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DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS,  
AND EASEMENTS FOR THE HAVEN COTTAGES AND VILLAS

A 55 YEAR AND OLDER COMMUNITY

SOUTH JORDAN, UTAH

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DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS FOR  
THE HAVEN COTTAGES AND VILLAS

A 55 Year and Older Community

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS FOR THE HAVEN COTTAGES AND VILLAS (this "**Declaration**") is made as of this \_\_\_ day of \_\_\_\_\_, 2020, by Haven SJ LLC, a Utah limited liability company ("**Declarant**").

**RECITALS:**

- A. Declarant holds legal title to certain real property located in the County of Salt Lake, State of Utah to be known as "The Haven Cottages and Villas" which property is described in Exhibit A, attached hereto and incorporated herein (the "**Property**" and/or the "**Community**").
- B. To establish efficient management and to preserve the value and appearance of the Community, the Declarant desires to create a nonprofit corporation that would be assigned the powers and delegate the duties of (i) managing certain aspects of the Community, (ii) maintaining and administering the Common Area, (iii) administering, collecting and disbursing funds pursuant to the provisions regarding Assessments and charges hereinafter created and referenced, and (iv) performing such other acts that generally benefit the Community and the Owners. The Haven Cottages and Villas Owners Association, Inc., a Utah nonprofit corporation, has or will be incorporated under the Laws of the State of Utah for the purpose of exercising the powers and functions aforesaid.
- C. Declarant desires to establish for its own benefit and for the mutual benefit of all future Owners, Mortgagees, Residents, Occupants or other holders of an interest in the Community, or any part thereof, certain easements and rights and certain mutually beneficial covenants, restrictions and obligations with respect to the proper development, use and maintenance of the various Parcels within the Community.
- D. Declarant desires and intends that the Owners, Mortgagees, Lessees, Occupants, Residents and other Persons hereafter acquiring any interest in or otherwise utilizing property within the Community, shall at all times enjoy the benefits of, and shall hold their interest subject to the rights, easements, privileges, covenants and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the aesthetic and cooperative aspects of the Community and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Community.
- E. By this Declaration, Declarant intends to establish a common scheme and plan for the possession, use, enjoyment, repair, maintenance, restoration and improvement of the

Community and the interests therein conveyed and to establish thereon a planned community.

- F. In order to cause this Declaration to run with the land comprising the Community and to be binding upon the Community and the Owners thereof from and after the date of this Declaration is Recorded, Declarant hereby makes all conveyances within the Community, whether or not so provided in the conveying instruments, subject to the Covenants herein set forth; and by accepting deeds, leases, easements or other grants or conveyances to any portion of the Community, the Owners and other transferees for themselves and their heirs, executors, administrators, trustees, personal representatives, successors and assigns, agree that they shall be personally bound by all of the Covenants (including but not limited to the obligation to pay Assessments) hereinafter set forth except to the extent such Persons are specifically excepted herefrom.
- G. The Project created by this Declaration is not a cooperative.

NOW, THEREFORE, Declarant does hereby declare and establish the following covenants, conditions, easements, and protective covenants:

## **ARTICLE I** **Definitions**

Capitalized defined terms that are not otherwise defined in the body of this Declaration shall have the meanings set forth below.

1.1 “**Act**” means the Community Association Act (U.C.A. §§57-8a-101 et seq.), as amended from time to time.

1.2 “**Action**” has the meaning ascribed to it in Section 12.18.5.9.

1.3 “**Age Qualified Occupant**” shall mean and refer to any person 55 years of age or older who occupies a Residential Unit.

1.4 “**Age Restricted Community**” shall mean and refer to a development in compliance with all Age Restriction Laws.

1.5 “**Age Restriction**” shall mean and refer to the requirement that the Project provide housing primarily for persons 55 years of age or older and shall be operated as an Age Restricted Community such that at least 80% of the occupied Residential Units shall be occupied by at least one person 55 years of age or older.

1.6 “**Age Restriction Laws**” shall mean the Housing for Older Persons Act of 1995.

1.7 “**Amount Owning**” has the meaning ascribed to it in Section 12.14.

1.8 “**Architectural Control Committee**” or “**ACC**” means the Architectural Control

Committee established by the Association.

1.9 “**Architectural Guidelines**” mean those guidelines described in, Section 13.3 of this Declaration.

1.10 “**Area of Common Responsibility**” means the Community Common Area and the Community Common Facilities, together with those areas, if any, which by the terms of this Declaration, a development agreement, plat designation or other agreement with a Municipal Authority become the responsibility of the Association, such as any sidewalks located within a public right-of-way. The office of the property manager contracting with the Association, if located within the Community, or any public rights-of-way within or adjacent to Community, may be part of the Area of Common Responsibility.

1.11 “**Articles of Incorporation**” or “**Articles**” mean the Articles of Incorporation of The Haven Cottages and Villas Owners Association, Inc., a Utah nonprofit corporation, as filed with the Division of Corporations and Commercial Code of the State of Utah.

1.12 “**Assessment**” means a charge imposed or levied by the Association on or against a Unit or an Owner pursuant to the terms of this Declaration or any other Governing Document, and includes a Base Assessment, a Detached Home Assessment, a Townhome Assessment, a Parcel Assessment and a Special Assessment.

1.13 “**Association**” means The Haven Cottages and Villas Owners Association, Inc., a Utah nonprofit corporation, its successors or assigns.

1.14 “**Association Warranty**” or “**Association Warranties**” has the meaning ascribed to it in Section 12.18.2.

1.15 “**Base Assessment**” means the Assessments levied against all Units in the Community to fund Common Expenses.

1.16 “**Board**” means the Board of Directors of the Association.

1.17 “**Bound Party**” has the meaning ascribed to it in Section 12.18.5.1.

1.18 “**Bulk Provider**” means a private, public or quasi-public utility or other company which provides, or proposes to provide, cable television, satellite television, high speed internet, security monitoring or other electronic entertainment, information, communication or security services, or concierge or other personal services to the Owners, Occupants, or Units within the Community pursuant to a Bulk Service Agreement.

1.19 “**Bulk Service Agreement**” means an agreement between the Association and a Bulk Provider pursuant to which the Bulk Provider would provide cable television, satellite television, high speed internet, security monitoring or other electronic entertainment, information, communication or security services, or concierge or other personal services, to Owners, Occupants or Units within the Community.

1.20 “**Bylaws**” mean and refer to the Bylaws of the Association, attached hereto as **Exhibit C** and incorporated herein by reference, as they may be amended from time to time.

1.21 “**City**” means the City of South Jordan, a Utah municipal corporation.

1.22 “**Claim**” (or collectively, “**Claims**”) means any and all claims, demands, suits, Actions, causes of action, counterclaims, judgments, liabilities, losses, damages, costs, and expenses, including, but not limited to, attorney’s fees and costs.

1.23 “**Common Area**” all the land of the Community less and except the Units that may be located within the Project from time to time, and any Improvements that may be located on such land, including the Community Common Area and the Townhome Common Area.

1.24 “**Common Expenses**” mean and include the actual and estimated expenses incurred by the Association for the general benefit of all Owners within the Community, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Bylaws, and the Articles of Incorporation of the Association, and may include, without limitation, when determined by the Board, expenses incurred in bringing or defending lawsuits and other litigation expenses.

1.25 “**Community**” means The Haven Cottages and Villas development.

1.26 “**Community Assessments**” means Assessments levied against the Units within Community to fund the costs and expenses incurred by the Association regarding Areas of Common Responsibility and the costs incurred by the Association pertaining to the Community as a whole and not primarily associated with the Townhome Common Area.

1.27 “**Community Common Area**” means (a) Common A as depicted on the Plat for The Haven Villas Phase 1A Residential Subdivision, (b) the Community Common Facilities, and (c) all personal property that the Association now or hereafter owns or otherwise holds for the common use and enjoyment of all Owners within the Community, which Community Common Area is so designated by Declarant, in Declarant’s sole discretion.

1.28 “**Community Common Facilities**” means the Improvements and facilities constructed within Common A as depicted on the Plat for The Haven Villas Phase 1A Residential Subdivision, which Improvements and facilities may, without obligation, include a clubhouse, swimming pool, Jacuzzi, pickleball court, and associated landscaping and parking.

1.29 “**Community Governing Bodies**” has the meaning ascribed to it in Section 5.5.

1.30 “**Community-Wide Standards**” means those standards of aesthetics, environment, appearance, architectural design and style, maintenance, conduct and usage generally prevailing within the Community as set forth in this Declaration.

1.31 “**Compliance Inspection**” has the meaning ascribed in Section 5.2.5.

1.32 “**Covered Loss**” has the meaning ascribed to it in Section 6.1.1.

1.33 “**Declarant**” means collectively Haven SJ LLC, a Utah limited liability company, and its successors or assigns which take title to any portion of the Community for the purpose of development and/or sale and who are designated as Declarant hereunder in a Recorded instrument executed by the immediately preceding Declarant.

1.34 “**Declarant Affiliates**” mean any entity controlling, controlled by, or under common control with Declarant or any entity in which a principal of Declarant has an interest.

1.35 “**Declaration**” means this Declaration of Covenants, Conditions, Restrictions, and Easements for The Haven Cottages and Villas.

1.36 “**Delinquent Owner**” has the meaning ascribed to it in Section 12.13.

1.37 “**Detached Home**” shall mean a single-family home that is constructed in its own standalone Parcel and does not share a common wall with another dwelling unit. It is anticipated that the Project will contain sixty nine (69) Detached Homes.

1.38 “**Detached Home Assessment**” shall mean an Assessment levied against the Detached Homes.

1.39 “**Detached Home Expenses**” shall mean the costs and expenses associated with maintaining and repairing any portion of the exterior of Detached Home lots, including, without limitation, lawn care and mowing.

1.40 “**Eligible Holder**” has the meaning ascribed to it in Section 16.1.

1.41 “**Environmental Laws**” mean all present and future Laws, orders, permits, licenses, approvals, authorizations and other requirements of any kind applicable to Hazardous Substances.

1.42 “**Exclusive Common Area**” means any Common Area located on a Parcel or within the Common Area of the Community that exclusively serves a particular Unit within the Community or that is designated as Exclusive Common Area by Declarant or the Association. Said areas may also be highlighted/cross hatched on the Plat and designed as Limited Common Area.

1.43 “**Exclusive Common Area Improvements**” means patios, decks, hot tubs, fixed barbeque equipment (i.e., not readily mobile), playground equipment, trampolines, and other such outdoor Improvements that are placed within the Exclusive Common Area.

1.44 “**FHA**” has the meaning ascribed in Section 18.1.

1.45 “**Governing Documents**” means all documents and applicable provisions thereof

as set forth in this Declaration, any Supplemental Declaration, the Bylaws and Articles Incorporation of the Association, the Plat, Rules and Regulations, Architectural Guidelines, all written decisions and resolutions of the ACC and Board, and any lawful amendments to any of the foregoing.

1.46 “Gross Sales Price” has the meaning ascribed to it in Section 12.6.

1.47 “Hazardous Substances” mean any substance: (a) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as a hazardous waste, hazardous substance, pollutant or containment under any governmental statute, code, ordinance, regulation, rule or order, and any amendment thereto, including for example only the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §9601 et seq., and the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq., or (b) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous or otherwise hazardous, including gasoline, diesel fuel, petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, radon and urea formaldehyde foam insulation.

1.48 “HUD” has the meaning ascribed to it in Section 18.1

1.49 “Improvements” means any Improvement now or hereafter constructed within the Community and includes anything that is a structure and appurtenances thereto of every type and kind, including but not limited to any (a) Detached Home, Townhome, building, shed, guest house, casita, pergola, swimming pool, hot tub, screening wall, accessory building, fence, or wall; (b) any walkway, garage, road, driveway or parking area; (c) any mailbox, sign, covered patio, stairs, deck, fountain, artistic work, craft work, figurine, ornamentation or embellishment of any type or kind (whether or not affixed to a structure or permanently attached to a Unit); (d) any radio or television antenna or receiving dish; (e) any paving, exterior lights, curbing, trees, shrubs, hedges, grass, windbreak, or other landscaping Improvements of every type and kind; (f) any excavation, fill, retaining wall or other thing or device which affects the natural flow of surface water or the flow of water in a natural or artificial stream, wash or drainage channel, and related fixtures and equipment, and (g) any other structure of any kind or nature.

