Association, Inc., a Utah nonprofit corporation, and that the foregoing document was signed by him/her on behalf of the Association by authority of its Corrected First Amended and Restated By-Laws or resolution of the Board, and he/she acknowledged before me that he/she executed the document on behalf of the Association and for its stated purpose.

____
Notary Public



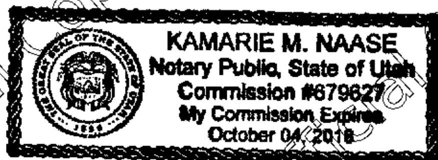
DECLARANT CONSENT

This Corrected Second Restated and Amended Declaration is hereby approved as to both form and content by Sun River St. George Development, L.C.

By: Darcy
Name (printed) ____________
Title: ____________

STATE OF UTAH,)
:ss.
County of Washington.)

On this 17th day of November, 2016, before me personally appeared Darcy Stewart, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he/she is the Managing Partner of Sun River St. George Development, L.C., a Utah limited liability company, and that the foregoing document was signed by him/her on behalf of said company by authority of its Articles of Organization, Operating Agreement or resolution of the Members/Mangers, and he/she acknowledged before me that he/she executed the document on behalf of said company and for its stated purpose.



Kamarie M. Naase
Notary Public

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EXHIBIT "A"

LEGAL DESCRIPTION

A PARCEL OF LAND LOCATED IN THE EAST 1/2 OF SECTION 22, THE WEST 1/2 AND THE NORTHEAST 1/4 OF SECTION 23, THE SOUTHWEST 1/4 OF SECTION 14 AND THE SOUTHEAST 1/4 OF SECTION 15, TOWNSHIP 43 SOUTH, RANGE 16 WEST SALT LAKE BASE & MERIDIAN BEING FURTHER DESCRIBED AS FOLLOWS:
BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 22 (BRASS CAP) AND RUNNING THENCE N00*06'57"W, 1,319.49 FEET ALONG THE SECTION LINE TO THE. SOUTH 1/16 CORNER; THENCE S89*49'39"W, 2,646.84 FEET ALONG THE 1/16 LINE TO THE CENTER SOUTH 1/16 CORNER; THENCE N00*09'14"W, 1,320.25 FEET ALONG THE CENTER SECTION LINE TO THE CENTER 1/4 CORNER OF SAID SECTION 22; THENCE N89*50'38"E, 744.33 FEET ALONG THE CENTER SECTION LINE; THENCE N24*52'57"E, 2,822.99 FEET TO A POINT MORE OR LESS ON THE SOUTHERLY BANK OF THE VIRGIN RIVER (PRESENT MEANDER LINE); THENCE ALONG THE SOUTHERLY BANK OF THE VIRGIN RIVER AS FOLLOWS S86*30'00"E, 97.90 FEET; THENCE N75*12'00"E, 497.77 FEET; THENCE N64*07'32"E, 395.10 FEET; THENCE N67*34'00"E, 284.71 FEET, THENCE N72*42'00"E, 254.15 FEET; THENCE N70*12'00"E, 128.15 FEET; THENCE LEAVING SAID BANK OF THE VIRGIN RIVER S17*30'00"W, 209.78 FEET, THENCE S33*30'00"E, 274.56 FEET; THENCE N77*15'00"E 382.80 FEET MORE OR LESS TO THE EAST LINE OF THE SOUTHWEST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 14, THEN S00*00'00"E, 91.74 FEET ALONG THE 1/16 LINE TO THE EAST 1/16 CORNER OF SAID SECTION 23; THENCE SOUTH 00*06'59"E, 1,319.62 FEET ALONG THE CENTER SECTION LINE TO THE CENTER NORTH 1/16 CORNER; THENCE N89*55'10"E, 1,317.18 FEET ALONG THE 1/16 LINE TO THE NORTHEAST 1/16 CORNER; THENCE S00*02'19"E, 1,319.93 FEET ALONG THE 1/16 LINE TO THE CORNER EAST 1/16 CORNER; THENCE S89*55'58"W, 1,315.38 FEET ALONG THE 1/16 LINE TO THE CENTER 1/4 CORNER OF SAID SECTION 23, THENCE S00*06'59"E, 2,641.42 FEET ALONG THE CENTER SECTION LINE TO THE SOUTH 1/4 CORNER OF SAID SECTION 23; THENCE S89*59'09"W, 2,637.56 FEET ALONG THE SECTION LINE TO THE POINT OF BEGINNING.
THE ABOVE DESCRIBED PARCEL CONTAINS 523.461 ACRES MORE OR LESS;

