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RESTATED AND AMENDED
DECLARATION
OF
COVENANTS, CONDITIONS AND
RESTRICTIONS
FOR
COUNTRY OAKS CONDOMINIUM

August 2012

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RESTATED AND AMENDED
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OF
COVENANTS, CONDITIONS AND
RESTRICTIONS
FOR
COUNTRY OAKS CONDOMINIUM

This Restated and Amended Declaration of Covenants, Conditions and Restrictions for Country Oaks Condominium ("Restated Declaration") is made and executed in Davis County, Utah, this ____ day of _____, 2012, by the Country Oaks Condominium Board of Directors ("Board") pursuant to the provisions of the Utah Condominium Ownership Act ("Act"), Utah Code Annotated, §57-8-1, et seq., (1953 as amended), after being voted on and approved by the Unit Owners in accordance with the Governing Documents of Country Oaks Condominium Homeowners Association, Inc. ("Association").

RECITALS

WHEREAS, Country Oaks Condominium was created upon the filing of the Declaration of Covenants, Conditions, Restrictions and By-laws for Country Oaks Condominium ("Enabling Declaration") on November 5, 1975, with the Davis County Records Office, in Book 582, beginning on Page 709, as Entry Number 422434; and

WHEREAS, Country Oaks recorded a Supplemental and Amended Declaration of Covenants, Conditions, Restrictions and By-laws for Country Oaks Condominium in the records of Davis County, Utah, on November 29, 1976, in Book 626, beginning on page 333, entry number 448322.

WHEREAS, Country Oaks recorded a Second Supplemental and Amended Declaration of Covenants, Conditions, Restrictions and By-laws for Country Oaks Condominium in the records of Davis County, Utah, on July 29, 1977, in Book 667, beginning on page 141, entry number 468593.

WHEREAS, Country Oaks recorded a Third Supplemental and Amended Declaration of Covenants, Conditions, Restrictions and By-laws for Country Oaks Condominium in the records of Davis County, Utah, on December 14, 1977, in Book 682, beginning on page 542, entry number 481031.

WHEREAS, Country Oaks recorded a Fourth Supplemental and Amended Declaration of Covenants, Conditions, Restrictions and By-laws for Country Oaks Condominium in the records of

Davis County, Utah, on October 2, 1978, in Book 731, beginning on page 381, entry number 509958.

WHEREAS, Country Oaks recorded an Amendment to the By-laws of Country Oaks Condominium in the records of Davis County, Utah, on May 13, 1982, in Book 902, beginning on page 358, entry number 615152.

WHEREAS, Country Oaks recorded an Amendment to the Declaration of Covenants, Conditions, Restrictions, and Bylaws for Country Oaks Condominium in the records of Davis County, Utah, on August 30, 1990, in Book 1368, beginning on page 93, entry number 901021.

WHEREAS, Country Oaks recorded an Amended Declaration of Covenants, Conditions and Restrictions for Country Oaks Condominium in the records of Davis County, Utah, on May 21, 1993, book 1617, beginning on page 834, entry number 1036688.

WHEREAS, Country Oaks recorded an Amended Declaration of Covenants, Conditions and Restrictions for Country Oaks Condominium in the records of Davis County, Utah, on December 16, 1996, in Book 2074, beginning on page 871, entry number 1293260.

WHEREAS, Country Oaks recorded an Amendment to Amended Declaration of Covenants, Conditions and Restrictions for Country Oaks Condominium in the records of Davis County, Utah, on August 23, 2000, in Book 2684, beginning on page 175, entry number 1609494.

WHEREAS, Country Oaks recorded an Amendment to Amend Declaration of Covenants, Conditions and Restrictions for Country Oaks Condominium in the records of Davis County, Utah, on December 14, 2000, in Book 2725, beginning on page 1055, entry number 1629369.

WHEREAS, Country Oaks recorded a Second Amendment to Amended Declaration of Covenants, Conditions, and Restrictions for Country Oaks Condominium in the records of Davis County, Utah, on January 29, 2002, in Book 2973, beginning on page 526, entry number 1724799.

WHEREAS, Country Oaks recorded a Third Amendment to Amended Declaration of Covenants, Conditions, and Restrictions for Country Oaks Condominium in the records of Davis County, Utah, on July 11, 2002, in Book 3082, beginning on page 321, entry number 1769110.

WHEREAS, Country Oaks recorded a Third Amendment to Amended Declaration of Covenants, Conditions, and Restrictions for Country Oaks Condominium in the records of Davis County, Utah on January 13, 2003, in Book 3205, beginning on page 164, entry number 1821734.

WHEREAS, Country Oaks recorded a Third Amendment to Amended Declaration of Covenants, Conditions and Restrictions for Country Oaks Condominium in the records of Davis County, Utah, on January 23, 2003, in Book 3259, beginning on page 230, entry number 1848236.

WHEREAS, Country Oaks recorded an Amendment to Declaration for Country Oaks Condominium in the records of Davis County, Utah, on July 29, 2009, in Book 4827, beginning on page 712, entry number 2470813.

WHEREAS, Unit Owners are the Owners of the Units and Common Areas and Facilities at County Oaks Condominium located in Davis County, Utah, described in the Appendix "A" which is attached hereto and made a part hereof; and

WHEREAS, there are 91 Units within Country Oaks Condominium; and

WHEREAS, any person or entity who in any manner uses the Property at Country Oaks is subject to the Act and to the provisions of this Restated Declaration; and

NOW, THEREFORE, to accomplish the Owners' objectives, this Restated Declaration is hereby adopted. The Governing Documents are hereby restated, replaced and amended by this Restated Declaration. It is the intent of the Owners that this Restated Declaration replace all prior Governing Documents and that this Restated Declaration be the sole set of restrictive covenants governing Country Oaks. Regardless of any language herein to the contrary, the following are not renounced, rescinded, revoked, replaced or amended: the Plat Maps (as defined herein); the submission and dedication of the real Property described in Addendum "A" to the provisions of this Restated Declaration; the ratification, approval and incorporation of the Country Oaks Homeowners Association, Inc., a Utah nonprofit corporation, and the Articles of Incorporation on file with the State of Utah; and, any other provision, paragraph, or section that is required by the laws of Utah to maintain the legal status of the Project which, if repealed, would nullify the legal status of the Project.

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

RESTATED DECLARATION

ARTICLE I NAME OF CONDOMINIUM

- 1.1 The name by which the Condominium Property is known shall be "Country Oaks Condominium."

ARTICLE II DEFINITIONS

When used in this Restated Declaration (including that portion hereof captioned "recitals" and in the Bylaws attached hereto as Exhibit "C") the terms used shall have the meaning stated in the Act and as follows unless the context otherwise requires.

- 2.1 "Act" shall mean and refer to the Utah Condominium Ownership Act, Utah Code Annotated, §57-8-1, et seq. (1953 as amended).
- 2.2 "Association" shall mean the Country Oaks Homeowner's Association, Inc., a Utah nonprofit corporation, organized as the governing entity of the Project charged with the responsibility to maintain the Common Areas and Facilities.
- 2.3 "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association duly elected thereto by the Unit Owners, as provided in this Restated Declaration and Bylaws. Said Board is charged with and shall have the responsibility and authority to make and to enforce all of the reasonable rules and regulations covering the operation and maintenance of the Property and to carry out those duties described herein.
- 2.4 "Common Areas and Facilities" or "Common Areas" shall mean and refer to:
- (a) The land described in Article 3.1 hereof.
 - (b) That portion of the condominium project not specifically included in the respective Units herein defined. There shall be no Ownership interests in the Common Areas separate from the Ownership of a Unit.
 - (c) All foundations, columns, girders, beams, supports, main walls, roof, exterior walkways, parking areas, service streets, stalls and social center, recreational areas and facilities, yards, gardens, fences, all installations of power, light and other utilities to the outlets, and in general all other apparatus, installations and other parts of the Property necessary or convenient to the existence, maintenance and safety of the Common Area, of normally in common use.
 - (d) Those Common Areas and Facilities specifically set forth and designated as such in the Map.

- (e) All Common Areas and Facilities as defined in the Act, whether or not expressly listed herein, except that portion of the condominium project included in the respective Units.
- 2.5 “**Common Expenses**” shall mean and refer to all expenses of administration, maintenance, repair or replacement of the Common Areas and Facilities; to all items, things and sums described in the Act which are assessed against the Unit Owners in accordance with the provisions of the Act, or this Declaration, the Bylaws, such rules and regulations pertaining to the condominium Project as the Board may from time to time adopt, and such determinations and agreements lawfully made and/or entered into by the Board.
- 2.6 “**Condominium**” shall mean and refer to the Ownership of a single Unit in the Country Oaks Condominium Project, together with an undivided interest in Common Areas and Facilities of the Property.
- 2.7 “**Condominium Project**” or “**Project**” shall mean and refer to the entire real estate condominium project referred to in this Restated Declaration.
- 2.8 “**Enabling Declaration**” shall mean the instrument by which Country Oaks Condominium was established on November 5, 1975, with the Davis County Records Office, in Book 582, beginning on Page 709, as Entry Number 422434.
- 2.9 “**Governing Documents**” shall mean the Enabling Declaration and all amendments to the Enabling Declaration, including Bylaws, recorded against the Property prior to the recording of this Restated Declaration.
- 2.10 “**Limited Common Areas and Facilities**” or “**Limited Common Areas**” shall mean and refer to those Common Areas and Facilities designated in this Restated Declaration and/or the Map as reserved for use of a certain Unit or Units to the exclusion of the other Units, including but not limited to balconies, patios, garages, and decks designated in the Map. Also, the following, if designated to serve a single Unit but located outside the Unit's boundaries, are Limited Common Areas and facilities allocated exclusively to a Unit: a shutter; an awning; a doorstep; a stoop; a porch; a balcony; a patio; an exterior door; an exterior window.
- 2.11 “**Majority**” or “**Majority of the Unit Owners**” shall mean the Owners of more than 50 percent in the aggregate in interest of the undivided Ownership of the Common Areas and Facilities.
- 2.12 “**Manager**” shall mean and refer to the person, persons or corporation selected by the Board to manage the affairs of the condominium Project.
- 2.13 “**Map**” or “**Plat Map**” shall mean and refer to the record of survey map (or maps) of Country Oaks Condominium, recorded at Davis County with the Enabling Declaration or

supplemental declarations in accordance with Utah Code Annotated, §57-8-13 (1953 as amended).