1.50 “Laws” mean any law, regulation, rule, order, statute or ordinance of any governmental or private entity in effect at any time during the Term and applicable to the Project or the Unit and the Owner’s use thereof, including, but not limited to, building, fire and safety codes and regulations, building permits, conditional use permits, and certificates of occupancy.

1.51 “Lease” has the meaning ascribed to it in Section 12.14.

1.52 “Lessee” means the lessee or tenant under a Lease, oral or written, of any Unit, including an assignee of the lessee’s or tenant’s interest under a Lease.

1.53 “Limited Common Area” means that portion of the Common Area that is designated as Limited Common Area on a Plat or which is improved by Improvements or facilities that benefit or service a single Townhome or a limited group of Townhomes, such as a

driveway, walkway, sidewalk, balcony, porch, stairs, or stoop as determined by the Association using its reasonable business judgment.

1.54 “Lot Damage” has the meaning ascribed to it in Section 6.1.1.

1.55 “Lot Damage Percentage” has the meaning ascribed to it in Section 6.1.1.

1.56 “Member” means a Person entitled to membership in the Association, as provided herein.

1.57 “Mortgage” means a mortgage, a deed of trust, a deed to secure debt, or any other form of security deed.

1.58 “Mortgagee” means a beneficiary or holder of a Mortgage.

1.59 “Municipal Authority” means any applicable governmental entity or municipality that has jurisdiction over all or some part of the Community, including, without limitation, the City.

1.60 “Notice of Claim” has the meaning ascribed to it in Section 12.18.5.4.

1.61 “Notice of Sale” has the meaning ascribed to it in Section 12.11.

1.62 “Occupant” means any Person other than an Owner, who has actual use, possession or control of a Unit or any portion thereof, or any other Improvement located within the Community.

1.63 “OTARD” has the meaning ascribed to it in Section 14.7.

1.64 “Owner” shall mean and refer to one (1) or more Persons who hold the record title to any Unit within the Community, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is subject to a written Lease with a term in excess of one (1) year and the Lease specifically so provides, then upon filing a copy of the Lease with the Board the Lessee (rather than the fee owner) will be considered the Owner for the purpose of exercising all privileges of membership in the Association.

1.65 “Owner Warranty” or “Owner Warranties” has the meaning ascribed to it in Section 12.18.3.

1.66 “Parcel” means one or more legally subdivided lot within the Project as designated on the Plat, intended for single family residential use. Parcel numbers shall be synonymous with Unit numbers notwithstanding the assignment of a separate residential address to each Parcel/Unit (Exhibit B).

1.67 “Parcel Assessment” has the meaning ascribed to it in Section 12.4.3.



1.68 “**Party Wall**” means any wall that separates any two (2) immediately adjoining Townhomes facing such Owner’s Unit.

1.69 “**Period of Administrative Control**” means a period of time commencing as of the date of this Declaration and expiring upon the first to occur of: (a) the date that is ninety (90) days after Declarant or a Declarant Affiliate no longer owns a Parcel or Unit in the Community, or (b) the date that is twenty (20) years after the date this Declaration is Recorded, or (c) the date that Declarant gives written notice to the Board and Records an instrument with the Salt Lake County recorder’s office wherein Declarant voluntarily surrenders all rights to control the activities of the Association.

1.70 “**Person**” means a natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.71 “**Plat**” means that certain plat entitled as The Haven Cottages or The Haven Villas, duly Recorded, as the same may be amended from time to time and any plats for future phases of the Project, and which is incorporated herein by this reference.

1.72 “**Project**” means the development known as “The Haven Cottages and Villas” located in South Jordan, Utah.

1.73 “**Property**” has the meaning ascribed to it in Recital A.

1.74 “**Public View**” means, as to each Unit, visibility of a location on the lot or exterior of the Unit from a Street or Common Area.

1.75 “**Qualified Occupant**” means a person that is eighteen (18) years of age or older.

1.76 “**Reasonably Available**” has the meaning ascribed to it in Section 6.1.7.

1.77 “**Record,**” “**Recording,**” “**Recorded**” and “**Recordation**” means placing or having placed an instrument of public record in the official records of Salt Lake County, Utah.

1.78 “**Regulated Modification**” means (without implication that any particular matter is permitted or prohibited by this Declaration and without limitation as to Article XII of this Declaration as set forth below) the commencement, placement, construction, reconstruction or erection of, or modification, alteration, or addition to, any building, structure, Improvement, thing or device, and any usage thereof, whether temporary or permanent, which may affect, modify or alter the aesthetics, environment, architectural scheme, appearance or standards, patterns of usage, or grades or topography generally prevailing within the Community as of the date of establishment of the Regulated Modification, excluding any such matters or activities conducted by Declarant or Association, but including by way of illustration and not of limitation:

1.78.1 any building, garage, porch, shed, bathhouse, swimming pool, hot tub, pool house, coop or cage, covered or uncovered patio, children’s play fort or play set and any other recreational devices or equipment used outside of a Unit, fence, wall or other screening

device, curbing, paving, wall, trees, shrubbery and any other landscaping, fountains, statuary, lighting fixtures, signs or signboard, or any temporary or permanent living quarters, and any other temporary or permanent modification or alteration;

1.78.2 any other building, structure, Improvement, thing or device, and any activities related thereto and any usage thereof, as specified from time to time by applicable Architectural Guidelines, whether temporary or permanent, which may affect, modify or alter the aesthetics, environment, architectural scheme, appearance or standards, patterns of usage, or grades or topography generally prevailing in the Community.

1.78.3 any modifications to the structural, mechanical, or electrical elements, systems or components of a Unit.

1.79 “**Reinvestment Fee**” has the meaning ascribed to it in Section 12.6.

1.80 “**Related Parties**” means and applies as follows:

1.80.1 Lessees or other Occupants of each Owner’s Unit are Related Parties of that Owner, and with respect to each such Owner, tenant or other Occupant, Related Parties include: (i) their respective family and other household members (including in particular but without limitation all children and other dependents), (ii) their respective guests, invitees, servants, agents, representatives and employees, and (iii) all other Persons over which each has a right of control or under the circumstances could exercise or obtain a right of control.

1.80.2 Related Parties of the Association, ACC and Declarant include their respective members, managers, shareholders, officers, directors, partners, co-venturers, committee members, servants, agents, representatives and employees regarding all acts or omissions related to any of the foregoing representative capacities.

1.81 “**Released Persons**” has the meaning ascribed to it in Section 15.18.2.

1.82 “**Rent Application Notice**” has the meaning ascribed to it in Section 12.14.

1.83 “**Rent Payment Notice**” has the meaning ascribed to it in Section 12.14.

1.84 “**Required Work**” has the meaning ascribed to it in Section 5.2.5.

1.85 “**Residence**” means any Townhome or Detached Home situated within the Community. The term “Residence” shall include the exterior elements of a Townhome that constitute part of the Common Area.

1.86 “**Right to Cure Period**” has the meaning ascribed to it in Section 12.18.5.2.

1.87 “**Rules and Regulations**” shall mean the current applicable Rules and Regulations as same may be supplemented, amended, modified or repealed as provided in Section 11.3 of this Declaration.

1.88 “SID” has the meaning ascribed to it in Section 5.7.

1.89 “Special Assessment” shall mean and refer to Assessments levied in accordance with Section 12.4 of this Declaration.

1.90 “SSD” has the meaning ascribed to it in Section 5.7.

1.91 “SSD Act” has the meaning ascribed to it in Section 5.7.

1.92 “Supplemental Declaration” shall mean an amendment or supplement to this Declaration executed by or consented to by Declarant.

1.93 “Termination Notice” has the meaning ascribed to it in Section 12.13.

1.94 “Telecommunications Act” has the meaning ascribed to it in Section 14.7.

1.95 “Townhome” means any dwelling unit situated within the Community and attached to one or more other dwelling Units in a row of at least two such Units in which each Unit has its own front access to the outside, no Unit is located over another Unit, and each Unit is separated from any other Unit by one or more common Party Wall, designed and intended for separate, independent use and occupancy as a Townhome Residence, or for overnight or longer residential accommodations. The term “Townhome” shall include the exterior elements of a Townhome that constitute part of the Common Area. It is anticipated that there will be forty eight (48) Townhomes within the Community developed a part of twelve (12) quad-plex structures.

1.96 “Townhome Assessment” shall mean an Assessment levied against the Townhomes.

1.97 “Townhome Common Area” shall mean the Common Areas exclusively benefitting the Townhomes, including, but not limited to, (a) the exterior elements of the Townhomes, (b) the Common Area shown on the Plat for The Haven Villas Phase 1A Residential Subdivision as Common B and on the Plat for The Haven Villas Phase 2A Residential Subdivision as Common \_\_ (including the open space, landscaped areas, and Improvements that may be located thereon), and (c) the Limited Common Area shown on the Plat for The Haven Villas Phase 1A Residential Subdivision as Limited Common Area A, B, C, D, E, F, G, H, I, and J, and the Limited Common Area designated on the Plat for Haven at The Haven Villas Phase 2A Residential Subdivision. The Townhome Common Area shall not include the Community Common Area, including the area noted on the Plat for The Haven Villas Phase 1A Residential Subdivision as “Common A” whereupon the Community Common Facilities, such as the clubhouse, pickleball court, swimming pool will be located.

1.98 “Townhome Expenses” shall mean the costs and expenses associated with (a) insuring, maintaining, repairing, and replacing the Townhome Common Areas, including, but not limited to, obtaining and maintaining insurance related to the Townhomes and any associated deductibles and the maintenance, repair, replacement and restoration of any exterior element of a

Townhome and any Limited Common Area that is maintained by the Association.

1.99 “Transfer” has the meaning ascribed to it in Section 12.6.

1.100 “Unit” means a Parcel and any Residence constructed or located thereon, including, but not limited, to all exterior elements of the Townhome and the Improvements. A Unit shall exclude any Common Area.

1.101 “Visible Location” means a location in the Community that is in Public View.

1.102 “Warning Notice” has the meaning ascribed to it in Section 12.9.

## **ARTICLE II** **Declaration**

2.1 **Declaration.** Declarant hereby declares that all of the real property described in Exhibit “A” shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the desirability of and which shall run with the real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the Community or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each Owner thereof. All of the property within the Community shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each Person, for himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, binds himself, herself or itself, and his, her or its heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, Rules and Regulations now or hereafter imposed by this Declaration. In addition, each such Person by so doing acknowledges that this Declaration sets forth a general scheme for the development and use of the Community and evidences his, her or its agreement that all the restrictions, conditions, covenants, Rules and Regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, Lessees and transferees thereof. Furthermore, each such Person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners.

2.2 **Development of Community.** Notwithstanding the foregoing, no provision of this Declaration shall be construed or enforced to prevent or limit the Grantor’s right to complete development of the Community in accordance with the plan therefor as the same exists or may be modified from time to time by the Declarant nor prevent normal construction activities during the construction of Improvements within the Community. No development or construction activities shall be deemed to constitute a nuisance or violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, erection of temporary structures, posting of signs or similar activities, provided that the same are actively, efficiently and expeditiously pursued to completion. In the event any dispute concerning the foregoing shall arise, a temporary waiver of the applicable provision(s) of this Declaration may be granted by the

Architectural Control Committee, provided that such waiver shall be for a reasonable period of time. Any such waiver need not be Recorded and shall not constitute an amendment of this Declaration.