AND

THE SOUTHEAST QUARTER (SE 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 22, TOWNSHIP 43 SOUTH, RANGE 16 WEST, SALT LAKE BASE AND MERIDIAN. THE ABOVE DESCRIBED PARCEL CONTAINS 40.087 ACRES MORE OR LESS.

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EXHIBIT "B"

Any property located in Washington County, Utah, now under Declarant's control or may in the future come under Declarant's control within the following:

Sections 22, 23, 24, 26, 27, 28, 33, 34, and 35 of township 43 South, Range 16 West of the Salt Lake base and meridian.

EXHIBIT "C"

LANDSCAPE/LIMITED COMMON AREAS

1. As part of the Association's responsibility to maintain the Common Areas as set forth in the Declaration, the Association will maintain the landscaping in the front yard area of each Lot. Such landscape maintenance of the front yard area, as defined in the Design Guidelines, may also necessarily include portions of the private buildable pad area as shown on the Plat and Limited Common Area to the extent such extends into the front yard area. Plant replacement is the sole responsibility of the Owner. If at any time an Owner fails to replace dead plants after receiving written notice in accordance to Section 3.24 of the Second Amended and Restated By-Laws, the plant will be replaced with a like plant and the Owner will be assessed the cost. The minimum number of plants, as outlined in the Design Guidelines, must be preserved.

The Owner, and not the Association unless assumed by separate written agreement, has the obligation to install, maintain, repair and replace the landscaping in the side and rear yard areas. Landscaping of the side and rear yard areas must be done within 150 days of the close of escrow.

The Owner shall also be responsible for maintenance of his or her Lot and dwelling unit and all other improvements comprising the Lot in a manner consistent with that set forth in this Supplemental Declaration. Each Owner shall also be responsible for maintaining the interior surface of any perimeter wall or fence unless such maintenance is assumed by the Association or a Neighborhood Association pursuant to a Supplemental Declaration.

In addition to any other enforcement rights, if an Owner fails to perform properly his or her maintenance responsibility as set forth in the Declaration and this Supplemental Declaration, the Association may perform such maintenance responsibility and assess all costs incurred in accordance with Section 8.7 of the Declaration. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

2. As a part of original construction of a Dwelling Unit by Declarant, patios, extensions of the Dwelling Unit, and other similar structures may extend into the Limited Common Areas appurtenant to that Dwelling Unit, provided that such structures do not violate City of St. George yard setback requirements. Limited Common Areas shall be for the exclusive use, benefit and occupancy of the Owner to which such Limited Common Area appertains and is identified on the Official Plat or on the Properties.

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EXHIBIT "D"
NEIGHBORHOODS

All of Phases 1 through 41, and Phases 44 through 47, including any and all Common Area, as shown on the Official Plats, according to the Official Records on file in the Office of the Recorder of Washington County, State of Utah.