- 2.14 **“Owner”** or **“Unit Owner”** shall mean the person, persons, trustee or entity owning a Unit in fee simple and an undivided interest in the fee simple estate of the Common Areas and Facilities in the percentage specified and established in this Restated Declaration.
- 2.15 **“Property”** shall mean and include the land, the buildings, all improvements and structures thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for use in connection therewith.
- 2.16 **“Restated Declaration”** shall mean this document which has been enacted to replace and amend the Governing Documents, including all prior declarations, supplemental declarations and amended declarations enacted or recorded prior to this Restated Declaration.
- 2.17 **“Unit”** shall mean that part of the Property to which an individual or entity has received a deed or title in fee simple and shall include the elements of the condominium Property which are not owned in common with the Owners of other Units as shown on the Map. A Unit may not be owned independent of an interest in the Common Area. The definition of a Unit shall include the following:
- (a) The boundary lines of each Unit are the interior surfaces of its perimeter walls, bearing walls, floors, ceiling, windows and window frames, doors and door frames, and trim, and includes both the portions of the building so described and the air space so encompassed, together with all fixtures and appliances therein contained.
 - (b) The following are part of a Unit: lath; furring; wallboard; plasterboard; plaster; paneling; tiles; wallpaper; paint; finished flooring; and any other material constituting part of the finished surface of a wall, floor, or ceiling. Any portion of a wall, floor, or ceiling not listed herein is part of the Common Areas and Facilities.
 - (c) If a chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a Unit:
 - (1) any portion of an item described in this Subsection serving only that Unit is part of the Limited Common Areas and facilities; and
 - (2) any portion of an item described in this Subsection is part of the Common Areas and Facilities if the item serves:
 - (a) more than one Unit; or
 - (b) any portion of the Common Areas and Facilities.
 - (d) Subject to Subsection (c), the following within the boundaries of a Unit are part of the Unit:
 - (1) spaces;
 - (2) interior partitions; and
 - (3) other fixtures and improvements.

- 2.18 **“Unit number”** shall mean and refer to the number designating the Unit in the Restated Declaration and in the record of survey map.

**ARTICLE III
DESCRIPTION OF PROPERTY**

- 3.1 **Description of Land.** The land on which Country Oaks Condominium is located is that tract or parcel of land in Davis County, State of Utah, more particularly described in Appendix “A” of this Restated Declaration,

- 3.2 **General Description of Buildings.** The buildings constituting a part of this condominium project are identified in relationship to each other in the Map.

- (a) The total number of Units in each building and the number of bedrooms which each Unit contains are specified in the Map
- (b) The number of levels or floors in each such Unit is shown in the Map. All buildings will consist of wood frame structures, together with an exterior composite of brick. Any buildings constructed in the future shall be constructed of the same quality (or better) material as those buildings that currently exist.
- (c) Each Unit is designed for use as a single-family residence, and has the exclusive right to use and occupy the garage reserved for each Unit as shown in the Map.
- (d) All other details involving the respective descriptions and locations of the buildings and a statement of the number of stories, number of Units and the principal materials of which each building is or is to be constructed and other like details are set forth in the Map.

- 3.3 **Description of Units.** Each Unit Shall Consist of:

- (a) The space enclosed within the undecorated interior surface of its perimeter walls, floors and ceilings (being in appropriate cases the inner surfaces parallel to the roof plane of the roof rafters, and the projections thereof) projected, where appropriate, to form a complete enclosure of space.
- (b) Any finishing material applied or affixed to the interior surfaces of the perimeter walls, floors and ceiling, including without limitation paint, lacquer, varnish, wallpaper, tile and paneling.
- (c) Non-supporting interior walls.
- (d) Windows and doors in the perimeter walls, whether located within the bounds of Unit or not, but not including any space occupied thereby to the extent located

outside, the bounds of the Units.

- (e) All utility pipes or lines or systems, and fixtures or appliances connected thereto servicing a single Unit or connecting a single Unit to a main or central utility, whether located within the bounds of the Unit or not, but not including any space occupied thereby to the extent located outside the bounds of the Unit.
- (f) Units forming a part of the condominium Property are more particularly described in the Map, which shows graphically all the particulars of the buildings; without limiting the generality of the foregoing, the Unit designations are set forth in Appendix "B" attached hereto.
- (g) Each Unit has immediate access to the Common Areas or facilities or Limited Common Areas and Facilities contiguous to the building in which such Unit is located.
- (h) Every contract for the sale of a Unit and every other instrument affecting title to a Unit may describe that Unit by its identifying number or symbol as designated in the Map or Maps with the appropriate reference to the Map(s) and to the Declaration, as each shall appear on the records of the County Recorder of Davis County, Utah. Such description will be construed to describe the Unit together with the Unit's appurtenant undivided interest in the Common Areas and Facilities, and to incorporate all the rights incident to Ownership of a Unit and all the limitations of such Ownership as described in this Declaration.

3.4 **Description of Common Areas and Facilities.** The Common Areas and Facilities shall consist of all parts of the condominium Property except the Units. Without limiting the generality of the foregoing, the Common Areas and Facilities shall include the following, whether located within the bounds of a Unit or not:

- (a) All structural parts of the building, including without limitation foundations, columns, joists, beam supports, supporting walls, floors, ceiling and roofs.
- (b) Patios, yards, courts and driveways which are not Limited Common Areas and Facilities as defined herein.
- (c) The roadways contained therein, provided that such roadways shall cease to be part of the Common Areas and Facilities when and if dedicated to public use with the consent of the Association and accepted by the public authority having jurisdiction.
- (d) Any utility pipe or line or system servicing more than a single Unit, and all ducts, sires, conduits and other accessories used therewith, but excluding any pipe or line or system or to a pipe or line or system servicing a single Unit.
- (e) All other parts of the condominium Property necessary or convenient to its existence,

maintenance and safety, or normally in common use, or which have been designated as common use, or which have been designated as Common Areas and Facilities in the drawings.

- (f) The Limited Common Areas and Facilities hereinafter described.
- (g) All repairs and replacements of any of the foregoing.

3.5 **Description of Limited Common Areas and Facilities.** Each Unit Owner is hereby granted an irrevocable license to use and occupy the Limited Common Areas and Facilities reserved exclusively for the use of his Unit, which shall consist of all the Common Areas and Facilities, including but not limited to a balcony and/or patio, yard, and a garage and driveway which are intended for the exclusive service of the Unit, the use and occupancy of which shall in each case be limited to such Unit.

ARTICLE IV STATEMENT OF PURPOSES, USES AND RESTRICTIONS

- 4.1 **Purposes.** The purposes of the condominium Property are to provide housing and recreational facilities for the Unit Owners and their respective families, tenants, guests and servants.
- 4.2 **Restrictions on Use.** The Units and Common Areas and Facilities shall be used and occupied as follows:
- (a) No part of the condominium Property shall be used for other than housing and the related common purposes for which the condominium Property was designed. Each Unit shall be used and occupied as a residence for a single family and for no other purpose.
 - (b) There shall be no obstruction of the Common Areas and Facilities nor shall anything be stored in the Common Areas and Facilities without the prior written consent of the Board, except as is otherwise provided herein.
 - (c) Nothing shall be done or kept in any Unit or in the Common Areas and Facilities which will increase the rates of insurance on the buildings or contents thereof beyond that customarily applicable for residential use, without the prior written consent of the Board. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Areas and Facilities which will result in the cancellation of insurance on any building, or the contents thereof, or which would be in violation of any law or regulation of any governmental authority. No waste shall be committed in the Common Areas and Facilities.
 - (d) No Unit Owner shall cause or permit anything (including without limitation a sign, awning, canopy, shutter, storm door, screen door, radio or television antenna) to

hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or the outside of windows or doors, without the prior written consent of the Board.

- (e) No animals or birds of any kind shall be raised, bred or kept in any Unit, or in the Common Areas and Facilities, except that dogs, cats and other household pets may be kept in Units, subject to the rules adopted by the Association, provided that they are not kept, bred or maintained for any commercial purposes; and provided further that any such pet causing or creating a nuisance or disturbance shall be permanently removed from the condominium Property upon ten days written notice from the Board.
- (f) No noxious or offensive activity shall be carried on in any Unit or in the Common Areas and Facilities, nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or occupants.
- (g) Nothing shall be done in any Unit or in, on or to the Common Areas and Facilities which will impair the structural integrity of the buildings or any part thereof, or which would structurally change the buildings or any part thereof, except as is otherwise provided herein.
- (h) No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Common Areas and Facilities except in a patio court in such manner as not to be visible except from the Unit for which such courtyard is reserved. The Common Areas and Facilities shall be kept free and clear of all rubbish, debris and other unsightly materials.
- (i) Except in a patio court in such manner as not to be visible except from the Unit for which such court is reserved, or (subject to the rules) on driveways or in other areas specifically designed and intended for such purpose, there shall be no playing, lounging or parking or placing of baby carriages, playpens, bicycles, wagons, toys, vehicles, benches or chairs in or on any part of the Common Areas and Facilities.
- (j) No industry, business, trade, occupation or profession of any kind, whether for commercial, religious, educational, charitable or other purposes shall be conducted, maintained, or permitted on any part of the condominium Property, except such as may be permitted by the Board and subject to the rules, nor shall any "For Sale" or "For Rent" signs or other window displays or advertising be maintained or permitted by any Unit Owner on any part of the condominium Property or in any Unit therein, except that:
 - (1) the Board or its agent or representative may place "For Sale" or "For Rent" signs on any Unit or on the condominium Property for the purpose of facilitating the disposal of Units by any Unit Owners, mortgagee or the

Association; and

- (2) a Unit Owner with respect to a Unit and the Board or its agent or representative with respect to the Common Areas and Facilities, may perform or cause to be performed any maintenance, repair or remodeling work, required or permitted by its Declaration.