### **2.3 Age Restricted 55 Year and Older Community.**

2.3.1 Age Restriction. Declarant desires and intends that the Development be operated to provide housing opportunities for persons age 55 years and older in accordance with 42 U.S.C., Section 3602(k). Once a Residence is occupied by an Age Qualified Occupant, other Qualified Occupants of that Residence may continue to occupy that Residence, regardless of the termination of the Age Qualified Occupant's occupancy, if at least 80% of the Residences within the Project are occupied by at least one person 55 years or older, subject to the current requirements of Age Restriction Laws.

2.3.2 Intent to Comply. The Declarant or the Association will publish and adhere to policies and procedures that demonstrate its intent to provide housing for Age Qualified Occupants, such as written rules, regulations, lease provisions, deed restrictions, advertising, actual practices and so forth. Declarant and the Association will comply with all of the rules issued by the Secretary of Housing and Urban Development for verifications of occupancy through reliable surveys and affidavits. Owners and occupants shall be required to cooperate in providing age verification, including responding to requests for surveys and providing reliable documentation of the ages of the persons occupying a Residence, such as through a copy of a driver's license, birth certificate, passport, immigration card, military identification, or other acceptable identification. Declarant or the Association will re-survey and update its list of residents at least once every two (2) years to ensure that the 80% requirement is met.

2.3.3 Exclusions. The following may be excluded from the calculation of the 80% requirement: (a) unoccupied Residences; (b) Residences occupied by employees of the Association who are under age 55 and who provide substantial management and maintenance services to the Project; and (c) Residences occupied solely by persons who are necessary or essential to provide medical and/or health and nursing care services as a reasonable accommodation to residents of the Project. In order to not risk losing the exemption provided in the Housing For Older Persons Act of 1995, if Age Qualified Occupants die with survivors or heirs who are under age 55, re-sales and leases of such Residences previously occupied by an Age Qualified Occupant may be restricted by the Association to occupancy by at least one Age Qualified Occupant.

2.3.4 Advertisements. Declarant or its designee may advertise or market the 20% portion of the Residences within the Project that are not required to be occupied by at least one Age Qualified Occupant to prospective buyers under age 55 [who are Qualified Occupants/ and to families with children], but the marketing must be done in a way that identifies Haven Cottages and Villas as housing intended for older persons. Advertising and marketing must be consistent with the intent that the Project is a 55 year and older community.

2.3.5 Temporary Absence. If an Age Qualified Occupant is on vacation, hospitalized, on sabbatical, providing ecclesiastical, philanthropic, humanitarian or related service or otherwise absent for a season, such Age Qualified Occupant may allow a younger relative or house sitter who is a Qualified Occupant to live in such Age Qualified Occupant's Residential Unit during such absence, in which case, such Residence shall be deemed in compliance with the 80% occupancy requirement as long as the Residence is not leased to such relative or house sitter, and provided that the Age Qualified Occupant returns on a periodic basis and maintains legal and financial responsibility for the Residential Unit.

2.3.6 Enforcement. The Association shall have the power and authority to specifically enforce the provisions of this Section 2.3 and the Age Restriction by any legal or equitable means available, as the Association deems reasonably appropriate.

2.3.7 Prohibition on Sale in Violation of Age Restriction. Each Owner shall have and enjoy the privileges of fee simple ownership of his or her Unit; however, the Project is intended to be an Age Restricted Community and, as such, is intended and operated for occupancy by persons age 55 years and older. Declarant and/or the Association are granted and hereby expressly reserve the unilateral right to void any re-sale or lease of a Unit in violation of the Age Restrictions by recording a written "Notice of Election to Void Sale or Lease for Violation of Age Restrictions" or its equivalent in the Official Records of Salt Lake County, Utah.

2.4 Conflicts with Law. In the event of any conflicts between the provisions of this Declaration and the requirements of the applicable ordinances of any Municipal Authority, the more restrictive provisions shall control.

2.5 No Condominium. Declarant and each Owner hereby agree and understand that the Community is not, by execution and Recording of this Declaration, being submitted to the provisions of the Condominium Ownership Act (U.C.A. §57-8-1, *et seq.*). This Declaration does not constitute a declaration as provided for in the Condominium Ownership Act and the provisions of the Condominium Ownership Act shall not be applicable to Community or any portion thereof.

2.6 Development. Unless otherwise determined by Declarant, Declarant in its sole and exclusive discretion, intends to and shall have the right to construct or cause to be constructed or designate the general contractor (which may be a Declarant Affiliate) to construct all Residences within the Community. Notwithstanding the foregoing intention to construct all of the Residences, Declarant reserves the right to sell, convey, transfer, assign or otherwise dispose of any Parcel, without first constructing a Residence thereon.

2.7 Readjustment of Parcel Boundaries. Declarant hereby reserves for itself, Declarant Affiliates and Declarant's successors and assigns, the right to effectuate minor realignment and adjustment of the boundary lines between Parcels for purposes of proper configuration and final engineering of the Community; provided that any such realignment and adjustment does not affect any existing Residence or Improvement (other than landscaping) on

the affected Parcel. The authority to realign and adjust such Parcel boundary lines shall be exclusively reserved to the Declarant, Declarant Affiliate and Declarant's successors or assigns, in their sole and reasonable discretion, subject to the other provisions of this Section 2.7. All Owners specifically acknowledge and agree that they shall cooperate with Declarant to effectuate such minor realignment and adjustment of their respective Parcel boundary lines by deed in form and content as requested by the Declarant for the purposes of proper configuration and final engineering of the Parcels in relationship to the development of the Community. Further, all Owners acknowledge and agree that no amendment to this Declaration or the Plat shall be required to effectuate any Parcel boundary line adjustments so long as such adjustments are made pursuant to U.C.A. §10-9a-608(5) as amended, or any successor statute. More particularly, boundary line adjustments between adjacent Parcels may be executed upon the approval of the appropriate Municipal Authority, if required, and upon Recordation of an appropriate deed if:

(a) No new Residence or Improvement results from the Parcel boundary line adjustment and exchange of title;

(b) The appropriate Municipal Authority and adjoining property Owners consent to the boundary line adjustment (such Owners' consent to be granted as described above);

(c) The adjustment does not result in violation of applicable Municipal Authority zoning requirements; and

(d) The appropriate Municipal Authority Records a notice of approval in accordance with U.C.A. §10-9a-608(5) as amended, or any successor statute.

**2.8 Development Plan.** Notwithstanding any other provision of this Declaration to the contrary, and subject to the appropriate Municipal Authority, Declarant, without obtaining the consent of any other Owner or Person, shall have the right to make changes or modifications to its plan of development with respect to any Parcels owned by the Declarant in any way which the Declarant desires including, but not limited to, changing all or any portion of the Parcels owned by the Declarant or changing the nature or extent of the uses to which such Parcels may be devoted.

### **ARTICLE III** **Property Rights**

**3.1 Common Area.** Every Owner shall have a right and nonexclusive easement of use, access and enjoyment in and to the Community Common Area, and the Townhome Owners shall have the right and nonexclusive easement of use, access and enjoyment in and to the Townhome Common Area (exclusive of any Exclusive Common Area that is appurtenant to a Townhome), subject to:

(a) this Declaration as it may be amended from time to time, any applicable

amendment to this Declaration, and any restrictions or limitations contained in any deed conveying the Common Area to the Association;

(b) the right of the Board to limit the number of guests who may use the Common Area, and to adopt other rules regulating the use and enjoyment of the Common Area;

(c) the right of the Board to suspend the right of an Owner to use Community Common Facilities (i) for any period during which any charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed thirty (30) days for a single violation or for a longer period in the case of any continuing violation, of this Declaration or the other Governing Documents, after notice and a hearing pursuant to the Bylaws;

(d) the right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area to the extent expressly authorized herein;

(e) the right of the Board to impose membership requirements and charge admission or other fees for the use of any Community Common Facilities;

(f) the right of the Board to permit nonmember use of any Community Common Facilities or other recreational facility situated on the Common Area upon payment of use fees established by the Board;

(g) the right of the Association, acting through the Board, to mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and

(h) the right of Declarant or the Association to grant to certain Owners the exclusive use of portions of the Common Area, which areas are designated Exclusive Common Area, as more particularly described in Section 3.2 below.

Any Owner may delegate his or her right of use and enjoyment of the Common Areas to his or her Related Parties, subject to reasonable regulation by the Board and in accordance with procedures it may adopt. An Owner who leases his or her Unit shall be deemed to have delegated all such rights to the Unit's Lessee.

**3.2 Exclusive Common Area.** Declarant, in Declarant's sole discretion, may designate portions of the Common Area as Exclusive Common Area which are reserved for the exclusive use of Owners and their Related Parties within a particular Parcel and/or within the Community. The property designated as Limited Common Area designated to a particular Parcel on the Plat for the Community shall be Exclusive Common Area under this Declaration. Any Exclusive Common Area, including any Exclusive Common Area Improvement and/or Regulated Modification, designated to a particular Parcel within the Community will be maintained by the Owner, and the Owner shall indemnify the Association for, from, and against any and all Claims arising from the use of the Exclusive Common Area and any Exclusive Common Area Improvement and/or Regulated Modification located therein. The Owner shall be responsible for all costs associated with operation, maintenance, repair, replacement, and



insurance of Exclusive Common Area and any Exclusive Common Area Improvement and/or Regulated Modification. If the Association incurs any costs associated with the Exclusive Common Area and any Exclusive Common Area Improvement and/or Regulated Modification, the Association may assess the costs as a Parcel Assessment, as defined herein, against the Owners of Units located on such Parcel for whose benefit the Exclusive Common Area are designated.

Declarant may designate any Exclusive Common Area as such, and assign the exclusive use thereof, by any of (a) the deed conveying the Common Area to the Association, (b) a Supplemental Declaration covering the particular Parcel benefited by the Exclusive Common Area, (c) the Recorded Plat covering the particular Parcel(s), or (d) any other Recorded instrument. Further, Declarant, during the Period of Administrative Control, or thereafter, the Association, may convert one or more areas of Common Area to Exclusive Common Area for one or more particular Parcels within the Community, or may convert Exclusive Common Area to Common Area. Any such action by the Association after the expiration of the Period of Administrative control will require the vote of both (i) a majority of the total Association votes, and (ii) a majority of the votes within the Parcel(s) to which the Exclusive Common Area either is to be assigned or from which Exclusive Common Area is to be converted to Common Area.

#### **ARTICLE IV** **Membership and Voting Rights**

**4.1 Membership.** Every Owner shall be deemed to have a membership in the Association. No Owner, whether one (1) or more Persons, shall have more than one (1) membership per Unit owned. In the event the Owner of a Unit is more than one (1) Person, the vote for such Unit shall be exercised as provided below. The membership rights of a Unit owned by a corporation or partnership shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the secretary of the Association, subject to the provisions of this Declaration and the Bylaws. Membership in the Association shall not be Transferred, pledged, or alienated in any way, except upon the transfer of ownership of the Lot and Unit to which it is appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer is void. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the purchaser of such Owner's Lot, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

**4.2 Voting.** The Association shall have two (2) classes of membership, Class "A" and Class "B" as follows:

**4.2.1 Class "A".** Class "A" Members shall be all Owners, including Declarant, with the exception of the Class "B" Member, if any. Each Class "A" Member shall be entitled to one (1) equal vote for each Unit in which they hold the interest required for membership under Section 4.1 hereof; there shall be only one (1) vote per Unit.

**4.2.2 Class "B".** The Class "B" Member shall be Declarant. The Class "B"

Member has the right to disapprove actions by the Board. Other rights of the Class "B" Member, including the right to approve actions taken under this Declaration and the other Governing Documents, are specified elsewhere in this Declaration and the other Governing Documents. During the Period of Administrative Control, the Declarant as the sole owner of the Class "B" shares shall be the sole entity entitled to vote on all matters and to appoint the members of the Board. Notwithstanding anything herein or in the Bylaws of the Association to the contrary, since the Declarant has the sole voting rights during the Period of Administrative Control, the annual meeting during the Period of Administrative Control shall solely include the Declarant and shall not include any Class "A" Members, and the Declarant shall not be obligated to provide any notices of any meetings of the Class "B" Member to any of the Class "A" Members. Upon expiration of the Period of Administrative Control, the Class "B" Membership shall cease, but Declarant's Class "A" Membership, if applicable, shall remain. Declarant, in Declarant's sole discretion, by a Recorded notice, may elect to terminate the Period of Administrative Control at any time, but shall not be required to do so.