NEIGHBORHOOD MAP

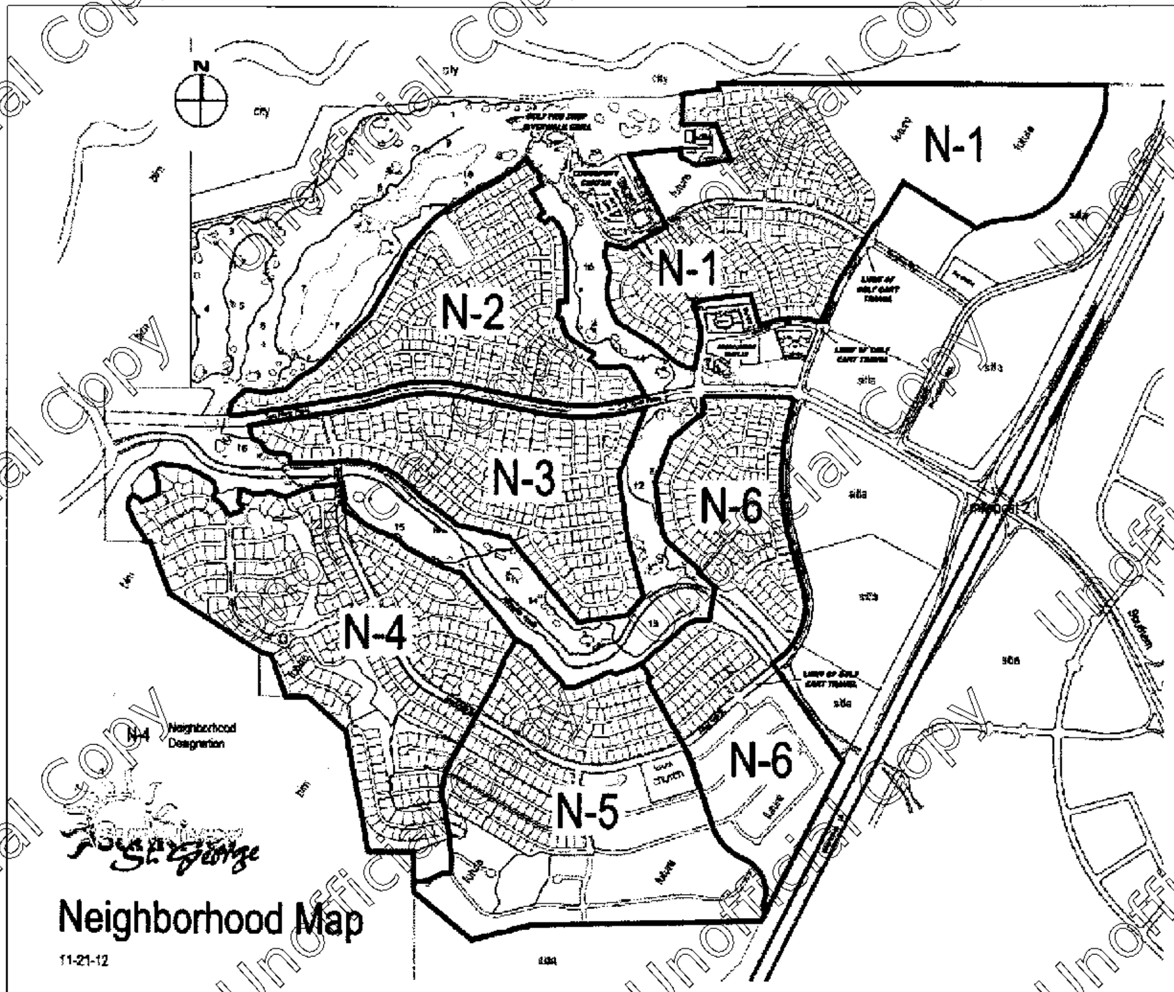

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EXHIBIT "E"
(Phase 16/REFLECTIONS)

1. The side yards of and between adjacent Lots are designated as Common Area. Nevertheless except as provided in the following paragraphs, side yard Common Area may be converted to Limited Common Area by an Owner fencing in the side yard beginning at the rear most portion of the roof line of that Owner's Dwelling Unit or the rear most portion of the roof line of the adjacent Dwelling Unit (whichever is closer to the rear yard Lot line of the two Lots) and running thence to the rear of the Lot and/or Limited Common Area appurtenant to the Lot and bisecting the side yard Common Area between the two adjacent Lots. All other side yard Common Area between adjacent Lots shall remain Common Area and no fences shall be permitted in that area.

Side yard Common Area adjacent to and/or between the following Lots and may never be converted to Limited Common Area; (1) Lots 1091 and 1092 and 1091 and 1093.