ARTICLE V OWNERSHIP AND USE

- 5.1 **Ownership of a Unit.** Except with respect to any of the Common Areas and Facilities located within the bounds of a Unit, each Unit Owner shall be entitled to the exclusive Ownership and possession of his Unit and Unit Owners to the Ownership of an undivided interest in the Common Areas and Facilities in the percentage expressed in Appendix "B" hereof.
- 5.2 **Prohibition Against Subdivision of a Unit.** No Unit Owner shall, by deed, plat, lease or otherwise, subdivide or in any manner cause his Unit to be separated into tracts or parcels smaller than the whole Unit as shown on the Map.
- 5.3 **Ownership of Common Areas and Facilities.** The Common Areas and Facilities shall be owned by the Unit Owners as tenants in common, and Ownership thereof shall remain undivided. No action for partition of any part of the Common Areas and Facilities shall be maintainable, except as specifically provided in the Utah Condominium Ownership Act, nor may any Unit Owners otherwise waive or release any rights in the Common Areas and Facilities.
- 5.4 **Use of Common Areas and Facilities.** Except with respect to Limited Common Areas, each Unit Owner may use the Common Areas and Facilities in accordance with the purposes for which they are intended, but subject to this Restated Declaration and Bylaws, which right of use shall be appurtenant to and run with his Unit.
- 5.5 **Interest in Common Areas and Facilities.** The percentage of interest in the Common Areas and Facilities of each Unit has been determined on the basis of size in accordance with the Utah Condominium Ownership Act, Sec. 57-8-7, U.C.A., which percentages are contained in Appendix "B" hereof. The square footage figures set forth in Appendix "B" includes floor space of finished areas; basements and attics are not included.
- 5.6 **Use of Limited Common Areas and Facilities.** A Unit Owner's use and occupancy of the Limited Common Areas and Facilities reserved for his Unit shall be subject to and in accordance with this Restated Declaration and the Bylaws. Each Unit Owner shall maintain the patio and /or balcony, garage and driveway, the use of which is reserved for his Unit. The Association shall maintain the remainder of the Limited Common Areas and Facilities.

**ARTICLE VI
AGENT FOR SERVICE OF PROCESS**

- 6.1 **Name of Agent.** The name and address of the person in Davis County, State of Utah, appointed as the agent to receive service of process in matters pertaining to the Property as provided under the Utah Condominium receive service of process in matters pertaining to the Property as:

Sharm Christensen
2531 East 1900 North
Layton, Utah 84040

The agent may be changed from time to time by the Board filing appropriate instruments.

**ARTICLE VII
PERCENTAGE OF OWNERSHIP AND VOTING RIGHTS**

- 7.1 **Percentage of Ownership.** The percentage of ownership by Unit Owners in the Common Areas and Facilities of the condominium shall be for all purposes, including voting. Voting rights in the Association are only held in connection with the Ownership of a Unit. The Common Expenses shall be allocated among the Unit Owners in accordance therewith. The percentage of ownership in the Common Areas and Facilities shall be as set forth in Appendix "B," it being the intent that the aggregate percentage of ownership in the Common Areas and Facilities of Units in all phases shall equal 100 percent.

**ARTICLE VIII
EASEMENTS**

- 8.1 **Board Granting Easements.** The Board may hereafter grant easements for utility purposes for the benefit of the condominium Property, including the right to install, lay, maintain, repair and replace water mains and pipes, sewer lines, gas mains, telephone wires and equipment, and electrical conduits and wires over, under, along, on and through any portion of the Common Areas and Facilities.
- 8.2 **Interior Easements.** An easement in favor of each Unit Owner is hereby established to permit such Owner to attach draperies, pictures, mirrors and like decorations and furnishings to the interior surfaces of the perimeter and interior walls and ceilings, consistent with rules and regulations established by the Board.
- 8.3 **Common Area Easements.** Each Unit shall be subject to such easement as may be necessary for the installation, maintenance, repair or replacement of any Common Areas and Facilities located within the boundaries of such Unit.
- 8.4 **Encroachment Easements.** In the event that by reason of the construction, reconstruction, settlement or shifting of any building, any part of the Common Areas and Facilities

encroaches or shall thereby encroach upon any part of the Common Areas and Facilities or any other Unit, valid easements for such encroachment are hereby established and shall exist for the benefit of such Unit and the Common Areas and Facilities, as the case may be, so long as all or any part of the building containing any such Unit shall remain standing, provided, however, that in no event shall a valid easement for any encroachment be created in favor of any Unit Owner or in favor of the Unit Owners as Owners of the Common Areas and Facilities if such encroachment occurred due to the willful conduct, negligent act or omission of such Unit Owner or Owners.

ARTICLE IX MANAGEMENT

- 9.1 **Unit Owners Manage.** The business, Property and affairs of the Association, shall be managed by a Board consisting of five members who are Unit Owners in the project to be elected as provided in the Bylaws. Such Board shall have all the powers, duties and responsibilities as are now or may hereafter be provided by the Act, this Restated Declaration, the Bylaws and/or any amendments subsequently filed thereto; provided, however, that the Board may engage the services of a professional Manager and fix and pay a reasonable fee or compensation therefor. Not more than one (1) Board member may serve from a single Unit at any given time.
- 9.2 **The Board Shall Manage the Project.** The Board shall be responsible for the control, operation and management of the Project in accordance with the provisions of the Act, this Restated Declaration and such administrative, management and operation rules, and regulations as it may adopt from time to time as herein provided, and all agreements and determinations lawfully made and entered into by the committee.
- 9.3 **Board Providing Facilities.** The Board shall have the authority to provide such facilities, in addition to those for which provision has already been made, as it may deem to be in the best interest of the Unit Owners and to effect the necessary amendment of documents and Maps in connection therewith. The Board shall be known by such name or designation as it, or the Unit Owners, at any meeting may assign.

ARTICLE X CHANGE IN OWNERSHIP

- 10.1 Whenever there is a change of Ownership of a residential Unit and its appurtenant right, for whatever reason, the Board or the Manager may require as condition to recognizing the new Unit Owner or Owners as such, that the new Unit Owner or Owner furnish evidence substantiating the new Ownership.

ARTICLE XI ASSESSMENTS

- 11.1 **Payment of Common Expenses.** Every Unit Owner shall pay his proportionate share of the

Common Expenses, which share shall be equal to the percentage of undivided interest in the Common Areas and Facilities as set forth in Appendix "B," as amended, from time to time as provided in this Restated Declaration. Payment thereof shall be in such amounts and at such times as the Board determines in accordance with the Act, the Declaration or the Bylaws. There shall be in lien for nonpayment of Common Expenses as provided by Utah Code Annotated. The lien for nonpayment of Common Expenses may be enforced as provided therein and as provided in the Bylaws.

- 11.2 **Lien for Assessments.** All sums assessed to or levied against any Unit by the Association pursuant to the provisions of this Article, together with interest thereon and costs of collection as herein provided, shall be secured by a lien on such Unit in favor of the Association. To further evidence such liens for sums assessed pursuant to this Article, the Association may cause to be prepared (but shall not be obligated to) a written notice of lien setting forth the amount of the assessment, the amount remaining unpaid, a description of the Unit, and the name of the record Owner thereof. Such notice shall be recorded in the office of the County Recorder for Davis County, State of Utah. No such notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien shall exist solely by reason of this Restated Declaration, and the preparation and recording of any such notice of lien shall not be required in order to create or perfect such lien, but shall be solely at the discretion and for the convenience and better protection of the Association. The recording of this Restated Declaration constitutes record notice and perfection of a lien described herein. The lien for nonpayment of Common Expenses may be enforced by sale or foreclosure of the Unit Owner's interest by the Board as provided in U.C.A. § 57-8a-301 through 307, or by the filing of an action in court. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. The Owners hereby convey and warrant pursuant to U.C.A. Sections 57-1-20 and 57-8-10 Richard W. Jones, trustee, with power of sale, the Units and all improvements to the Units for the purpose of securing payment of assessments under the terms of this Restated Declaration. The Board may appoint a successor trustee at any time without amending this Restated Declaration. Any relief obtained, whether or not through foreclosure proceedings, shall include the Board's costs and expenses and reasonable attorney fees. In the event of foreclosure, after institution of the action the Board shall, without regard to the value of the Unit or the extent of the Owner's equity therein, be entitled to the appointment of a receiver to collect any income or rentals which may be produced by the Unit concerned.
- 11.3 **Attorney Fees.** In any legal action brought by the Board against any Unit Owner, tenant, lessee or lessor as a result of a violation of any provision of the Utah Code, the Declaration, the Bylaws, the House Rules or the Administrative Rules and Regulations, or if the Board retains legal counsel or incurs any attorney fees associated with or as a result of retaining legal counsel as a result of any such violation, then the Board shall collect any and all attorney fees as a Common Expense from the Unit Owner, tenant, lessee or lessor, jointly and severally, with or without judicial process, and shall be entitled to an award of attorney fees in any action or judicial proceeding. A Unit Owner shall be jointly liable for attorney fees in any action brought against a tenant renting or leasing a Unit from a Unit Owner as a result

of any violation by the Unit Owner's tenant.

- 11.4 **Unit Owner Repair Responsibility.** In the event the Board maintains, alters, repairs, replaces, fixes or otherwise incurs expenses or costs in connection with the maintenance, repair, alteration or replacement of any portion of an Owner's Unit that is not part of the Common Area and facilities, the expense and cost of such service shall be charged to and collected from the Owner of the Unit. Such charges may result from but are not limited to the following situations: 1) The Board determines after attempting to contact a Unit Owner, and contact is not successful or feasible, that maintenance, repairs, alterations, or replacement is necessary to prevent damage to the Common Areas and Facilities or to another Unit or Units; 2) A tenant contacts the Board and complains, requests or demands repair, replacement or alteration to Property of the Unit that is not Common Area; 3) A Unit Owner fails within seven (7) days after written request from the Board to make changes, modifications, repairs or alterations to bring the Owner's Unit in compliance with the Declaration, Bylaws, Regulations or Rules for Country Oaks Condominium or to take necessary action to prevent damage to the Common Areas and Facilities or to another Unit or Units.
- 11.5 **Common Assessment Due Date.** Common Areas assessments are due on the first day of each month. Special assessments are due on the dates stated by the Board. All assessments, whether special or common, if not paid within thirty (30) days of the date when due shall incur a late fee of not more than \$50.00 per month, as determined by a written policy from the Board, for each and every thirty (30) day period the assessment or any portion thereof remains delinquent. All payments shall be first applied to late fees and then to the payment first due.

ARTICLE XII INSURANCE

- 12.1 **Types of Insurance.** The Board shall obtain and maintain at all times insurance of the type and kind as provided herein and in conformity with the Condominium Ownership Act and including insurance for such other risks, of a similar or dissimilar nature, as are or shall hereby customarily be covered with respect to other properties similar to the Property in construction, design and use. The Board shall make every reasonable effort to obtain insurance with the following provisions or endorsements:
- (a) Exclusive authority to adjust losses shall be vested in the Board as insurance trustee.
 - (b) The insurance coverage shall not be brought into contribution with insurance purchased by individual Unit Owners or their respective mortgagees.
 - (c) Each Unit Owner may obtain additional insurance covering his real Property interest at his own expense.
 - (d) The insurer waives its right of subrogation as to any claims against each Unit Owner.