4.2.3 Suspension of Voting Rights. The Board may elect to prohibit an Owner from exercising any voting rights as a Member of the Association during any period in which the Owner is delinquent in the payment of any Assessments.

4.3 Multiple Owners. When more than one Person holds an ownership interest in a Unit (such as husband and wife,), all such Persons are Members, but in no event will they be entitled to more than one vote with respect to each particular Unit owned. The single vote, approval, or consent of such joint Owners must be cast or given in accordance with the decision of a majority, or if such joint Owners cannot reach a majority decision, then none of the joint Owners will be permitted to vote, approve, or consent as to any such matter upon which a majority decision cannot be reached. The vote, approval or consent of any single Owner from among such joint Owners is conclusively presumed to be cast or given in accordance with the decision of the majority of the joint Owners and with their full authority, but the Unit's vote shall be suspended if more than one (1) Person seeks to exercise it.

4.4 Appurtenant Right. Membership shall be appurtenant to and shall run with the property interest which qualifies the Owner thereof for membership, and membership may not be severed from, or in any way transferred, pledged, mortgaged, or alienated except together with the title to such property interest.

4.5 Record of Ownership. Every Owner shall promptly cause to be duly filed of record the conveyance document (i.e., Deed) (or in the case of an installment sales contract, a copy of the sales contract) on the Parcel of the Unit owned by such Owner. Each Owner shall file a copy of such conveyance documents (or contract) with the secretary of the Association who shall maintain a record of ownership of the Lots. Any Owner who mortgages his Lot or any interest therein by a Mortgagee which has priority over the lien of any Assessment provided herein shall notify the secretary of the Association of the name and address of the Mortgagee and also of the release of such Mortgage; and the secretary of the Association shall maintain all such information in the records of ownership. Any cost incurred by the Association in obtaining the

information about an Owner as specified herein which is not furnished by such Owner shall be reimbursed to the Association through a Parcel Assessment.

## **ARTICLE V** **Maintenance**

**5.1 Association's Responsibility.** The Association shall use a reasonable standard of care in providing for the maintenance, repair, and replacement of: (a) the Area of Common Responsibility and the Townhome Common Area, which shall include the following within the Common Area: (i) all landscaping and other flora, including, but not limited to lawns, shrubs, trees, irrigation systems, etc., (ii) all paved surfaces, including, but not limited to, any private streets or drives, sidewalks, walkways, driveways to Units, etc., (iii) fences or walls, (iv) the Common Facilities, including any recreation equipment owned by the Association, and (v) landscaped medians within public rights-of-way throughout the Community (subject to the terms of any license agreements pertaining thereto); (b) the front and back lawns of the Detached Homes; and (c) the exterior elements of all Townhomes, including, but not limited to, exterior walls, roofs, rain gutters and downspouts, overhangs, gables and eaves, exterior side of outside doors and garage doors, exterior lighting, porches, decks (installed as part of the original construction), railings, patios, etc., including, but not limited to, all necessary routine maintenance inspections, maintenance, and repairs; provided, however, to the extent that any of the exterior elements of a Townhome is considered Exclusive Common Area and/or exclusively used by the Owner of a Townhome, such as a balcony or patio, the Association may elect to exclude such area and improvements from its maintenance and repair obligations. The Association shall not have any obligation to maintain the exterior elements of any Detached Home or any Exclusive Common Area Improvements. The Association will provide reasonable snow removal over sidewalks, driveways, and walkways within the Community pursuant to the snow and ice removal plan adopted by the Board and as amended from time to time. The Association's obligations shall be subject to the Association's and the Owner's repair and restoration obligations in the event of any damage or destruction as discussed more particularly in Article VII. The Association may maintain other property that it does not own, including, without limitation, property dedicated to the public, such as park strips, if the Board determines that such maintenance is necessary or desirable in its discretion.

There is an existing private irrigation pipe that goes through the Project that services a water/irrigation company and the water users/shareholders of that water/irrigation company. The Association is responsible to maintain and repair the portion of the irrigation pipe that is located within the Project.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the Base Assessment, notwithstanding that the Association may be entitled to reimbursement from the Owner(s) of certain portions of the Area of Common Responsibility pursuant to this Declaration, other Recorded covenants, or agreements with the Owners) thereof; provided, however, all costs associated with the inspection, maintenance, repair and replacement of the exterior elements of any Townhome shall be a Townhome Assessment.

If any Owner causes damage to the Area of Common Responsibility either through negligence or intentional act, the Association may assess the cost and expense to repair such damage to the Owner as a Special Assessment.

## **5.2 Owners' Responsibilities.**

5.2.1 **General.** Each Owner shall maintain and repair the interior of its Unit, any Exclusive Common Area Improvements owned by such Owner; and any portion of Exclusive Common Area the Association elects not to maintain. Each Owner of a Detached Home will maintain and repair the exterior elements of its Detached Home and any portion of the Parcel upon which the Detached Home is located (except for lawn care and mowing if performed by the Association), along with any Regulated Modification and fence, in a good, attractive, clean, and sanitary condition. Since snow and ice removal cannot occur simultaneously throughout the entire Community and there may be time delays in removing snow and ice and snow and ice removal may not occur when snowfall does not exceed a minimal threshold, there may be instances where snow and ice may be present on sidewalks, walkways and driveways within the Community. Except to the extent performed by the Association pursuant to Section 5.1 above, an Owner will remove snow and ice from walkways and driveways immediately adjacent to their Unit as designated on the snow and ice removal plan adopted by the Board and as amended from time to time. Each Owner shall comply with any and all applicable Laws and shall not cause or permit any private or public nuisance on its Unit, such as excessive noise, odor, dust, vibration, or any other activity that would reasonably disturb other Owners and Occupants within the Community. It is represented and acknowledged that decks attached to Units may not be designed to handle heavy loads, such as spas and plants, and deck surfaces are not designed to have regular watering of plants, which will leak soil additives onto the deck and damage the deck. The Association reserves the right to establish and promulgate a maintenance manual regarding the maintenance of decks and other items. The Owner shall comply with the requirements set forth in such maintenance manual relating to items of Owner's responsibility. The Owner releases the Association, the Declarant, any architects, contractors and suppliers for any damage to the decks resulting from Owner's actions or failure to comply with the maintenance recommendations related to the Unit, any decks, and any other element of the Residence.

5.2.2 **Landscaping.** Any landscaping, shrubbery, trees, flowers, etc. to be placed on the Common Area must be reviewed and approved by the ACC. If any Owner installs any landscaping, flowers or vegetation on the Common Area immediately outside of such Owner's Unit and if such landscaping requires special care, such Owner shall provide any additional care needed for such landscaping.

5.2.3 **Owners' Insurance.** By virtue of taking title to a Unit subject to the terms of this Declaration, each Owner of a Townhome covenants and agrees with all other Owners and with the Association that each Owner of a Townhome shall maintain an HO-6 policy of insurance insuring furnishings, equipment, personal property, and contents within the Owner's Unit (commonly known as "all-in" coverage). By virtue of taking title to a Detached Home subject to the terms of this Declaration, each Owner of a Detached Home covenants and agrees

with all other Owners and with the Association that each Owner of a Detached Home shall maintain an HO-3 homeowner's policy of insurance insuring the Detached Home and the contents therein.

5.2.4 Disturbance of Common Area. An Owner shall not disturb or damage any portion of the Common Area, including any Exclusive Common Area, without first obtaining the approval of the ACC or the Board, as the case may be.

5.2.5 Right of Entry and Inspection; Owner's Default. In the event the Board or ACC determines that: (i) an Owner may have or has failed or refused to discharge properly the Owner's maintenance and repair obligations as provided in this Article, (ii) the need for maintenance, repair, or replacement which is the responsibility of the Association hereunder may have or has been caused through the intentional or negligent act or omission of an Owner, or the Owner's Related Parties, or (iii) a condition exists on a Unit which may increase the possibility of a fire or other hazards and create a threat of harm to person or damage to property, then the Association may conduct inspections of any affected Parcel and Unit and all buildings, structures and other Improvements thereon (a "*Compliance Inspection*") and/or perform the maintenance, repair, or replacement (the "*Required Work*") in accordance with the following:

5.2.5.1 If the Board or ACC determines that a violation of this Article may exist, the Board or ACC and their representative may inspect the Unit, and conduct such tests, measurements and other investigative work as may be reasonably required to confirm that a violation does or does not exist. Except in the event of an emergency, the Association must give written notice of the Association's intent to conduct a Compliance Inspection. The notice must state generally the nature of the suspected violations. The notice must also state the name, address and telephone number of a contact with whom to schedule a date and time for the inspection within ten (10) days of the date of the notice (or such longer time as may be stated in the notice), and must state that if a date and time is not so scheduled the Compliance Inspection may be conducted at any time within forty-five (45) days after the date of the notice.

5.2.5.2 Except in the event of an emergency, the Association must give written notice of the Association's intent to provide Required Work. The notice must set forth the Required Work with reasonable particularity. The Owner of the Unit to which the notice of Required Work pertains will have ten (10) days within which to complete the Required Work as set forth in such notice, or, in the event the Required Work is not capable of completion within a ten-day period, to commence the Required Work within ten (10) days and to complete same within a reasonable time not to exceed thirty (30) days unless otherwise specifically approved by the Board or ACC. The affected Owner must give written notice of the completion of Required Work stating in detail the Required Work which has been completed. The Board or ACC may also conduct a Compliance Inspection to confirm completion of all Required Work.

5.2.5.3 A Compliance Inspection notice and a notice as to Required Work must be delivered or mailed to the street address of the affected Unit.

5.2.5.4 If any Owner fails to schedule an inspection pursuant to a Compliance Inspection notice, the Association has the right (but not the obligation), through its

designated representatives, to inspect the Unit. If any Owner fails to fully comply with a notice as to Required Work, the Association has the right (but not the obligation), through its designated representatives, to do all things to the exterior of the Unit and the exterior of any other Improvements, and to all other portions of the Parcel to commence and complete the Required Work. In case of emergency the Association has the right (but not the obligation), through its designated representatives, to immediately take all actions reasonably necessary to abate the emergency.

5.2.5.5 The good faith determination by the Board or ACC as to the need for a Compliance Inspection and as to all aspects of Required Work is final and conclusive, and extends to any condition as to any Unit, or which adversely affects any other Unit or any Common Area. Neither the Association nor any of its representatives may be held liable for trespass or any other tort or Claim for damages in connection with any actions or failure to act pursuant to this Section.

5.2.5.6 If a violation is confirmed, all reasonable costs and expenses as to conducting a Compliance Inspection and as to all aspects of Required Work which is performed by the Association pursuant to this Section, as determined in the sole opinion of the Board or ACC, shall be paid by the Owner of the Unit, and are secured by the continuing Assessment lien established by this Declaration against such Owner's Unit.

5.2.5.7 The provisions hereof are cumulative of the provisions of this Declaration, and otherwise as set forth in this Declaration.

#### 5.2.6 Hazardous Substances.

5.2.6.1 The Owners shall comply with applicable Environmental Laws, and shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances, on or within a Unit or the Project. The Owners shall not do, nor allow anyone else by, through or under them such as an Occupant, contractor, or servant, anything affecting the Project that is in violation of any Environmental Law. The preceding two sentences shall not apply to the presence, use, or storage on the Project of small quantities of Hazardous Substances that are generally recognized to be appropriate to the maintenance of a Unit or the Project in compliance with Environmental Laws.