Side yard Common Area adjacent to and/or between the following Lots and Common Area properties may only be converted to Limited Common Area if approved in advance in writing by the Architectural Review Committee and the City of St. George: (1) Lots 1074, 1075, and 1076; (2) Lot 1077 and the Community Center (Exclusive Common Area); (3) Lot 1078 and the Community Center (Exclusive Common Area); (4) Lot 1098 and the Community Center (Exclusive Common Area); (5) Lot 1097 and Lots 1096 and 1095; (6) Lots 1099 and 1109; (7) Lots 1024 and 1025; (8) Lot 1025 and Lots 1026 and 1027; (9) Lot 1019 and Lots 1020 and 1021; and (10) Lot 1018 and Lots 1037 and 1038.

2. Exclusive Common Area may not be converted to Limited Common Area.

3. Limited Common Area may be encroached into with rockery retaining walls built as a part of original construction by the Declarant.

4. In addition to the Base Assessment and all other Assessments provided for in the Declaration, this Phase 16 shall be subject to Neighborhood Assessments to cover the costs associated with (i) maintenance, repair, replacement, and insurance of the Exclusive Common Area, (ii) the provision of bundled telecommunications, video transmission, security and other fiber-optic services, and (iii) such other costs associated with Neighborhood 5 as from time to time may be established by the Board of Sun River St. George Community Association, Inc.

5. Limited Common Area may be encroached into with rockery retaining walls built as a part of original construction by the Declarant.

6. Rockery retaining walls located in Limited Common Area which is bordered by Common Area shall be maintained and repaired by the Sun River St. George Community Association, Inc.

7. Declarant reserves the right to form a Neighborhood Association and/or a Maintenance Association for the purpose of administering the Exclusive Common Area. Upon

formation of such an Association(s) each Owner of a Lot in the area covered by such Association(s) shall automatically become a member. Any such Association shall have jurisdiction concurrent with and subordinate to that of the Sun River St. George Community Association, Inc.

EXHIBIT "F"
SUPPLEMENTAL COVENANTS

(Phases 20-24, 26-31, and 33-34)

1. Upon review and approval of the Architectural Review Committee, side yard Common Area may be converted to Limited Common Area by an Owner in the following instances:

(a) the construction of a fence in the side yard Common Area beginning at the rear most portion of a Dwelling Unit (as used herein Dwelling Unit shall include patios covered by the roof of the Dwelling Unit). Such fence, however, shall not be closer than eight feet (8') to a Lot line (boundary of private ownership area) of an adjacent Dwelling Unit and from the rear most portion of the adjacent Dwelling Unit the remainder of the fence shall bisect the Common Area;

and

(b) whenever there is eight (8) or more feet from a Lot line (boundary of private ownership area) to the Limited Common Area separation line, by an Owner installing a fence on the Limited Common Area separation line, provided however that there is eight (8) or more feet on the other side of the Limited Common Area separation line to an adjoining Lot line.

2. All other side yard Common Area between adjacent Lots shall remain Common Area, as shown on the final plat, and no fences shall be permitted in that area.

3. Limited Common Area may be encroached into with rockery retaining walls built as a part of original construction by the Declarant.

4. Rockery retaining walls located in Limited Common Area which is bordered by Common Area shall be maintained and repaired by the Sun River St. George Community Association, Inc.

5. In addition to the Base Assessment and all other Assessments provided for in the Declaration, all Phases subject to the covenants in this Exhibit, shall be subject to Neighborhood Assessments to cover the costs associated with (i) the provision of bundled telecommunications, video transmission, security and other fiber optic services, and (ii) such other costs associated specifically with Neighborhood 6 as from time to time may be established by the Board of Sun River St. George Community Association, Inc.

6. Notice is hereby given that the total area of landscaping requiring irrigation on any given Lot shall be restricted to a maximum of five thousand (5,000) square feet, in order to comply with conservation requirements set by the City of St. George and Washington County Conservancy District.

EXHIBIT "G"

CHURCH

(Phase 30)

Pursuant to Section 2.7 of the Declaration, Declarant hereby designates the real property described in Exhibit G-1 to be used for Religious purposes and exempt from the covenants, conditions and restrictions of the Declaration, except that if the owner of the property fails to keep the property in a condition of good repair then the Association may – after notice, hearing and an opportunity to cure – levy a Benefitted Assessment against the owner pursuant to Section 8.7 of the Declaration to cover the cost to bring the property into a condition of good repair.