- (e) The insurance coverage cannot be canceled, invalidated or suspended because of the conduct of any one or more individual Owners or their respective lessees, employees, agents, contractors and guest.
- (f) The insurance coverage cannot be canceled, invalidated or suspended because of the conduct of any officer or employee of the Association or Board or their employees, agents or contractors, without prior demand in writing that the Boards cure the defect, and then only if the defect is not cured within 15 days.

12.2 **Casualty and Other Insurance.** The Board, for the benefit of the Property and the Unit Owners, shall maintain a policy or policies of casualty and multi-risk "all peril" insurance on the Property, with the provisions and endorsements as set forth in Article 12.1 above, if obtainable, also with extended coverage endorsements, for the full insurable 100% replacement value of the Units, Common Areas and Facilities, items of common personal Property and fixtures, payable to the Board as insurance trustee, to be disbursed in accordance with the terms of this Declaration. The limits and coverage of said insurance shall be reviewed at least annually by the Board and shall include an appraisal of the Property. Said policy or policies shall provide for a separate loss payable endorsement in favor of the mortgagee or mortgagees, if any of each Unit.

12.3 **Liability Insurance.** The Board shall obtain a policy or policies of insurance insuring the Board, the Unit Owners and their respective lessees, servants, agents or guests against any liability to the public or to the Owners of Units, members of the households of Unit Owners and their respective invitee or tenants, incident to the Ownership and/or use of the Property. Limits of liability under such insurance shall not be less than \$1,000,000 for any one person injured in any one occurrence, and shall not be less than \$100,000 for Property damage in each occurrence. The limits in coverage of said liability policy or policies shall be issued on a comprehensive liability basis and, if possible, shall provide cross-liability endorsements for possible claims of any one or more or group of insured's against any one or more or group of insures, without prejudice to the right of a named insured under the policies to maintain an action against another named insured.

12.4 **Unit Owner's Insurance Responsibility.** No Unit Owner shall be entitled to exercise his right to maintain insurance coverage in such a way as to decrease the amount that the Board, on behalf of all of the Unit Owners, may realize under any insurance policy that the Board may have in force covering the Property or any part thereof at any time.

ARTICLE XIII DESTRUCTION OR DAMAGE

In the event of damage to or destruction of part or all of the improvements in the condominium project, the following procedures shall apply:

13.1 **Sufficient Insurance Proceeds.** If proceeds of the insurance maintained by the Board are

alone sufficient to repair or reconstruct the damaged or destroyed improvement, such repair or reconstruction shall be carried out.

- 13.2 **Less Than 75% Destroyed.** If less than 75 percent of the project's improvements are destroyed or subsequently damaged, and if proceeds of the insurance maintained by the committee are not alone sufficient to accomplish repair or reconstruction, restoration shall be carried out and all the Unit Owners shall be assessed for any deficiency on the basis as provided in Article 11 above.
- 13.3 **Repair When More Than 75% Damaged.** If 75 percent or more of the project's improvements are destroyed or substantially damaged, if proceeds of the insurance maintained by the Board are not alone sufficient to accomplish restoration, and if the Unit Owners, within 100 days after the destruction or damage, a vote of at least 75 percent, elect to repair or reconstruct the affected improvements, restoration shall be accomplished in the manner directed under Article 13.2 above.
- 13.4 **No Repair After Damage.** If 75 percent or more of the project's improvements are destroyed or subsequently damaged, if proceeds of the insurance maintained by the committee are insufficient to accomplish restoration, and if the Unit Owners do not, within 100 days after the destruction or damage and by vote of at least 75 percent, elect to repair or reconstruct the affected improvements, the Board shall promptly record with the Davis County Recorder a notice setting forth such facts. Upon the recording of such notice, the provisions of subsection (1) through (4) §57-8-31, Utah Code Annotated (1953 as amended), shall apply and shall govern the rights of all parties having an interest in the project or any of the Units.
- 13.5 **Notice to Mortgages.** In the event of substantial damage to or destruction of any Unit or to 75 percent or more of the project's improvements, the mortgages of any affected Unit, and all mortgagees in the event 75 percent of the project's improvements are damaged or destroyed, shall be given written notice within 30 days of such damage or destruction. No provision herein will entitle the Owner of a Unit or other party to priority over such mortgagee with respect to the distribution to such Unit of any insurance proceeds.
- 13.6 **Board Shall Direct Reconstruction.** Any reconstruction or repair which is required to be carried out by this Article 13 shall be accomplished at the instance and direction of the Board. Any determination which is required to be made by this Article 13 regarding the extent of damage to or destruction of project improvements shall be made as follows: The Board shall select three MAI appraisers; each appraiser shall independently arrive at a figure representing the percentage of project improvements which have been destroyed or substantially damaged; the percentage which governs the application of the provisions of this Article 13 shall be the average of the three appraisal figures.

**ARTICLE XIV
TERMINATION**

- 14.1 **Removing the Property from the Act.** All of the Owners may remove the Property from the provisions of the Act by an instrument duly recorded to that effect, provided that the holders of all liens affecting any of the Units consent or agree by instruments duly recorded that their liens be transferred to the percentage of the undivided interest of the Unit Owners in the Property.
- 14.2 **Ownership After Removal.** Upon removal of the Property lien from the provisions of the Act, the Unit Owners shall own the Property and all assets of the Association as tenants in common, and the respective mortgagees and lienors shall have mortgages and liens upon the respective undivided interests of the Unit Owners. Such undivided interests of the Unit Owners shall be the same as the percentage of undivided interest in the Common Areas and Facilities appurtenant to the Owner's Units prior to removal from the Act.

**ARTICLE XV
EMINENT DOMAIN**

Insofar as not inconsistent with §57-8-32.5, Utah Code Annotated, the following shall apply:

- 15.1 **Eminent Domain Notice.** Whenever any proceeding is instituted that could result in the temporary or permanent taking, injury or destruction of all or part of the Common Areas and Facilities or one or more Units or portions thereof by the exercise of the power of or power in the nature of eminent domain or by an action or deed in lieu of condemnation, the Board and each Unit Owner and each mortgagee of affected Units shall be entitled to notice thereof, which notice shall be provided by the Board, and the Board shall act as agent for each Unit Owner, except for those Unit Owners who at their respective expense participate in the proceedings incident thereto: No provision herein will entitle the Owner of a Unit or other party to priority over a mortgagee of such Unit with respect to the distribution to such Unit of the proceeds of any award or settlement.
- 15.2 **Damages and Awards.** With respect to Common Areas and Facilities, any damages or awards shall be determined for such taking, injury or destruction as a whole and not for each Unit Owner's interest therein. After such determination, each Unit Owner shall be entitled to a share in the damages in the same proportion as his percentage of undivided interest of the Common Areas and Facilities. This provision does not prohibit a Majority of Unit Owners from authorizing the Board to use such damages or awards for replacing or restoring the Common Areas and Facilities so taken on the remaining land or on other acquired land, provided that this Restated Declaration and Map are duly amended.
- 15.3 **Taking Damages.** With respect to one or more Units or portions thereof, the damages or awards for such taking shall be deemed to be proceeds from insurance on account of damage or destruction pursuant to Article 13 hereof and shall be deposited with the Board as trustee. Even though the damage or awards may be payable to one or more Unit Owners, the Unit

Owners shall deposit the damages or awards with the Board of Directors as trustee, and in the event of failure to do so, at the option of the Board of Directors, either a special assessment shall be made against a defaulting Unit Owner of a Unit in the amount of this award, or the amount of such award shall be set off against the sums hereafter made payable to such Unit Owner. The proceeds of the damages or awards shall be distributed or used in a manner, and the Units Owners of affected Units shall have the rights, provided in Article 12 for insurance proceeds, provided the Property is removed from the provisions of the Act. If the Property is not removed from the provisions of the Act and one or more Units are taken, in whole or in part, the taking shall have the following effects:

- (a) If the taking reduces the size of a Unit and the remaining portion of the Unit may be made tenant-able, the Unit shall be made tenant-able. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the Owner of the Unit. The balance of the award, if any, shall be distributed to the Unit to the extent of the unpaid balance of its mortgage, and the excess, if any, shall be distributed to the Unit Owner. If there is a balance of the award distributed to the Unit Owner or a mortgagee, the Unit Owner's percentage of undivided interest in the Common Areas and Facilities shall be equitably reduced. This shall be done by reducing such interest in the proportion by which the floor area of the Unit is reduced by the taking, and then re-computing the percentages of undivided interests of all Unit Owners in the Common Areas and Facilities.
- (b) If the taking destroys or so reduces the size of a Unit that it cannot be made, tenant-able, the award shall be paid to the mortgagee of the Unit to the extent of the unpaid balance of its mortgage, and the excess, if any, shall be paid to the Unit Owner, whereupon the Unit Owner shall cease to be a member of the Association. The remaining portion of such Unit, if any, shall become a part of the Common Areas and Facilities and shall be placed in condition for use by all Unit Owners in the manner approved by the Board. If the cost of such work shall exceed the balance of the fund from the award for the taking, such work shall be done only if approved by a Majority of the Unit Owners. The percentages of undivided interests in the Common Areas and Facilities appurtenant to the Units that continue as a part of the Property shall be equitably adjusted to distribute the Ownership of the Common Areas and Facilities among the reduced number of Units Owners, and the Board shall file an amendment to the Declaration and Map to reflect the changes in the Property and the percentages of undivided interest of the remaining Units. The Board is authorized to record such amendment.

ARTICLE XVI MORTGAGE PROTECTION

- 16.1 **Mortgage Definition.** The term "mortgage" as used herein shall mean any recorded mortgage having priority over other mortgages and shall include a recorded deed of trust. The term "mortgagee" shall mean the Owner and holder of a mortgage and shall include a beneficiary under a deed of trust.