5.2.6.2 Each Owner shall indemnify, defend and hold the Association and each and every other Owner harmless from and against any and all Claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment, or any other injury or damage resulting from or relating to any Hazardous Substances located under or upon or migrating into, under, from or through the Project, which the Association or the other Owners may incur due to the actions or omissions of an indemnifying Owner. The foregoing indemnity shall apply: (i) when the release of the Hazardous Substances was caused by an indemnifying Owner or an Occupant; and (ii) whether or not the alleged liability is attributable to the handling, storage, generation, transportation or disposal of Hazardous Substances on the Project. The obligations of each Owner under this Section shall survive any subsequent sale by an indemnifying Owner.

### **5.3 Party Walls.**

5.3.1 General Maintenance of Party Walls. Each Owner of a Townhome shall maintain and repair the surface and non-structural elements of any Party Wall that separates any two (2) adjoining Townhomes facing such Owner's Unit. Each Owner hereby covenants and agrees not to do anything or to erect any barrier that will hinder, delay, or limit the maintenance of the Party Wall. With respect to the surface components of the Party Wall, each Owner agrees to maintain and keep in good condition and repair, including the making of replacements as needed, all surface components which face into such Owners' respective Unit. With respect to pipes, conduits, ducts, and other utility service lines and connections which benefit only one or more, but fewer than all, of the Owners, the Owner(s) benefited solely thereby shall be fully and personally responsible for the cost of maintaining such items in good condition and repair, including the making of replacements as needed. If the need for maintenance or repair of the Party Wall is caused through the willful or negligent act of any Owner or his/her Occupant, the cost of such maintenance or repairs shall be the sole and exclusive expense of such Owner. With respect to structural components of the Party Wall, except as may be otherwise provided in the immediately preceding sentences, the Owners benefitted by the Party Wall agree to share equally in the cost of maintenance and upkeep thereof in good condition and repair, including the replacement thereof as necessary.

5.3.2 Structural Repair and Maintenance. The costs to maintain and repair the structural elements of any Party Wall that separates any two (2) adjoining Townhomes shall be equally shared by the adjoining Unit Owners. In the event an Owner owns two adjacent Townhomes separated by a Party Wall, the Owner may alter the Party Wall to create an aperture between the two commonly owned Townhomes, subject to ARC approval and the following conditions: (i) the alteration cannot impair the structural integrity or mechanical systems of the Townhomes; (ii) the alteration cannot reduce the support of any portion of the Common Areas; or (iii) the alteration cannot violate any ordinances or codes of the Municipal Authority; (iv) the Owner shall submit an opinion by a licensed civil engineer as to the foregoing; and (v) the Owner shall pay a fee to the Association to cover the Association's costs and expenses to process and review the application. If the Townhomes are ever sold or become under separate ownership, the aperture shall be removed and the Party Wall restored consistent with the original construction.

5.3.3 Damage and Destruction. If a Party Wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner of an adjoining Townhome may repair and restore the Party Wall. If any Owner of an adjoining Townhome thereafter makes use of the Party Wall, such Unit Owner shall contribute its proportionate share toward the cost of repair and restoration. Notwithstanding the above, the Owner who repaired and restored the Party Wall may require a larger contribution from any Owner under any rule of Law regarding liability for negligent or willful acts or omissions. In the event any damage or destruction is covered by insurance, the party receiving any insurance proceeds hereby waives right of recovery and of subrogation against the other adjoining Unit Owner(s).

5.3.4 Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

5.3.5 Arbitration. In the event of any dispute arising concerning a Party Wall, or under the provisions of this Section, each Owner will attempt in good faith to amicably resolve the dispute, including participating in mediation. If the dispute cannot be resolved informally or amicably, each Owner agrees to participate in arbitration to resolve the dispute. Each Owner involved in the dispute shall appoint one (1) arbitrator. Should any Owner refuse to appoint an arbitrator within ten (10) days after written request by the Board, the Board shall appoint an arbitrator for the refusing Owner. The arbitrators will then mutually appoint one (1) or two (2) additional arbitrators so that the total number of arbitrators is an odd number. The decision by a majority of the arbitrators shall be binding upon the Owners and shall be a condition precedent to any right of legal action that either Owner may have against another Owner. The costs of the arbitrators and the arbitration shall be assessed against the non-prevailing Owner(s) in the arbitration.

5.4 Utility Lines. Any utility lines that exclusively serve a Unit shall be maintained and repaired by the Owner of the Unit served by such utility lines. Without limiting the foregoing, an Owner will maintain the sewer line from the sewer lateral to the Unit, the water line from the meter to the Unit, and the data/communications conduit and cabling from the distribution box to the Unit. The electrical and natural gas meters shall be deemed part of a Unit. An Owner will maintain all utility meters and the utility lines from the meters to the Unit. Each Owner is granted a license over, under, through, and across the Common Area where any utility lines may be located for the placement, installation, maintenance, repair and replacement of a utility line as described above, including, but not limited to, the right to excavate the applicable Common Area. Prior to disturbing any portion of the Common Area, an Owner will notify the Association and the proposed work will be coordinated with the Association. Any work performed within the Common Area will be performed in a diligent and expeditious manner and completed as soon as possible after commencement. An Owner will be responsible for any damage caused by or Claims arising from an Owner's work within the Common Area and the failure to maintain any utility lines or facility exclusively servicing the Owner's Unit, including any sewer lateral backup caused by the Owner or the Owners to properly perform its maintenance obligations. Any utility lines that service more than one Unit shall be maintained and repaired by the Association, and the cost of such maintenance and repair shall be allocated either among all the Units as part of the Base Assessments or to the Owners of the Units that are served by such utility lines in an equitable manner as decided by the Association in its sole discretion as part of a Special Assessment or a Parcel Assessment. To the extent not inconsistent with the provisions of this Section, the general rules of Law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. Each Owner will pay before delinquency the cost of any utility service that is separately metered to the Owner's Unit, including, but not limited to, any sewer bills pertaining to the sewer service provided to an Owner and/or the Owner's Unit.

5.5 Security. The Association may, but shall not be obligated to, maintain or support,



certain activities within the Community designed to make the Community safer than it otherwise might be. NEITHER THE ASSOCIATION AND THE BOARD, THE DECLARANT, THE ACC (COLLECTIVELY, THE "**COMMUNITY GOVERNING BODIES**") NOR ANY OF THEIR RESPECTIVE RELATED PARTIES SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY WITHIN THE COMMUNITY, AND THE COMMUNITY GOVERNING BODIES SHALL NOT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. ALL OWNERS, OCCUPANTS, LESSEES, GUESTS AND INVITEES OF ANY OWNER OR OCCUPANT AND RELATED PARTIES, AS APPLICABLE, ACKNOWLEDGE THAT THE COMMUNITY GOVERNING BODIES AND THEIR RESPECTIVE RELATED PARTIES DO NOT REPRESENT OR WARRANT THAT ANY FIRE PROTECTION SYSTEM OR BURGLAR ALARM SYSTEM DESIGNATED BY OR INSTALLED ACCORDING TO THE DESIGN GUIDELINES MAY NOT BE COMPROMISED OR CIRCUMVENTED, THAT ANY FIRE PROTECTION OR BURGLAR ALARM SYSTEMS WILL PREVENT LOSS BY FIRE, SMOKE, BURGLARY, THEFT, HOLD-UP, OR OTHERWISE NOR THAT FIRE PROTECTION OR BURGLARY ALARM SYSTEMS WILL IN ALL CASES PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER, OCCUPANT, LESSEE, GUEST OR INVITEE OF AN OWNER OR OCCUPANT, AS APPLICABLE, ACKNOWLEDGES AND UNDERSTANDS THAT THE COMMUNITY GOVERNING BODIES AND THEIR RESPECTIVE RELATED PARTIES ARE NOT INSURERS AND THAT EACH OWNER, OCCUPANT, LESSEE, GUEST, INVITEE ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PARCELS AND ANY RESIDENCE, TO PERSONS, TO UNITS, TO IMPROVEMENTS AND TO THE CONTENTS OF THE RESIDENCE AND IMPROVEMENTS AND FURTHER ACKNOWLEDGES THAT THE COMMUNITY GOVERNING BODIES HAVE NOT MADE REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, LESSEE, GUEST, INVITEE OR RELATED PARTY RELIED UPON ANY REPRESENTATIONS OR WARRANTIES NOR HAS ANY OWNER, OCCUPANT, LESSEE, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO ANY FIRE AND/OR BURGLAR ALARM SYSTEMS RECOMMENDED OR INSTALLED OR ANY SECURITY MEASURES UNDERTAKEN WITHIN THE COMMUNITY OR THE NEIGHBORHOOD.

## **5.6 Bulk Service Agreements.**

5.6.1 Contracting. The Association, acting through its officers or the Board, shall have the right, power and authority to enter into one or more Bulk Service Agreements with one or more Bulk Providers, for such term(s), at such rate(s) and on such other terms and condition as the Board deems appropriate, all with the primary goals of providing to Owners and Occupants of Units both within the Community, or within one or more portions thereof, cable television, Community satellite television, high speed Internet, security monitoring or other electronic entertainment, information, communication or security services, or any concierge or other personal services: (a) which might not otherwise be generally available to such Owners and

Occupants; (b) at rates or charges lower than might otherwise generally be charged to Owners and Occupants for the same or similar services; (c) otherwise on terms and conditions which the Board believes to be in the interests of Owners and Occupants generally; or (d) any combination of the foregoing.

5.6.2 Assessments. If all Units within the Community are to be served by a particular Bulk Service Agreement, the Board shall have the option either to: (a) include the Association's costs under such Bulk Service Agreement in the budget for each applicable fiscal year and thereby include such costs in the Basé Assessments for each such applicable year; or (b) separately bill to each Owner his, her or its proportionate share of the Association's costs under such Bulk Service Agreement, as reasonably determined by the Board, and with such frequency as may be determined by the Board, but no more often than monthly. Such "separate billing" may be made as one or more separate line items on billings or invoices from the Association to the affected Owner(s) for Assessments or other charges. If not all Units within the Community will be served by a particular Bulk Service Agreement, the Board shall have only the billing option described in clause (b) above.

5.6.3 No Avoidance of Payment. No Owner of a Unit covered by a Bulk Service Agreement shall be entitled to avoid or withhold payment of amounts charged by the Board to such Owner or such Owner's Unit under this Section 5.6 whether on the basis that such Owner does not use, accept or otherwise benefit from the services provided under such Bulk Service Agreement, or otherwise. Notwithstanding the above, the Board shall have the right, at its option, to exempt a Unit from payment of an Assessment related to the Bulk Service Agreement if such Unit is not serviced by such Bulk Provider.

5.6.4 Approval of Bulk Service Agreement. The Board shall not without the approval of at least fifty-one percent (51%) of the Members then entitled to vote, represented in person or by proxy at an annual or special meeting of the Association, enter into a Bulk Service Agreement which imposes on the Association or the Members any obligation to pay the direct costs of construction of any cable, lines or other facilities or equipment for any cable television, Community satellite television, high speed internet, security monitoring or electronic entertainment, information, communication or security services. Notwithstanding the above, nothing in this Section shall prevent the Board from entering into, or require approval by the Members of any Bulk Service Agreement which imposes on the Association or the Owners installation, connection, service charge or similar charges or fees which do not exceed those generally prevailing at the time within the greater Salt Lake County, Utah area, or which includes as a component of the monthly fee charged by the Bulk Provider amortization of some or all of its capital costs and related costs in providing services under the Bulk Service Agreement.