EXHIBIT "G-1"

Parcel for Church Site at Sun River, Oct. 2007

Beginning at a point being South 88°43'41" East 1,941.34 feet along the section line and South 556.78 feet from the Northwest Corner of Section 23, Township 43 South, Range 16 West, Salt Lake Base & Meridian, and running;

thence North 75°01'27" East 220.43 feet;
thence easterly 145.24 feet along an arc of a 833.00 foot radius curve to the left (center bears North 14°58'33" West long chord bears North 70°01'46" East 145.05 feet with a central angle of 09°59'23");
thence easterly 37.81 feet along an arc of a 25.00 foot radius curve to the right (center bears South 24°57'56" East long chord bears South 71°38'09" East 34.31 feet with a central angle of 86°39'33");
thence South 28°18'23" East 33.72 feet
thence southerly 78.37 feet along an arc of a 375.00 foot radius curve to the right (center bears South 61°41'37" West long chord bears South 22°19'10" East 78.23 feet with a central angle of 11°58'27")
thence South 16°19'55" East 225.19 feet;
thence South 75°01'27" West 416.70 feet;
thence North 14°58'33" West 341.75 feet to the Point of Beginning.

Containing 141,198 square feet or 3.241 acres.

TAX ID# SG-6-3-23-4241

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EXHIBIT "H"
LEGAL DESCRIPTION

This Amendment to the Declaration of Covenants, Conditions and Restrictions of Sun River St. George effects the following real property, all located in Washington County, State of Utah:

All of Phases 1 through 41, and Phases 44 and 47 including any and all Common Area, as shown on the Official Plats, according to the official records of the Washington County Recorder:

Phase	Lots	Tax ID Nos.
1A	1-12	SG-SUR-1-1A-1-12
1B	14/15; 16-A-17-A	SG-SUR-1-1B-14/15; SG-SUR-1-1B-16-A-17-A
	18-24; 25-A	SG-SUR-1-1B-18-24; SG-SUR-1-1B-25-A
	27-80; 81-A	SG-SUR-1-1B-27-80; SG-SUR-1-1B-81-A
	83-84; 85-A	SG-SUR-1-1B-83 - 84; SG-SUR-1-1B-85-A
	86-87; 88-A-101-A	SG-SUR-1-1B-86-87; SG-SUR-1-1B-88-A-101-A
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12	876-929	SG-SUR-12-876-929
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21	1347-1395	SG-SUR-21-1347-1395
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24	1587-1627	SG-SUR-24-1587-1627
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26	1628-1666	SG-SUR-26-1628-1666
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28	1438-1479	SG-SUR-28-1438-1479
29	1726-1741	SG-SUR-29-1726-1741
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31	1742-1787	SG-SUR-31-1742-1787
32	1862-1895	SG-SUR-32-1862-1895
33	1788-1808	SG-SUR-33-1788-1808
34	1809-1826	SG-SUR-34-1809-1826
35	A; 1688-1708	SG-SUR-35-A; SG-SUR-35-1688-1708
36	1827-1861	SG-SUR-36-1827-1861
37	1914-1920; 1935-1941	SG-SUR-37-1914-1920; SG-SUR-37-1935-1941
38	1921-1934	SG-SUR-38-1921-1934
39	1942;1944; 1946-1949; 1950;1952	SG-SUR-39-1942; SG-SUR-39-1944; SG-SUR-39-1946-1949; SG-SUR-39-1950; SG-SUR-39-1952
40	1953-1961; 1984-1993	SG-SUR-40-1953-1961; SG-SUR-40-1984-1993
41	A; 1962-1983	SG-SUR-41-A; SG-SUR-41-1962-1983
43A	2016-2020	SG-SUR-43A-2016-2020; SG-6-3-26-430; SG-6-3-26-426
44	A; 2036-2058	SG-SUR-44-A; SG-SUR-44-2036-2058
45	A; 2059-2082	SG-SUR-45-A; SG-SUR-45-2059-2082
46	A; 2083-2108	SG-SUR-46-A; SG-SUR-46-2083-2108
47	2109-2128	SG-SUR-47-2109-2128
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