- 16.2 **Owner Roster.** The Board shall maintain a roster of Unit Owners from the evidence of change of Ownership furnished to the Board, which roster shall include the mailing addresses of Unit Owners. If the Board has been given written notice by a mortgagee of the necessary information, the Board shall maintain another roster which shall contain the name and address of each mortgagee of a Unit. Each notice shall consist of a certified copy of the recorded instrument evidencing the title of the mortgagee. The mortgagee shall be stricken from the roster upon receipt by a Board of a request from the mortgagee or of a certified copy of a recorded release of satisfaction of the mortgagee unless the removal is requested by the mortgagee.
- 16.3 **Mortgagee Notification.** Any mortgagee on any Unit who has provided written advance notification to the Board is entitled to written notification from the Board of any default by the mortgagor's obligation under the Declaration which is not cured within 30 days.
- 16.4 **Mortgagee Rights.** Any institutional holder of a first mortgage on a Unit shall, upon prior written request, be entitled to (a) inspect the books and records of the Association, (b) receive an annual financial statement of the project within 90 days following the end of any fiscal year of the Association, and (c) receive a copy of the minutes of any meeting of the Association.
- 16.5 **Mortgagee Assessments.** A mortgagee of any Unit who comes into possession of the Unit pursuant to the remedies provided in the mortgage, foreclosure of mortgage, or deed (or assignment) in lieu of foreclosure, shall take the Property free of any claims or unpaid assessments or charges against the mortgaged Unit which accrued prior to the time such mortgagee comes into the possession of the Unit (except for claims for a pro rata share of such assessments or charges resulting from a pro rata reallocation of such assessment or charges to all Units, including the mortgaged Unit.)
- 16.6 **Liens Affecting Mortgagee Rights.** The liens created under the Act or pursuant to this Restated Declaration or Bylaws upon any Unit shall be subject and subordinate to and shall not affect the rights of a mortgagee upon such interest made in good faith and for value, provided that after the foreclosure sale, a lien may be created for nonpayment of Common Expenses on the interest of the purchaser at the foreclosure sale to secure all Common Expense assessments assessed hereunder to such purchaser as an Owner after the date of such foreclosure sale, which said liens, if any claimed, shall have the same effect and be enforced in the same manner as provided herein.
- 16.7 **Amendments Affecting Mortgagee.** No amendment to this Article shall affect the rights of a mortgagee recorded prior to the recordation of any such amendment not otherwise entitle thereto.

**ARTICLE XVII
CONVEYANCES, EASEMENTS**

- 17.1 **Unit Descriptions.** Every deed, leases, mortgage or other instrument may describe a Unit by its identifying number and letter. Every such description shall be deemed good and sufficient for all purposes and shall be deemed to convey, transfer, encumber or otherwise affect the Unit Owner's corresponding percentage of undivided Ownership in the Common Areas and Facilities, as a tenant in common, as set forth in Appendix "B", even though the same is not exactly mentioned or described.
- 17.2 **Deeds.** Every deed, lease, mortgage or other similar instrument shall be deemed to:
- (a) Except and reserve with respect to a Unit: (i) any portion of the Common Areas and Facilities lying within said Unit; (ii) easements through said Unit, appurtenant to the Common Areas and Facilities and all other Units, for support and repair of the Common Areas and Facilities and all other Units; and (iii) easements appurtenant to the Common Areas and Facilities for encroachment upon the air space of said Unit by those portions of the Common Areas and Facilities located within said Unit.
 - (b) Include with respect to a Unit non-exclusive easements for ingress and support of said Unit through the Common Areas and Facilities, for the repair of said Unit through all other Units and through the Common Areas and Facilities, and for the use of the balcony, patio, storage areas and parking spaces.
 - (c) Except and reserve, with respect to the undivided percentage interest in the Common Areas and Facilities, non-exclusive easements appurtenant to all Units for ingress, egress, support and repair and exclusive easement appurtenant to each Unit for the use of the balcony, patio, storage areas and parking spaces.
 - (d) Include, with respect to the undivided percentage interest in the Common Areas and Facilities, non-exclusive easements throughout each Unit for support and repair of the Common Areas and Facilities and non-exclusive easements for encroachment upon the air space of all the Units by and for the portions of the Common Areas and Facilities lying within the Units.

**ARTICLE XVIII
MAINTENANCE OF UNITS**

- 18.1 Each Unit Owner, at his own expense, shall keep the interior of his Unit and its equipment and appurtenances in good order, condition and repair, and in a clean and sanitary condition, and shall do all redecorating and painting which may at any time be necessary to maintain the good appearance of his Unit. Except to the extent that the Board, the Association or the Unit Owner is protected by insurance against such injury, the Unit Owner shall repair all injury or damages to the Unit, or condominium project caused by the act, negligence or carelessness of the Unit Owner or that of any lessee or subleasee or any member of the Unit

Owner's family or of the family of any lessee or subleasee, and all such repairs, redecorating and painting shall be a quality and kind equal to the original work. In addition to decorating and keeping the interior of the Unit in good repair, the Unit Owner shall be (except to the extent covered by the Association's insurance) responsible for the maintenance or replacement of any plumbing, fixtures, refrigerators, air conditioning and heating equipment, dishwashers, disposals, ranges, etc., that may be in or connected with the Unit. The Board shall be responsible for maintenance and upkeep of all conduits, ducts, plumbing and wiring and other facilities for the furnishing of heat, gas, light, power, air conditioning, water and sewer contained in the portions of the Units that service part or parts of the Property other than the Unit in which they are contained. Without the written permission of the Board first had and obtained, the Unit Owner shall not make or permit to be made any structural alteration, improvement or addition in or to the Unit, patios, balconies, garages, or in or to the exterior of the building, and shall not paint or decorate any portion of the exterior of the building in which his Unit is located.

ARTICLE XIX RIGHT OF ENTRY

- 19.1 The Board and its duly authorized agents shall have the right to enter any and all of the Units in case of an emergency originating in or threatening such Unit or any other part of the project, whether or not the Unit Owner or occupant thereof is present at the time. The committee and its duly authorized agents shall also have the right to enter into any and all of said Units at all reasonable times as required for the purpose of making necessary repairs upon the Common Areas and Facilities of the project or the purpose of performing emergency installations, alterations, or repairs to the mechanical or electrical devices or installations located therein or thereon; provided, however, such emergency installations, alterations or repairs are necessary to prevent damage or threatened damage to other Units in the project; and provided further that the Unit Owner affected by such entry shall first be notified thereof if available and if time permits.

ARTICLE XX ADMINISTRATIVE RULES AND REGULATIONS

- 20.1 The Board shall have the power to adopt and establish by resolution such building management and operational rules as it may deem necessary for the maintenance, operation, management and control of the project, and the committee may, from time to time by resolution, alter, amend and repeal such rules. When a copy of any amendment or alteration or provision for repeal of any rule or rules has been furnished to the Unit Owners, such amendment or alteration or provision for repeal of any rule or rules shall be taken to be a part of such rules. Unit Owners shall at all times obey such rules and see that they faithfully observed by those persons over whom they have or may exercise control and supervision, it being understood that such rules shall apply and be binding upon all Unit Owners and/or occupants of the condominium.

**ARTICLE XXI
OBLIGATION OF COMPLIANCE**

- 21.1 Each Unit Owner, tenant or occupant of a Unit shall comply with the provisions of the Act, this Declaration, the Bylaws, and the rules and regulations, all agreements and determinations lawfully made and/or entered into by the Board or the Unit Owners, when acting in accordance with their authority, and any failure to comply with any of the provisions thereof shall be grounds for an action by the Board to recover any loss or damage resulting therefrom or injunctive relief.

**ARTICLE XXII
DISPUTE RESOLUTION AND LIMITATION ON LITIGATION**

- 22.1 **Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes.** The Association, Unit Owners, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively the "Bound Parties"), agree to encourage the amicable resolution of disputes between the Bound Parties or involving enforcement of the provisions of this Restated Declaration, the Bylaws and any Rules and Regulations adopted by the Association, and to avoid the emotional and financial cost of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party, including without limitation, claims, grievances or disputes ("Claims") arising out of or relating to the violation, interpretation, application or enforcement of this Restated Declaration, the Bylaws, the Association rules, or the Articles of Incorporation, except those Claims exempted in Section 22(B) shall be subject to the procedures set forth in this Article 22.
- 22.2 **Exempt Claims.** The limitations in this Article 22 pertaining to exhausting administrative remedies shall not apply to the following Claims ("Exempt Claims"):
- (a) Any lien, claim, action or complaint wherein the Association or the Board alleges against a Unit Owner the nonpayment of Common Expenses, whether by special assessment or any other form of nonpayment of funds owed to the Association, or any other failure to comply with the provisions of Article 11 herein; and
 - (b) Any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of herein; and
 - (c) Any suit between Owners seeking redress on the basis of a claim which would constitute a course of action under the law of the State of Utah in the absence of a claim based on the Restated Declaration, Bylaws, Articles or Rules of the Association, if the amount in controversy exceeds \$5,000.00; and

- (d) Any fines assessed by the Association.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 22.3, but there shall be no obligation to do so.

22.3 **Mandatory Procedures for All Other Claims.** Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than a Claim exempted from this provision by Section 22.2, shall not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of such Claim until it has complied with the following procedures:

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

Claimant and is willing to meet in person with Claimant at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

- (c) **Negotiation.** Each Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. Upon receipt of a written request from any party, accompanied by a copy of the Notice, the Board (if not involved in the dispute as either a Claimant or Respondent) may appoint a representative to assist the parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the parties and to the welfare of the community.
- (d) **Meeting.** In the event that the cause of said grievance or complaint is not rectified by the parties within twenty (20) days from the date of the receipt of Respondent's response, within ten (10) days from the date of expiration of said initial twenty (20) day period, a time and place mutually acceptable to the Claimant and the Respondent shall be established for a meeting between the Claimant and the Respondent.
- (e) **Resolution or Litigation.** At such meeting, the Claimant and Respondent shall be entitled, but not required, to be represented by counsel. The parties, and/or counsel for the Claimant and counsel for the Respondent shall attempt to reach an amicable solution to the grievance or complaint. In the event that the parties are not able to reach such a solution within thirty (30) days from the date of the meeting between the Claimant and the Respondent, the Claimant shall then be entitled to proceed to have the matter judicially determined. Any resolution by the parties shall be reduced to writing and signed by each party or the party's legal representative prior to the end of the thirty (30) day period referred to herein.
- (f) **Exhaustion of Remedies Required.** All grievances and complaints of Claimants shall follow procedure outlined and set forth herein prior to the commencement of any litigation relative to said grievances and complaints. However, if a Respondent fails to provide the written response required within ten (10) days, or if either party refuses to meet in good faith within the time frames set forth herein to discuss resolution of the grievance or complaint, the non-offending party shall be released from the obligation to comply with this Article 23 and may seek judicial relief without the need to wait for additional time periods to expire.

22.4 **Allocation of Costs of Resolving Claims.** Each Party shall bear all of its own costs incurred prior to and during the proceedings described in Section 22.3, including the fees of its attorney or other representative.