5.7 City Authority to Perform Maintenance. The City shall have the right, but not the duty, to require, and if necessary, perform, at the Association's expense, landscape maintenance and snow removal within the common areas as required by municipal ordinances if the Association fails to adequately perform such. If City exercises this right, then City is entitled to recover any associated costs and attorney fees. In addition, to the extent permitted by

applicable law, the Owners in the development, by virtue of purchasing property in the Community, give City the right, but not the duty, to form, under the Special Service District Act (U.C.A Section 17D-1-101 et seq.) (the "**SSD Act**"), a Special Service District ("**SSD**") for the purpose of ongoing maintenance of the common areas of the Development to the extent permitted by the SSD Act or a Special Improvement District ("**SID**") for the purpose of making needed improvements to the common areas within the Community to the extent permitted by the SSD Act. City may consider creating a SSD or SID in accordance with and subject to the SSD Act if the Association or property owners in the Community file(s) a petition with the City in accordance with the SSD Act to take over the obligations of the Association to maintain, repair, and/or improve the common areas within the Community. The City Council may also create a SSD or SID in accordance with the SSD Act if it determines there is a historical and recurring pattern of a lack of care and maintenance by the Association of the common areas of the Community. The Governing Body of any such SSD or SID formed, as stated in this paragraph, shall consist of the City Mayor, City Council and the Association President. This Section shall not be amended or deleted without City's approval. This provision has been approved by the City Attorney of the City and satisfies the requirement of Section 17.04.300 of the City's Municipal Code.

## **ARTICLE VI**

### **Insurance**

**6.1 Association's Insurance.** Commencing no later than the time of the first conveyance of a Unit to an Owner other than Declarant or a Declarant Affiliate, the Association shall obtain and thereafter maintain, to the extent Reasonably Available, the following insurance coverage:

**6.1.1 Commercial Property Insurance.** The Association shall maintain, to the extent readily available, property insurance or guaranteed replacement cost insurance on the physical structure of all Townhomes, Limited Common Area and Exclusive Common Area appurtenant to a Unit (excluding any Exclusive Common Area Improvements), and the Common Area Facilities within the Project, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils. The total amount of coverage provided by blanket property insurance or guaranteed replacement cost insurance maintained by the Association may not be less than 100% of the full replacement cost of the insured property at the time the insurance is purchased and at each renewal date, excluding items normally excluded from property insurance policies. Property insurance shall include coverage for any fixture, Improvement, or betterment installed by an Owner to a Townhome or to a Limited Common Area or Exclusive Common Area appurtenant to a Unit (excluding any Exclusive Common Area Improvements), whether installed in the original construction or in any remodel or later alteration, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, and any other item permanently part of or affixed to an attached dwelling or to a Limited Common Area or Exclusive Common Area (excluding any Exclusive Common Area Improvements). An Association is not required to obtain property insurance for a loss to a Unit that is not physically attached to another Unit (i.e.,

a Detached Home) or to a Common Area structure. Each Owner of a Townhome will be an insured Person under the Association's property insurance policy. If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner, the Association's policy shall provide primary insurance coverage and the Owner is responsible for the Association's policy deductible, and the building property coverage, often referred to as coverage "A" of the Owner's separate property insurance policy will apply and cover that portion of the loss that is subject to the deductible under the Association's property insurance policy.

An Owner, and not the Association, is responsible to insure and repair any damage to any Exclusive Common Area Improvements.

An Owner of a Townhome that has suffered damage as part of a Covered Loss is responsible for an amount calculated by applying the Lot Damage percentage for that Townhome to the amount of the deductible under the Association's property insurance policy. If an Owner does not pay the amount required in the preceding sentence within thirty (30) days after substantial completion of the repairs to, as applicable, the Parcel or the Townhome, or the Limited Common Area or Exclusive Common Area appurtenant to the Townhome, the Association may levy an Assessment against the Owner for that amount. The Association will set aside an amount equal to the amount of the Association's property insurance policy deductible, or if the policy deductible exceeds \$10,000.00, an amount not less than \$10,000.00. The Association shall provide notice to each Owner of the Owner's obligations for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice to an Owner regarding the Owner's obligations for the Association's policy deductible and of any change in the amount of the deductible, the Association will be responsible for the amount of the deductible increase that the Association could have assessed the Owner to whom notice was not sent, but only to the extent that the Owner does not have insurance coverage that would otherwise apply under this Section. The Association's failure to provide notice shall not be construed to invalidate any other provision in this Section or this Declaration. The term "**Covered Loss**" means a loss, resulting from a single event or occurrence that is covered by the Association's property insurance policy. The term "**Lot Damage**" means damage to any combination of a Parcel, a Residence on a Parcel, or a Limited Common Area or Exclusive Common Area appurtenant to a Parcel or appurtenant to a Unit on a lot (excluding any Exclusive Common Area Improvements). The term "**Lot Damage Percentage**" means the percentage of total damage resulting in a Covered Loss that is attributable to Lot Damage.

If, in the exercise of the business judgment rule, the Board determines that a Covered Loss is likely not to exceed the Association's property insurance policy deductible and until it becomes apparent the Covered Loss exceeds the Association's property insurance deductible and a Claim is submitted to the Association's property insurance insurer: (a) for a Townhome to which a loss occurs, the Owner's policy is considered the policy for primary coverage for the damage to that Townhome; (b) the Association is responsible for any Covered Loss to any Common Area; (c) an Owner of a Townhome who does not have a policy to cover damage to the Owner's Townhome, the Association's property insurance policy deductible is

responsible for the damage to that Townhome, and the Association may, as provided herein, recover any payments the Association makes to remediate and repair the Townhome, as provided above; and (d) the Association need not tender the Claim to the Association's insurer. Notwithstanding the preceding, if the Association provides notice of the Association's policy deductible but fails to provide notice of a later increase in the amount of the deductible, the Association is responsible only for the amount of the increase for which notice was not given.

The insurer under a property insurance policy issued to the Association shall adjust with the Association a loss covered under the Association's policy. Notwithstanding the above, the insurance proceeds for a loss under an Association's property insurance policy: (i) are payable to an insurance trustee that the Association designates or, if no trustee is designated, to the Association; and (ii) may not be payable to a holder of a security interest.

An insurance trustee or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. If damaged property is to be repaired or restored, insurance proceeds shall be disbursed first for the repair or restoration of the damaged property. After the disbursements are made and the damaged property has been completely repaired or restored or the Project terminated, any surplus proceeds are payable to the Association, Owners and lien holders as provided in this Declaration.

Neither the Association nor the Board that acquires from an insurer the property insurance required in this Section shall be liable to Owners if the insurance proceeds are not sufficient to cover 100% of the full replacement cost of the insured property at the time of loss.

The Owner of any Detached Home shall obtain and maintain insurance pursuant to Section 5.2.3.

6.1.2 Commercial General Liability Insurance. The Association shall maintain liability insurance covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Area providing coverage on an occurrence basis with limits reasonably determined by the Board, but not less than \$1,000,000 per occurrence and in the aggregate. Each Owner will be an insured Person under the Association's liability insurance policy, but only for liability arising from the Owner's ownership interest in the Common Area, and the maintenance, repair and replacement of the Common Area and the Owner's membership interest in the Association.

6.1.3 Workers' Compensation Insurance. Workers' compensation insurance to the extent necessary to meet the requirements of applicable Law.

6.1.4 Fidelity Insurance/Bonds. The Board shall obtain fidelity bond/fidelity insurance coverage against dishonest acts on the part of directors, officers, managers, trustees, agents, employees, agents, employees or other individuals responsible for handling funds belonging to or administered by the Association. If funds of the Association are handled by a management agent, fidelity insurance coverage, the Association shall require the management agent to maintain fidelity bond/fidelity insurance coverage for its officers, employees or agents

thereof handling or responsible for funds of, or administered on behalf of, the Association. The fidelity insurance must name the Association as the named insured and shall be written to provide protection in an amount not less than the lesser of (a) estimated maximum of funds, including reserve funds, in the custody of the Association or management agent at any given time during the term of such bond or period of coverage of such insurance, (b) a sum equal to three months' aggregate Base Assessments plus reserves, or (c) the estimated maximum amounts of funds, including reserves, in the custody of the Association (or its management agent) at any one time. In connection with this coverage, an appropriate endorsement to the policy to cover any individual who serves without compensation shall be added if the policy would not otherwise cover volunteers. Any such coverage must also name the Association as an obligee.

6.1.5 **D&O Insurance.** A policy of "directors and officers" liability insurance, including errors and omissions coverage for the Board.

6.1.6 **Other Insurance.** Such other insurance or policies with greater coverage than provided herein as the Board shall determine from time to time to be appropriate to protect the Association or the Owners.

6.1.7 **Reasonably Available.** If the Association becomes aware that property insurance under Section 6.1.1 or liability insurance under Section 6.1.2 is not Reasonably Available, the Association shall, within seven (7) calendar days after becoming aware, give all Owners notice that the insurance is not Reasonably Available. The term, "***Reasonably Available***" means available using typical insurance carriers and markets, irrespective of the ability of the Association to pay.

6.2 **Authorized Companies.** All policies shall be written with a company authorized to do business in Utah which holds a Best's rating of A or better and is assigned a financial size category of VII or larger as established by A. M. Best Company, Inc., if Reasonably Available, or, if not available, the most nearly equivalent rating which is available.

6.3 **Authority to Adjust Losses.** Exclusive authority to adjust losses under policies obtained by the Association on the Community shall be vested in the Board; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

6.4 **Insurance Requirements.** The Board shall be required to use reasonable efforts to secure insurance policies that will provide the following:

6.4.1. **Owner's Insurance.** A property insurance or liability insurance policy issued to the Association may not prevent an Owner from obtaining insurance for the Owner's own benefit. Any Owner benefitting from any Exclusive Common Area is encouraged to obtain and maintain appropriate liability insurance associated with the Exclusive Common Area.

6.4.2 **Waiver of Subrogation.** The Association shall request that an insurer under a property insurance policy or liability insurance policy obtained by the Association waive

its right to subrogation under the policy against any Owner, any Person residing with an Owner, or an Owner's Related Parties.

6.4.3 Severability of Interest. The insurance maintained by the Association shall contain a "severability of interest" clause or endorsement, which precludes the insurer from denying the Claim of the Association, Declarant, Owner, or Occupant because of the negligence or other acts of another insured party or canceling, invalidating, suspending, or refusing to renew a policy on account of any one or more individual Owners.

6.4.4 Curable Violation. The insurance maintained by the Association shall contain a statement or endorsement that no policy may be canceled, invalidated, suspended, or subject to non-renewal on account of any curable defect or violation without prior demand in writing delivered to the Association to cure the defect or violation and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner, or Mortgagee.

6.4.5 Insured Party. The Association shall be the named insured under the insurance maintained by the Association. The Board may elect to include other parties as either named or additional insureds under its commercial general liability insurance policy.

6.4.6 Mortgagee Notification. For policies of property insurance, a standard Mortgagee clause providing that the insurance carrier shall notify any Mortgagee named in the policy at least ten (10) days in advance of the effective date of any substantial modification, reduction or cancellation of the policy.

6.4.7 Other Insurance. The insurance maintained by the Association shall contain a statement or endorsement that any "other insurance" clause in any policy excludes individual Owners' policies from consideration.

6.4.8 Notification. The insurance maintained by the Association shall contain a statement or endorsement that the Association will be given at least thirty (30) days' prior written notice of any cancellation, substantial modification, or non-renewal.

6.4.9 Owner's Actions. Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association, an Owner's act or omission may not void a property insurance policy or a liability insurance policy maintained by the Association or be a condition to recovery under a policy.

6.4.10 Compliance with Act. An insurance policy issued to the Association may not be inconsistent with any provision of the Act. In the event this Declaration or any Governing Document is contrary to a provision of the Act, such provision shall be revised and interpreted to be consistent with the provisions of the Act.

**6.5 Insurance Costs**. The cost to obtain and maintain the insurance carried by the Association, including reasonable deductibles, shall be included as part of the Base Assessments;

provided, however, the cost to obtain and maintain the property insurance on any Townhome to be carried by the Association, including reasonable deductibles for any Townhome shall not be included as a Base Assessment, but instead shall be included as part of the Townhome Assessments.

**6.6 Deductible.** If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner, the Association's policy provides primary insurance coverage. The deductible on a Claim made against the Association's property insurance policy shall be paid by the Owner who would be liable for the loss, damage, Claim, or repair in the absence of insurance, and in the event multiple Units are damaged then the deductible will be the sole responsibility of the Owner of the Unit where the loss originated. To the extent required by applicable Law, the Owner's property insurance policy, if any, applies to that portion of the loss attributable to the Association's policy deductible. If the loss, damage, or Claim results from a peril affecting the exterior of the building the deductible will be paid equally by all Owners affected by the loss. The Association's deductible shall not exceed \$5,000 (or such other limited permitted by applicable Law) unless thirty (30) day written notice is mailed to all Owners. Notwithstanding the foregoing, in the event coverage of any deductible by an Owner's property insurance is not required by applicable Law, the coverage of any deductible by an Owner's property insurance shall comply with the current and applicable HUD and FHA guidelines.

**6.7 Earthquake & Flood Insurance.** The Association shall have the right, but not the obligation to maintain earthquake and/or flood insurance for the Townhomes and/or elements of the Common Area. The Association shall obtain earthquake and flood insurance if approved through an affirmative vote of at least sixty-seven percent (67%) of the Members of the Association that are Owners of Townhomes as to insurance maintained on the Townhomes or by the Association as to the insurance maintained on the Common Area in a meeting of the Association. The earthquake and/or flood insurance shall be administered in a similar manner as property insurance, and the costs thereof shall be allocated to the Owners in the same manner as the costs of property insurance.

**6.8 Indemnification.** To the extent not prohibited or inconsistent with any applicable Laws, each Owner, by acceptance of a deed to a Unit, agrees to release, indemnify, hold harmless and defend each and every other Owner and Occupant within the Project and the Association against any Claim for bodily injury or property damage occurring within the Unit of the indemnifying Owner, including Limited Common Area and/or Exclusive Common Area appurtenant to such Owner's Unit, if any, except to the extent that: (a) such Claim is covered and defended by the Association's or an indemnified Owner's insurance; or (b) the injury or damage occurred by reason of the intentional act of the Association.

## **ARTICLE VII**

### **Damage and Restoration**

**7.1 Adjustment of Claims.** Immediately after damage or destruction by fire or other casualty to all or any part of the Project, Common Area, or Townhomes covered by insurance



where the Association is the insured party or a loss payee, the Board or its duly authorized agent shall proceed with the filing and adjustment of all Claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed portions of the Project, Common Area, or Units within the Community. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Project, Common Area, or Units to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or Improvements necessitated by changes in applicable building codes.

**7.2 Repair.** If a portion of the Project, Common Area or Townhomes for which insurance is required to be maintained by the Association in this Declaration or the Act is damaged or destroyed, the Association shall repair or replace the portion within a reasonable amount of time unless: (a) the Project is terminated; (b) the repair or replacement would be illegal under a state statute or local ordinance governing health or safety; or (c) (i) at least seventy-five percent (75%) of the allocated voting interests of the Members in the Association vote not to rebuild; and (ii) each Owner of a Townhome and the Limited Common Area appurtenant to that Townhome that will not be rebuilt votes not to rebuild. If a portion of the Project, Common Area, or Townhome is not repaired or replaced because the Project is terminated, the termination provisions of applicable Law and the Governing Documents apply. The cost of repair or replacement of any Townhome in excess of insurance proceeds and reserves will be part of a Townhome Assessment to the extent the Association is required to provide insurance for the Townhome. The cost of repair or replacement of any Common Area in excess of insurance proceeds and reserves is a Common Expense. If the entire Project is damaged or destroyed and not repaired or replaced, the Association shall use the insurance proceeds attributable to the damaged portions of the Project, Common Area, and/or Townhomes to restore the damaged area to a condition compatible with the remainder of the Project. Unless otherwise provided in the Act, no Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Community shall be repaired or reconstructed.

**7.3 No Repair.** In the event that it should be determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative Improvements are authorized, then and in that event the affected portion of the Community shall be cleared of all debris and ruins and maintained by the Association in a neat and attractive, landscaped condition consistent with the terms and conditions of this Declaration.

**7.4 Disbursement of Proceeds.** If the damage or destruction for which the proceeds of insurance policies held by the Association are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. The Association shall distribute the insurance proceeds attributable to the Townhomes that are not rebuilt to the Owners of such Townhomes that are not rebuilt or to any Mortgagees holding security interests in such Townhomes. Any proceeds remaining after defraying such costs of repair or reconstruction and after distributing any proceeds to the Owners of Townhomes that were not repaired and/or restored, shall be retained by and for the benefit of the Association and placed in a capital Improvements account. In the alternative, the Association shall distribute the remainder

of the proceeds to all the Owners or Mortgagees in proportion to the allocation of Base Assessments to the Units and Owners. If the Owners vote not to rebuild a Unit, the Unit's allocated interests are automatically reallocated upon the Owner's vote as if the Unit had been condemned, and the Association shall prepare, execute, and submit for Recording an amendment to this Declaration reflecting the reallocations described above. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

**7.5 Insufficient Proceeds for Restoration of the Common Area.** If the damage or destruction to the Project, Common Area, and/or Units for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Members, levy a Special Assessment against the Owners of Units. Additional Assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

**7.6 Insufficient Proceeds for Restoration of Townhomes.** If the damage or destruction to the Townhomes for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Members, levy a Special Assessment against the Owners of Townhomes. Additional Assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

## **ARTICLE VIII** **No Partition**

**8.1 No Partition.** There shall be no judicial partition of the Common Area or any part thereof, nor shall any Person acquiring any interest in the Community or any part thereof seek any judicial partition unless the Community has been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration, nor shall it be construed to preclude Declarant from withdrawing any portion of the Community in accordance with Article X below.

## **ARTICLE IX** **Condemnation**

**9.1 Taking.** Whenever all or any part of the Common Area shall be taken (or conveyed by the Board in lieu of and under threat of condemnation), each Owner shall be entitled to notice thereof. A decision by the Board to convey a part of the Common Area under threat of condemnation shall be binding on the Association so long as it is made in good faith. The award made for such taking shall be payable to the Association as trustee for all Owners (and the Owners hereby assign to the Association any rights to any awards pertaining to the Common Area to the Association) to be disbursed as follows:

If the taking involves a portion of the Common Area on which recreational Improvements have been constructed (excluding any Exclusive Common Area and Exclusive Common Area Improvements), then, unless within sixty (60) days after such taking, both Declarant (if during the Period of Administrative Control), and the Owners representing at least seventy-five percent (75%) of the total Class "A" votes of the Association shall otherwise agree, the Association shall restore or replace such Improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board. Neither the Board nor Declarant shall have any obligation to obtain or dedicate any Common Area in order to accomplish such a repair or restoration if such land is not available at the time of the condemnation. If such Improvements are to be repaired or restored, the above provisions in Article VI hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. Notwithstanding the above, the Association shall restore any Improvements or Property required to be restored by the City or any other applicable Municipal Authority. An Owner shall be responsible for the repair and restoration of any Exclusive Common Area Improvements.

If the taking does not involve any recreational Improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

## **ARTICLE X**

### **Transfer or Withdrawal of Property**

**10.1 Common Area.** At any time and from time to time during the Period of Administrative Control, Declarant may convey to the Association fee simple or easement interests in real property, improved or unimproved. Upon such conveyance to the Association, such real property interest shall be accepted by the Association as Common Area and thereafter shall be maintained by the Association at its expense.

**10.2 Withdrawal of Property.** During the Period of Administrative Control, Declarant shall have the right at any time to remove or withdraw lands or grant easements or licenses on, over, under or across such lands then owned by Declarant (or other Persons with Declarant's consent) from the Community, so long as such withdrawal or grant of such easement or right is not prohibited by the City or other Municipal Authority. Upon any such withdrawal (but excluding the grant of an easement or license) this Declaration and the covenants, conditions, restrictions and obligations set forth herein shall no longer apply to the lands withdrawn. In order to withdraw lands from the Community hereunder, Declarant shall be required only to Record a notice of withdrawal of land which contains: (i) a reference to this Declaration (including the document number under which this Declaration is Recorded); (ii) a statement that the provisions of this Declaration shall no longer apply to the withdrawn land; (iii) if Declarant is not the owner of the land so withdrawn, the signatures of both such owner and Declarant; and (iv) a legal description of the withdrawn land.

**10.3 Community Splits/Consolidations.** During the Period of Administrative Control, the Declarant, may elect to divide the Community into more than one (1) neighborhood or communities or to combine two (2) or more neighborhoods or communities into one (1) neighborhood or community at any time in accordance with U.C.A. §57-8a-601 and §16-6a-11, as amended or superseded. In the event the neighborhoods or communities are to be combined, a Declaration of Consolidation shall be prepared in accordance with U.C.A. §57-8a-601, as amended or superseded.

**ARTICLE XI**  
**Rights and Obligations of the Association**

**11.1 Common Area/Exterior of Units.** The Association, subject to the rights, responsibilities, and obligations of the Owners set forth in this Declaration and the terms and conditions of Article V of this Declaration, shall be responsible for the exclusive management and control of the Common Area and all Improvements thereon (including, without limitation, furnishings and equipment related thereto and common landscaped areas) (excluding any Exclusive Common Area and Exclusive Common Area Improvements) and the exterior elements of the Townhomes (excluding outside doors, garage doors, and windows), and shall keep them in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof and consistent with the Community-Wide Standards.

**11.2 Personal Property and Real Property for Common Use.** The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board, acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within or benefiting the Community conveyed to it by Declarant.

**11.3 Rules and Regulations.** The Board is hereby specifically authorized to adopt, amend, modify, supplement, cancel, limit, create exceptions to, expand, or enforce such reasonable Rules and Regulations applicable to the operation and use of the Common Area within the Community. The Board shall have the right from time to time through the exercise of its business judgment on behalf of the Association to promulgate reasonable Rules and Regulations that it deems beneficial to the Community, including, but not limited to: (i) traffic and parking regulations and other traffic control procedures; (ii) procedures and reasonable restrictions and limitations on the right to use any Common Area; and (iii) all procedural and substantive aspects for the establishment, levy, collection and payment of fines for any violations of any Governing Documents. Rules and Regulations are of equal dignity with and may be enforceable in the same manner as the provisions of this Declaration; provided:

(a) Rules and Regulations may not be enacted retroactively (except that if any activity is subsequently covered by Rules and Regulations and such activity ceases after enactment of the Rules and Regulations covering same, then the Rules and Regulations will apply to the activity thereafter);

(b) Rules and Regulations may not be incompatible with the provisions of this

Declaration or any Supplemental Declaration; and

(c) Before adopting, amending, modifying, canceling, limiting, creating exceptions to, or expanding the rules and design criteria of the Association, the Board shall (i) at least fifteen (15) days before the Board will meet to consider a change to the Rules and Regulations, deliver notice to the Owners that the Board is considering a changes to the Rules and Regulations, (ii) provide an open forum at the Board meeting giving Owners an opportunity to be heard at the Board meeting before the Board takes action on the Rules and Regulations, and (iii) deliver a copy of the changes in the Rules and Regulations approved by the Board to the Owners within fifteen (15) days after the date of the Board meeting.

(d) Notwithstanding the requirement in (c) above, the Board may adopt Rules and Regulations without first giving notice to the Owners if there is an imminent risk of harm to the Common Area, the Limited Common Area, a Unit, an Owner, or an Occupant or Resident. The Board shall provide a copy of the changes in the Rules and Regulations as provided in (c) above.

(e) A Board action pursuant to this Section 11.3 is disapproved if within sixty (60) days after the date of the Board meeting where the action was taken: (i) (1) there is a vote of disapproval by at least fifty-one percent (51%) of all the allocated voting interests of the Owners in the Association; and (2) the vote is taken at a special meeting called for that purpose by the Owners; or (ii) the Declarant delivers to the Board a writing of disapproval during the Period of Administrative Control.