22.5 **Enforcement of Resolution.** If the parties agree to resolve any Claim through negotiation in accordance with Section 22.3 and any party thereafter fails to abide by the terms of such agreement, then any other party may file suit to enforce such agreement without the need to again comply with the procedures set forth in Section 22.3. In such event, the party taking action to enforce the agreement shall be entitled to recover from the non-complying party (or

if more than one non-complying party, from all such parties pro rata) all costs incurred in enforcing such agreement, including without limitation attorney fees and court costs.

ARTICLE XXIII RESERVE FUND

- 23.1 **Reserve Analysis Frequency.** The Board shall cause a reserve analysis to be conducted no less frequently than every six years or as required by Utah law. The Board's initial reserve analysis must be prepared prior to June 30, 2012. The Board shall thereafter review and, if necessary, update a previously conducted reserve analysis no less frequently than every three years. The Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the reserve analysis.
- 23.2 **Reserve Fund Allowed Uses.** The Board may not use money in a reserve fund:
- (a) for daily maintenance expenses, unless a Majority of the Owners vote to approve the use of reserve fund money for that purpose; or
 - (b) for any purpose other than the purpose for which the reserve fund was established, unless a Majority of the Owners vote to approve the use of reserve fund money for another purpose.
- 23.3 **Reserve Fund Collection.** Based on the results of the reserve analysis, the Board shall create a reserve fund into which the Board shall cause to be deposited those Common Area Assessments collected from Owners for the purpose of funding the reserve fund.
- 23.4 **Reserve Fund Presentation.** The Board shall annually, either at the annual meeting of owners or at a special meeting of owners, (i) present the reserve study to the owners, and (ii) provide an opportunity for owners to discuss reserves and to vote on whether to fund the reserve fund and, if so, how to fund it and in what amount. The Board shall keep minutes of each such meeting held under this section and indicate in the minutes any decision relating to funding the reserve fund. For purposes of this section only, a quorum for purposes of voting to fund the reserve fund, shall be those owners who are present at the meeting at which the reserve study is presented and at which its funding is presented for a vote.
- 23.5 **Fund Maintenance.** The Board shall cause an Assessment to be made against all Owners consistent with the vote of the Owners regarding the manner and amount of funds to be placed in the reserve fund, which Assessment shall be collected on the same terms and conditions as other Common Expenses. The Board shall maintain a reserve fund separate from other funds of the Association. This Subsection may not be construed to limit a Board from prudently investing money placed in a reserve fund account.
- 23.6 **Definitions.** As used herein, "reserve analysis" means an analysis to determine:
- (a) the need for a reserve fund to accumulate money to cover the cost of repairing,

replacing, and restoring Common Areas and Facilities that have a useful life of three years or more, but excluding any cost that can reasonably be funded from the general budget or other funds of the Association; and

- (b) the appropriate amount of any reserve fund.
- (c) The reserve fund shall be maintained out of regular assessments for Common Expenses.

ARTICLE XXIV INDEMNIFICATION OF BOARD

- 24.1 Each member of the Board shall be indemnified and held harmless by the Unit Owners against all costs, expenses and liabilities whatsoever, including without limitation attorney fees reasonably incurred by him involved by reason of his being or having been a member of said committee, except in such cases wherein the member of the Board is adjudged guilty of gross negligence, willful misfeasance or malfeasance in the performance of his duties.

ARTICLE XXV AMENDMENT

- 25.1 The Unit Owners shall have the right to amend this Restated Declaration and/or the Map, with or without a meeting, upon the approval and consent of Unit Owners representing not less than two-thirds of the undivided interests in the Common Areas and Facilities. Any amendment shall be accomplished by the recordation of an instrument wherein the Board certifies that the Unit Owners representing at least two-thirds of the undivided interests in the Common Areas and Facilities have approved and consented to any such amendment.

ARTICLE XXVI VOTING

- 26.1 At any meeting of the Association, each Unit Owner, either in person or by proxy, shall be entitled to the same number of votes as the percentage of undivided interest of the Common Areas and Facilities assigned to his Unit in Appendix "B", as amended. If there is more than one Unit Owner with respect to a particular Unit, any or all of such Unit Owners may attend any meeting of the Association, but it shall be necessary for all such Unit Owners present to act unanimously in order to cast the votes pertaining to their Units.

ARTICLE XXVII NOTICES

- 27.1 Any notice permitted or required to be delivered as provided herein may be delivered either personally, by mail, or electronically as provided in the Bylaws. If delivery is made by mail, it shall be deemed to be delivered 24 hours after a copy of the same has been deposited in the U.S. Mail, postage prepaid, return receipt requested. Notice to Unit Owners shall be

addressed to each Unit Owner at the address given by such Unit Owner to the Board for the purpose of service of such notice or to the Unit of such Unit Owner if no such address has been given to the Board. If no address is provided by a Unit Owner to the Board, the Board shall not be liable for any lack of notice to the Unit Owner who fails to provide a current address. Such address may be changed from time to time by notice in writing to the Board at the then current address of the Association.

**ARTICLE XXVIII
NO WAIVER**

- 28.1 The failure of the Board or its contractors to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Restated Declaration or the Bylaws, or to exercise any right or option herein contained, or to serve any notice or to institute any action, shall not be construed as a waiver or a relinquishment for the future such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect. The receipt and acceptance by the Board or its contractor of the payment of any assessment from a Unit Owner, with knowledge of the breach of any covenant hereof, shall not be deemed a waiver of such breach, and no waiver by the Board of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board.

**ARTICLE XXIX
SEVERABILITY**

- 29.1 The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections hereof shall not affect the remaining portions of this instrument or any part thereof, all of which are inserted conditional on their being held valid in law, and in the event that one or more of the phrases, sentences, clauses, paragraphs or sections contained herein should be invalid or should be operated to render this agreement invalid, this instrument shall be construed as if such invalid phrase, or phrases, sentence or sentences, clause or clauses, paragraph or paragraphs, section or sections, has not been inserted.

**ARTICLE XXX
TOPICAL HEADINGS**

- 30.1 The topical headings of the paragraphs contained in this Restated Declaration are for convenience only and do not define, limit or construe the contents of the paragraphs or of the Declaration are for convenience only and do not define, limit or construe the contents of the paragraphs or of the Declaration.

**ARTICLE XXXI
EFFECTIVE DATE**

- 31.1 This Declaration shall take effect upon recording.

CERTIFICATION

IN WITNESS WHEREOF, the undersigned president of the Country Oaks Condominium Board, hereby certifies that condominium Unit Owners holding sixty-seven percent (67%) or more of the undivided Ownership interest in the Common Areas and Facilities have voted to approve this Restated Declaration.

IN WITNESS WHEREOF, this 13 day of August, 2012.

By: Shawn Christensen
President

STATE OF UTAH }
 : ss
COUNTY OF DAVIS }

On the 13 day of August, 2012, personally appeared before me Shawn Christensen who being duly sworn, did say he is the president of the Country Oaks Condominium Board and that the within and foregoing instrument was signed on behalf of said Board by authority of the Board and duly acknowledged to me that he is the signer of the above instrument.



Ligia E Parker
NOTARY PUBLIC

Appendix A Legal Description for Units in Country Oaks Condominium

All of phases 1 through 13, Country Oaks Condo and Country Oaks Condominium, according to the official plat thereof, including but not limited to the following, located in Davis County, Utah:

- All of Units 1A, 1B, 1C, 1D, Country Oaks Condo Phase 1
[09-094-0001 through 09-094-0004]
- All of Units 2A, 2B, 2C, 2D, Country Oaks Condo Phase 1
[09-094-0005 through 09-094-0008]
- All of Units 1 through 10, Country Oaks Condo Phase 2
[09-093-0001 through 09-093-0010]
- All of Units 1 through 8, Country Oaks Condo Phase 3
[09-094-0009 through 09-094-0016]
- All of Units 1 through 3, Country Oaks Condo Phase 4
[09-094-0017 through 09-094-0019]
- All of Units 1 through 9, Country Oaks Condo Phase 5 (Amended)
[09-094-0020 through 09-094-0028]
- All of Units 1 through 5, Country Oaks Condo Phase 6
[09-094-0029 through 09-094-0033]
- All of Units 1 through 13, Country Oaks Condo Phase 7-1
[09-329-0034 through 09-329-0046]
- All of Units 1 through 7, Country Oaks Condo Phase 7-2
[09-093-0011 through 09-093-0017]
- All of Units 17 through 24, Country Oaks Condo Phase 7-2
[09-093-0027 through 09-093-0034]
- All of Units 25 through 30, Country Oaks Condo Phase 7-2 (Amended)
[09-254-0025 through 09-254-0030]
- All of Units 1 through 4, Country Oaks Condominium Phase 9
[09-310-0001 through 09-310-0004]
- All of Units 5 through 6, Country Oaks Condominium Phase 10
[09-314-0005 through 09-314-0006]

All of Units 7 through 8, Country Oaks Condominium Phase 11
[09-318-0007 through 09-318-0008]

All of Units 9 through 12, Country Oaks Condominium Phase 12
[09-322-0009 through 09-322-0012]

All of Units 13 through 14, Country Oaks Condominium Phase 13
[09-329-0013 through 09-329-0014]

Appendix B
COUNTRY OAKS CONDOMINIUM

PHASE ONE

<u>Unit:</u>	<u>Size in Sq. Ft.</u>	<u>Undivided Interest in Common Areas</u>
1A	1650	1.227%
1B	1740	1.294%
1C	1680	1.249%
1D	1475	1.097%
2A	1650	1.227%
2B	1500	1.115%
2C	1500	1.115%
2D	1650	1.227%

PHASE TWO

1	1364	1.014%
2	1364	1.014%
3	1491	1.109%
4	1491	1.109%
5	1491	1.109%
6	1491	1.109%
7	1491	1.109%
8	1491	1.109%
9	1524	1.133%
10	1524	1.133%

PHASE THREE

1	1519	1.130%
2	1519	1.130%
3	1519	1.130%
4	1519	1.130%
5	1519	1.130%
6	1163	0.865%
7	1163	0.865%
8	1163	0.865%

PHASE FOUR

1	1524	1.133%
2	1524	1.133%
3	1524	1.133%

PHASE FIVE

<u>Unit:</u>	<u>Size in Sq. Ft.</u>	<u>Undivided Interest in Common Areas</u>
1	1440	1.071%
2	1440	1.071%
3	1440	1.071%
4	1440	1.071%
5	1440	1.071%
6	1440	1.071%
7	1440	1.071%
8	1410	1.049%
9	1410	1.049%

PHASE SIX

1	1524	1.133%
2	1524	1.133%
3	1524	1.133%
4	1524	1.133%
5	1524	1.133%

PHASE SEVEN-1

1	1440	1.071%
2	1440	1.071%
3	1440	1.071%
4	1440	1.071%
5	1440	1.071%
6	1440	1.071%
7	1440	1.071%
8	1440	1.071%
9	1410	1.049%
10	1410	1.049%
11	1440	1.049%
12	1440	1.071%
13	1440	1.071%

PHASE SEVEN-2

1	1440	1.071%
2	1440	1.071%
3	1440	1.071%
4	1440	1.071%
5	1440	1.071%
6	1410	1.049%
7	1410	1.049%

<u>Unit:</u>	<u>Size in Sq. Ft.</u>	<u>Undivided Interest in Common Areas</u>
17	1440	1.071%
18	1440	1.071%
19	1410	1.049%
20	1410	1.049%
21	1410	1.049%
22	1410	1.049%
23	1410	1.049%
24	1410	1.049%
25	1722	1.281%
26	1722	1.281%
27	1710	1.272%
28	1710	1.272%
29	1710	1.272%
30	1710	1.272%
PHASE NINE		
1	1585	1.179%
2	1585	1.179%
3	1585	1.179%
4	1585	1.179%
PHASE TEN		
1	1585	1.179%
2	1585	1.179%
PHASE ELEVEN		
1	1685	1.253%
2	1685	1.253%
PHASE TWELVE		
9	1185	0.881%
10	1185	0.881%
11	1185	0.881%
12	1185	0.881%
PHASE THIRTEEN		
13	1325	0.985%
14	1477	<u>1.098%</u>
TOTAL		100.00%

Appendix C

BYLAWS

of

**COUNTRY OAKS CONDOMINIUM
HOMEOWNERS ASSOCIATION, INC.**

BYLAWS
of
**COUNTRY OAKS CONDOMINIUM
HOMEOWNERS ASSOCIATION, INC.**

An association of Unit Owners under the Utah Condominium Ownership Act and a Utah Nonprofit Corporation under the Revised Nonprofit Corporations Act

The administration of the Country Oaks Condominium Homeowners Association (the "Association") shall be governed by these Bylaws, by the Utah Condominium Ownership Act, Utah Code Annotated §§57-8-1 et seq (the "Act") and by the Restated Declaration.

ARTICLE I
Application of Bylaws

- 1.1 All present and future Unit Owners, mortgagees, lessees and occupants of Units and their employees, and any other persons who may use the facilities of the property in any manner are subject to the Restated Declaration, these Bylaws and all rules made pursuant hereto and any amendment thereof. The acceptance of a deed or conveyance or the entering into of a lease or the act of occupancy of a Unit shall constitute an agreement that the provisions of the Restated Declaration and these Bylaws (and any rules and regulations made pursuant thereto), as they may be amended from time to time, are accepted.

ARTICLE II
Board of Directors

- 2.1 The administration of the property on behalf of the Association shall be conducted by a Board of Directors of five natural individuals.
- 2.2 At every annual meeting the Association shall elect the members of the Board of Directors, pursuant to paragraph 2.3 below. At least thirty (30) days prior to any annual meeting of the Association, the Board of Directors shall appoint from the Unit Owners a nominating committee of not less than three (3) members (one of whom shall be a member of the then Board of Directors) who shall recommend to the annual meeting one nominee for each position on the Board of Directors to be filled at that particular annual meeting. Nominations for positions on the Board of Directors may also be made by petitions filed with the secretary of the Association at least seven (7) days prior to the annual meeting of the Association, which petition shall be signed by ten (10) or more Unit Owners and signed by the nominee named therein indicating his willingness to serve as a member of the Board of Directors, if elected. Members of the Board of Directors shall be required to be Unit Owners, and must be natural individuals and residents of the State of Utah.
- 2.3 Members of the Board of Directors shall serve for a term of two (2) years. The terms of no

more than three members will end each year. The members of the Board of Directors shall serve until their death, resignation or removal. Any member of the Board of Directors who fails to attend three consecutive Boards of Directors meetings or fails to attend at least 25% of the Board of Directors meetings held during any calendar year shall automatically forfeit his membership on the Board of Directors.

- 2.4 Any member of the Board of Directors may resign at any time by giving written notice to the president of the Association, or the remaining Board of Directors members. Any member of the Board of Directors may be removed from membership on the Board of Directors by a two-thirds majority vote of the Association. Whenever there shall occur a vacancy on the Board of Directors due to death, resignation, removal or any other cause, the remaining members shall elect a successor member to serve until the next annual meeting of the Association, at which time said vacancy shall be filled by a vote of the Association for the unexpired term, if any.
- 2.5 The members of the Board of Directors shall receive no compensation for their services unless expressly approved by a majority of the Association; provided, however, that any member of the Board of Directors may be employed by the Association in another capacity and receive compensation for such employment.
- 2.6 The Board of Directors, for the benefit of the property and the Association, shall manage the business, property and affairs of the property and the Association and enforce the provisions of the Restated Declaration, these Bylaws, the house rules and the administrative rules and regulations governing the property. The Board of Directors shall have the powers, duties and responsibilities with respect to the property as contained in the Act, the Restated Declaration and these Bylaws.
- 2.7 The meetings of the Board of Directors shall be held at such places within the State of Utah as the Board of Directors shall determine. Three (3) members of the Board of Directors shall constitute a quorum, and if a quorum is present, the decision of a majority of those present shall be the act of the Board of Directors. The Board of Directors shall annually elect all of the officers of the Association. The meeting for the election of officers shall be held at the first meeting of the Board of Directors immediately following the annual meeting of the Association.
- 2.8 Special meetings of the Board of Directors may be called by the president or by any two Board of Directors members.
- 2.9 Regular meetings of the Board of Directors may be held without call or notice. The person or persons calling a special meeting of the Board of Directors shall, at least ten (10) days before the meeting, give notice thereof by any usual means of communication. Such notice need not specify the purpose for which the meeting is called, if an agenda is prepared for such a meeting, the meeting need not be restricted to discussions of those items listed on the agenda.
- 2.10 Any member of the Board of Directors may, at any time, waive notice of any meeting of the

Board of Directors in writing, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member of the Board of Directors at a meeting shall constitute a waiver of notice of such meeting except if a Board of Directors member attended the meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all the members of the Board of Directors are present at any meeting of the Board of Directors, no notice shall be required and any business may be transacted at such meeting.

- 2.11 Any two (2) persons who are designated of record as members of the most recent Board of Directors (regardless of whether or not they shall still be members) may execute, acknowledge and record an affidavit stating the names of all of the members of the then current management. The most recently recorded of such affidavits shall be prima facie evidence that the persons named therein are all of the incumbent members of the Board of Directors and shall be conclusive evidence thereof in favor of all persons who rely thereon in good faith.
- 2.12 The fiscal year shall be from April 1st to March 31st or as determined by the Board of Directors.

ARTICLE III Meetings of the Association

- 3.1 The presence in person or by proxy at any meeting of the Association of fifty percent (50%) of the percentage of ownership by Unit Owners in the Common Areas and Facilities in response to notice of all Unit Owners of record properly given shall constitute a quorum. In the event that fifty percent (50%) of the Ownership is not present in person or by proxy, the meeting shall be adjourned for twenty-four (24) hours, at which time it shall reconvene and any number of Units owners present at such subsequent meeting shall constitute a quorum. Unless otherwise expressly provided in the Restated Declaration, any action may be taken at any meeting of the Unit Owners upon a majority vote of the Unit Owners who are present in person or by proxy and who are voting.
- 3.2 There shall be an annual meeting of the Association on the second Tuesday of July at 7:00 p.m. at the property or at such other reasonable place or time (not more than sixty (60) days before or after such date) as may be designated by written notice by the Board of Directors delivered to the Unit Owners not less than fifteen (15) days prior to the date fixed for said meeting. At or prior to an annual meeting, the Board of Directors shall furnish to the Unit Owners: (i) a budget for the coming fiscal year that shall itemize the estimated Common Expenses of the coming fiscal year with the audited statement of the Common Expenses itemizing receipts and disbursements for the previous and current fiscal year, together with the allocation thereof to each Unit Owner; and (ii) an audited statement of the Common Expenses itemizing receipts and disbursements for the previous and current fiscal year, together with the allocation thereof to each Unit Owner. Within ten (10) days after the annual meeting, that budget statement shall be delivered to the Unit Owners who were not present the annual meeting.

- 3.3 Special meetings of the Association may be held at any time at the property or at such other reasonable place to consider matters which, by the terms of the Restated Declaration, require the approval of all or some of the Unit Owners, or for any other reasonable purpose. Special meetings shall be called by written notice, signed by a majority of the Board of Directors, or by Unit Owners representing at least one-third (1/3) in interest of the undivided ownership of the Common Areas and Facilities and delivered to all Unit Owners not less than fifteen (15) days prior to the date fixed for said meeting. The notices shall specify the date, time and place of the meeting, and the matters to be considered.
- 3.4 Robert's Rules of Order (latest edition) shall govern the conduct of the Association's meeting when not in conflict with the Restated Declaration or these Bylaws.

ARTICLE IV

Officers

- 4.1 All officers and employees of the Association shall serve at the will of the Board of Directors. The officers shall be a president, secretary and treasurer. The Board of Directors may appoint such other assistant officers as the Board of Directors may deem necessary. Officers shall be required to be a Unit Owner, and the president must be a member of the Board of Directors. No officer shall receive compensation for serving as such. Officers shall be annually elected by the Board of Directors and may be removed and replaced by the Board of Directors. The Board of Directors may, in its discretion, require that officers (and other employees of the Association) be subject to fidelity bond coverage.
- 4.2 The president shall be the chief executive of the Board of Directors and shall preside at all meetings of the Unit Owners and of the Board of Directors and may exercise the powers allocable to the presiding officer of an Association, including the appointment of committees. The president shall exercise general supervision over the property and its affairs. He shall sign on behalf of the Association all conveyances, mortgages and contracts of material importance to its business. He shall do and perform all acts which the Board of Directors may require.
- 4.3 The secretary shall keep minutes of all proceedings of the Board of Directors and of the meetings of the Association and shall keep such books and records as may be necessary and appropriate for the records of the Unit Owners and the Board of Directors. In the absence or inability of the president, the secretary shall perform the functions of the president.
- 4.4 The treasurer shall be responsible for the fiscal affairs of the Association, but may delegate the daily handling of funds and the keeping of records to a manager or managing company.

ARTICLE V

Common Expenses; Assessments

- 5.1 All assessments shall be made in accordance with the general provisions of Article 11 of the Restated Declaration.

- 5.2 Within thirty (30) days prior to the annual meeting of the Association, the Board of Directors shall estimate the Common Expenses for the following year. The estimated Common Expenses shall include such amounts as the Board of Directors may deem proper for general working capital, for the general operating reserve, for a reserve fund for replacements and major maintenance (which reserve fund shall be separately voted on by the Owners as provided in the Restated Declaration, Article 23) and shall take into account any expected income, surplus or deficit in the Common Expenses for any prior year. These estimated Common Expenses shall be presented at the annual meeting and thereafter shall be assessed on a monthly basis to the Unit Owners in proportion to their percentage of undivided interest in the Common Areas and Facilities as set forth in the Restated Declaration. If the estimated Common Expenses prove inadequate for any reason, including nonpayment of any Unit Owner's assessments, the Board of Directors may, by resolution duly adopted, make additional assessments, which shall be assessed to the Unit Owners in the same manner as the estimated Common Expenses. Each Unit Owner shall be obligated to pay to the Board of Directors assessments made pursuant to this Article on or before the first day of each month, or in such other reasonable manner as the Board of Directors shall designate. The funds received by the Board of Directors from assessments shall be kept in a separate account known as the "Common Expense fund" and shall be expended by the Board of Directors only in accordance with the provisions of the Act, the Restated Declaration and these Bylaws.
- 5.3 The failure by the Board of Directors before the expiration of any year, to estimate the common expense as required herein, shall not be deemed a waiver or modification in any respect of the provisions of the Restated Declaration or these Bylaws or a release of the Unit Owner from the obligation to pay any past or future assessments, and the estimated common expenses fixed for the previous and current year shall continue until a new estimate is fixed.
- 5.4 Amendments to this Article 5 shall be effective only upon unanimous written consent of the Unit Owners and their mortgagees.
- 5.5 No Unit Owner may exempt himself from liability for Common Expenses by waiver of the use or enjoyment of any of the Common Areas and Facilities or by abandonment of his Unit.
- 5.6 The treasurer shall keep detailed records of all receipts and expenditures, including expenditures affecting the Common Areas and Facilities, specifying and itemizing the maintenance, repair and replacement expenses of the Common Areas and Facilities and any other expenses incurred. Such record shall be available for examination by the Unit Owners during regular business hours. In accordance with the actions of the Board of Directors assessing Common Expenses against the Units and Unit Owners, the treasurer shall keep an accurate record of such assessments and of the payments thereof by each Unit Owner.
- 5.7 All Common Expense assessments shall be a separate, distinct and personal liability of the owner of the Unit at the time each assessment is made. The Board of Directors shall have the rights and remedies contained in the Act and in the Restated Declaration to enforce the collection of assessments for Common Expenses.
- 5.8 Any person who shall have entered into a written agreement to purchase a Unit shall be

entitled to obtain a written statement from the treasurer setting forth the amount of unpaid assessments charged against the Unit and its Owners, and if such statement does not reveal the full amount of the unpaid assessments as of the date it is rendered, neither the purchaser nor the Unit shall be liable for the payments of an amount in excess of the unpaid assessments shown thereon, provided that the former Unit Owner grantor shall remain so liable. Any such excess which cannot be promptly collected from the former Unit Owner grantor shall be reassessed by the Board of Directors as a Common Expense to be collected from all Unit Owners, including without limitation the purchaser of the Unit, his successors and assigns. The new Unit Owner shall and the former Unit Owner shall not be liable for any assessments made after the date of transfer of title to a Unit, even though the Common Expenses for the expenses incurred or the advances made by the Board of Directors for which the assessment is made relate in whole or in part to any period prior to that date.

- 5.9 In the event that title to a Unit is transferred at sheriff's sale pursuant to execution upon any lien against the Unit, the Board of Directors shall give notice in writing to the sheriff of any unpaid assessments for Common Expenses which are a lien against the Unit, and for any expenses of or advances by the Board of Directors which have not theretofore been reduced to a lien, which shall be paid out of the proceeds of the sale prior to the distribution of any balance to the former Unit Owner against whom the execution was issued. The purchaser at such sheriff's sale and the Unit involved shall not be liable for unpaid assessments for Common Expenses and for any expenses of or advances by the Board of Directors which became due prior to the sheriff's sale of the Unit. Any such unpaid assessments which cannot be promptly collected from the former Unit Owner shall be reassessed by the Board of Directors as a Common Expense to be collected from all of the Unit Owners, including the purchaser who acquired title at the sheriff's sale, his successors and assigns. To protect its right to collect unpaid assessments for Common Expenses which are a lien against a Unit, and for any expenses of and advances by the Board of Directors, the Board of Directors may on behalf of all the Unit Owners, purchase the Unit at sheriff's sale, provided such action is authorized by the affirmative vote of a majority of the members of the Board of Directors.
- 5.10 In addition to the statements issuable to purchasers of Units, the Board of Directors shall provide a current statement of unpaid assessments for Common Expenses and for any expenses of and advances by the Board of Directors in respect of the Unit, to the Unit Owner, to any person who shall have entered into a binding agreement to purchase the Unit and to any mortgagee on request at reasonable intervals.
- 5.11 In all cases where all or part of any assessments for Common Expenses and for any expenses of and advances by the Board of Directors cannot be promptly collected from the persons or entities liable therefor under the Act, Restated Declaration or Bylaws, the Board of Directors shall reassess the same as a Common Expense, without prejudice to its rights of collection against such persons or entities.

ARTICLE VI

Electronic Notice of Meetings

- 6.1 **Electronic Notices** Any notice permitted or required to be delivered by the Board or from

the Association to the Owners may be delivered personally, by U.S. mail, or by electronic means.

- (a) If notice is by mail, it shall be deemed to have been delivered 24 hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to each Owner at the address given by such person to the Board of Directors for the purpose of service of such notice or to the Unit of such person if no address has been given. Such addresses may be changed by Owners from time to time by notice in writing to the Board of Directors.
- (b) If notice is by electronic means, any notice delivered by the Association to Owners under the provisions of the Restated Declaration or these Bylaws may be sent by electronic means, including text message, email, or the Association's website. The Association shall maintain records of all notices sent to Members by electronic means, including the electronic address to which notice was sent. When a notice is sent electronically, the Association shall compile a list of Owners' current electronic addresses (such as email or text messaging addresses or other types of well known electronic forms, such as Facebook) and the Association shall send notification of all Association meetings and business to the electronic address of the Owners. The Association secretary shall thereafter send an electronic notice, via email or a comparable electronic means, of all Association meetings and business to those Owners who do not object to electronic notification in this manner. A member may, by written demand, require the Association to provide written notice to the Unit Owner by mail.
- (c) If notice is by personal means, notice may be delivered to Owners by hand delivery directly to the Owner or a responsible occupant of an Owner's Unit, or by securely attaching a copy of the notice to the front entry door of the Owner's Unit.

ARTICLE VII

Litigation

- 7.1 If any action is brought by one or more but less than all Unit Owners on behalf of the Association and recovery is had, the plaintiff's expenses, including reasonable counsel's fees, shall be a Common Expense, provided, however, that if such action is brought against the Unit Owners or against the Board of Directors, the officers, employees or agents thereof, in their capacities as such, with the result that the ultimate liability asserted would, if proved, be borne by all the Unit Owners, the plaintiff's expenses, including counsel fees, shall not be charged to or borne by the other Unit Owners, as a Common Expense or otherwise.
- 7.2 Complaints brought against the Association, the Board of Directors or the officers, employees or agents thereof, in their respective capacities as such, or the property as a whole, shall be directed to the Board of Directors, which shall promptly give written notice thereof to the Unit Owners and any mortgagees and shall be defended by the Board of Directors, and the Unit Owners and mortgagees shall have no right to participate other than through the Board of Directors in such defense. Complaints against one or more, but less than all Unit

Owners shall be directed to such Unit Owners, who shall promptly give written notice thereof to the Board of Directors and to the mortgagees affecting such Units, and shall be defended by such Unit Owners.

ARTICLE VIII

Abatement and Enjoinment of Violations by Unit Owners

- 8.1 The violation of any administrative rules or regulations adopted by the Board of Directors or the breach of any provision contained herein, or the breach of any provision of the Restated Declaration, shall give the Board of Directors the right, in addition to any other rights set forth in these Bylaws:
- (a) To enter the Unit in which or as to which such violation or breach exists and to similarly abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board of Directors shall not thereby be deemed guilty in any manner of trespass; or
 - (b) To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

ARTICLE IX

Accounting

- 9.1 The books and accounts of the Association shall be kept in accordance with generally accepted accounting procedures under the direction of the treasurer.
- 9.2 At the close of each fiscal year, the books and records of the Board of Directors shall be audited by a certified public accountant approved by the Association.

ARTICLE X

Special Committees

- 10.1 The Board of Directors by resolution may designate one or more special committees, each committee to consist of two (2) or more Unit Owners, which to the extent provided in said resolution, shall have and may exercise the powers set forth in said resolution. Such special committee or committees shall have such name or names as may be determined from time to time by the Board of Directors. Such special committees shall keep regular minutes of their proceedings and report the same to the Board of Directors when required. The members of such special committee or committees designated shall be appointed by the Board of Directors or the president. The Board of Directors or the president may appoint Unit Owners to fill vacancies on each of said special committees occasioned by death, resignation, removal or inability to act for any extended period of time.

ARTICLE XI
Amendment of Bylaws

- 11.1 These Bylaws may be amended by a two-thirds (2/3) affirmative vote of the Association at a meeting duly called for such purpose. Upon such an affirmative vote, the Board of Directors shall acknowledge the amended bylaws, setting forth the fact of the required affirmative vote of the Unit Owners and the amendment shall be effective upon recording.

ARTICLE XII
Severability

- 12.1 The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion hereof shall not affect the validity or enforceability of any other provision hereof.

ARTICLE XIII
Captions

- 13.1 The captions herein are inserted only as a matter of convenience and for reference and in no way to define, limit or describe the scope of these Bylaws nor the intent of any provision hereof.

ARTICLE XIV
Effective Dates

- 14.1 These Bylaws shall take effect upon recording of the Restated Declaration of which they are a part.