(f) The Board has no obligation to call a meeting of the Owners to consider disapproval of any action to adopt, amend, modify, cancel, limit, create exceptions to, expand, or enforce any Rules and Regulations, unless Owners submit a petition, in the manner prescribed in this Declaration for a special meeting, for the meeting to be held. Upon the Board receiving a petition as provided in the preceding sentence, the effect of the Board's action is: (i) stayed until after the meeting is held; and (ii) subject to the outcome of the meeting.

(g) During the Period of Administrative Control, the Declarant may exempt the Declarant from the Rules and Regulations and the rulemaking procedure under this Section.

(h) The Rules and Regulations shall treat similarly situated Owners similarly, except that Rules and Regulations may vary according to the level and type of service that the Association provides to Owners and differ between Townhome and Detached Homes.

(i) The criterion of any Rules and Regulations may not abridge the rights of an Owner to display religious and holiday signs, symbols, and decorations inside a Unit, provided that the Association may adopt time, place, and manner restrictions with respect to displays visible from outside the Unit.

(j) Rules and Regulations may not regulate the content of political signs; provided that Rules and Regulations may regulate the time, place, and manner of posting a political sign, and the Association design provision may establish design criteria for political

signs.

(k) Rules and Regulations may not interfere with the freedom of an Owner to determine the composition of the Owner's household; provided that an Association may: (i) require that all Occupants of a Unit be members of a single housekeeping unit consistent with applicable Law; and (ii) limit the total number of Occupants permitted in each Unit on the basis of the Unit's size and facilities and the fair use of the Common Area.

(l) Rules and Regulations may not interfere with an activity of an Owner within the confines of a Unit to the extent that the activity is in compliance with local Laws and ordinances; provided that Rules and Regulations may prohibit an activity within a Unit if the activity is not normally associated with a residential use or permitted by this Declaration or (i) creates monetary costs for the Association or other Owners, (ii) creates a danger to the health or safety of Occupants of other Units, (iii) generates excessive noise or traffic, (iv) creates unsightly conditions visible from outside the Unit, (v) creates an unreasonable source of annoyance to persons outside the Unit, or (vi) if there are attached Units, creates the potential for smoke to enter another Owner's Unit, the Common Area, or Limited Common Area.

(m) Rules and Regulations may not, to the detriment of an Owner and over an Owner's written objection to the Board, alter the allocation of financial burdens among the various Units; provided that the Association may: (i) change the Common Area available to an Owner, (ii) adopt generally applicable Rules and Regulations for the use of Common Area; or (iii) deny use privileges to an Owner who is delinquent in paying Assessments, abuses the Common Area, or violates the Governing Documents. Notwithstanding the foregoing, Rules and Regulations cannot alter the method of levying Assessments; or increase the amount of Assessments as provided in this Declaration.

(n) Rules and Regulations may not require an Owner to dispose of personal property that was in or on a Unit before the adoption of Rules and Regulations if the personal property was in compliance with all Rules and Regulations and the terms and conditions of the Governing Documents previously in force; provided that such exception only applies during the period of the Owner's ownership of the Unit and does not apply to a subsequent Owner who takes title to the Unit after adoption of such Rules and Regulation.

(o) Rules and Regulations or action by the Association or Board may not unreasonably impede a Declarant's ability to satisfy existing development financing for Community Improvements and right to develop the Project or other properties in the vicinity of the Project.

(p) Rules and Regulations or action by the Association or Board may not interfere with the use or operation of an amenity that the Association does not own or control the exercise of a right associated with an easement.

(q) Rules and Regulations may not divest an Owner of the right to proceed in accordance with a completed application for design review, or to proceed in accordance with another approval process, under the terms of the Governing Documents in existence at the time

the completed application was submitted by the Owner for review.

(r) The Association may through Rules and Regulations: (i) regulate the use, maintenance, repair, replacement, and modification of the Common Area; (ii) impose and receive any payment, fee, or charge for the use, rental, or operation of the Common Area, except Limited Common Area, or service provided to an Owner; (iii) impose a charge for a late payment of an Assessment; or (iv) provide for the indemnification of its officers and Board consistent with applicable Laws.

(s) The Association may not prohibit an Owner from displaying a United States flag inside a dwelling or Limited Common Area or on a Parcel, if the display complies with United States Code, Title 4, Chapter 1, The Flag, or other applicable Law. The Association may restrict the display of a flag on the Common Area.

(t) If permitted by applicable Law, the Board may modify the conditions and stipulations set forth in subsections (c) through (s) above.

**11.4 Implied Rights.** The Association may exercise any other right or privilege given to it expressly by this Declaration or the other Governing Documents, and every other right or privilege reasonably to be implied from the existence of any right or privilege so given to it or reasonably necessary to effectuate any such right or privilege.

**11.5 Governmental Interests.** During the Period of Administrative Control, Declarant shall have the right to designate sites within the Community, which may include Common Area owned by the Association, for fire, police, water, and sewer facilities, water detention or retention basins, parks, and other public facilities.

#### **11.6 Enforcement.**

11.6.1 General. Declarant, the Association, and their successors and assigns, and any Owner, have the right to enforce observance and performance of all restrictions, covenants, conditions and easements set forth in this Declaration and in all other Governing Documents, and in order to prevent a breach thereof or to enforce the observance or performance thereof have the right, in addition to all legal remedies, and all other rights and remedies set forth in this Declaration, to an injunction either prohibitive or mandatory.

11.6.2 Right to Inspect and Cure Defaults. The provisions of Section 5.2.5 apply to any breach of this Declaration and any other applicable Governing Documents. In addition and without prior notice, the Association may photograph any violation or suspected violation at any time and otherwise obtain evidence to confirm the existence or non-existence of any suspected violation in any reasonable manner without liability in trespass or otherwise.

11.6.3 No Estoppel, Waiver or Liability. Failure of Declarant, the Association or any Owner to enforce any of the provisions of this Declaration or any other Governing Documents will in no event be deemed a waiver of the right to do so thereafter (including without limitation as to the same or similar violation whether occurring prior or subsequent

thereto). No liability may attach to Declarant, the Association, or their respective Related Parties or committee members, for failure to enforce any provisions of this Declaration or any other Governing Documents.

11.6.4 Cumulative Rights and Remedies. Each right and remedy set forth in this Declaration and each other Governing Document is separate, distinct and non-exclusive, and all are cumulative. The pursuit of any right or remedy so provided or as provided by Law, or the failure to exercise a particular right or remedy, will not be construed as a waiver of such right or remedy or any other right or remedy. Without limitation of the foregoing, the provisions of this Section are declared specifically to be cumulative of the provisions of Section 5.2 of this Declaration as hereinabove set forth and in the Bylaws.

11.6.5 Liability for Conduct of Related Parties. Each Owner, Lessee and Occupant must ensure that their respective Related Parties strictly comply with all applicable provisions of this Declaration and all other Governing Documents. Each Owner, Lessee, and Occupant is liable for all consequences of any such violation by such party's Related Parties, and each Owner, Lessee and Occupant is jointly and severally liable for all consequences of any such violation by the Owner's, Lessee's and/or Occupant's Related Parties. To the same extent as aforesaid each Owner, Lessee and Occupant must indemnify and hold harmless Declarant, the Association and their respective Related Parties from any and all Claims of whatsoever kind whether incurred prior to, during or after proceedings in a court of competent jurisdiction, resulting, directly or indirectly, from any such violation.

11.6.6 Obligation for Payment of Costs and Expenses Resulting from Violations. Each Owner, Lessee and/or Occupant found to have committed, or who is responsible for, a violation or violations of any of the provisions of this Declaration or any other Governing Documents is jointly and severally liable for payment to the Association for, and to indemnify and to hold and save harmless the Association and its Related Parties from, any and all Claims, whether incurred prior to, during or after proceedings in a court of competent jurisdiction, incurred or attributable to any such violation(s), and must pay over to the Association all sums of money which the Association or its representatives may pay or become liable to pay as a consequence, directly or indirectly, of such violation(s). All such sums are secured by the continuing Assessment lien established by this Declaration. All such sums are due and payable upon demand by the Association or its representative without the necessity of any other or further notice of any act, fact or information concerning the Association's rights or such Owner's or their tenant's liabilities under this Section; provided, in the case of indemnification the demand shall contain a statement setting forth the Association's payment or liability to pay the Claim with sufficient detail to identify the basis for the payment or liability to pay.

11.6.7 Notice and Opportunity to be Heard. Substantial compliance with the procedures set forth in the Bylaws is sufficient whenever this Declaration or other Governing Documents require notice and opportunity to be heard regarding any alleged violation of the Governing Documents. The right of appeal to the Board as provided in the Bylaws includes appeal from the decisions of any Association committee except the ACC.

11.6.8 Filing of Notices of Non-Compliance. At any time the Board determines



in good faith there probably exists any noncompliance with any provisions of this Declaration or any other Governing Documents, the Board may, at its option, direct that a notice of noncompliance be Recorded covering the affected Unit or Units and the Owner(s) thereof at the sole cost and expense of such Owner(s). All such costs and expenses are due and payable upon demand, and are secured by the Association's continuing Assessment lien.

## **ARTICLE XII**

### **Assessments**

**12.1 Creation of Assessments.** There are hereby created Assessments for Association expenses as may from time to time specifically be authorized by the Board, to be commenced at the time and in the manner set forth in Section 12.4. There shall be four (4) types of Assessments: (a) Base Assessments to fund Common Expenses for the benefit of all Members of the Association; (b) Townhome Assessments that are assessed against the Owners of the Townhomes to reimburse the Association for costs incurred by the Association related to the Townhomes and for which the Association does not incur related to the Detached Homes, such as, for illustration purposes only, premiums and deductibles for insurance coverage for the Townhomes and the cost to maintain the Townhome Common Areas and the exterior elements of Townhomes and Limited Common Areas; (c) Parcel Assessments, as described in Section 12.4.3; and (d) Special Assessments as described in Section 12.4. Each Owner, by acceptance of a deed is deemed to covenant and agree to pay these Assessments.

All Assessments, together with interest at eighteen percent (18%) per annum, as computed from the date the delinquency first occurs, late charges, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Unit against which each Assessment is made until paid. Each such Assessment, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the Person who was the Owner of such Unit at the time the Assessment arose, and, in the event of a Transfer of title, his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance, except no first Mortgagee who obtains title to a Unit pursuant to the remedies provided in the Mortgage shall be liable for unpaid Assessments which accrued prior to such acquisition of title.

The Association shall, upon demand at any time, furnish to any Owner liable for any type of Assessment a certificate in writing setting forth whether such Assessment has been paid as to any particular Unit. Such certificate shall be conclusive evidence of payment to the Association of any Assessments therein stated to have been paid. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate, which fee shall not exceed the maximum fee permitted by applicable Law.

Assessments shall be paid in such manner and on such dates as may be fixed by the Board. Unless the Board otherwise provides, the Base Assessment and any Townhomes Assessment shall be due and payable on the first day of each fiscal year. If any Owner is delinquent in paying any Assessments or other charges levied on his Unit, the Board shall require any unpaid installments of the Base Assessment and/or any other Assessments to be paid in full

immediately, unless exceptional circumstances exist (as determined by the Board in its sole discretion).

No Owner may waive or otherwise exempt himself from liability for the Assessments provided for herein, including, by way of illustration and not limitation, by non-use of Common Area or abandonment of the Unit. The obligation to pay Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of any Assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Governing Documents, or for inconvenience or discomfort arising from the making of repairs or Improvements which are the responsibility of the Association, or from any action taken to comply with any Law, ordinance, or with any order or directive of any municipal or other governmental authority.

During the Period of Administrative Control, the Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services or materials or a combination of services and materials with Declarant or other entities for the payment of some portion of the Common Expenses.

**12.2 Computation of Base Assessment.** It shall be the duty of the Board, at least sixty (60) days before the beginning of each fiscal year, to prepare a budget covering the estimated Common Expenses of the Association during the coming year. The budget shall include a capital contribution establishing a reserve fund in accordance with a budget separately prepared, as provided in Section 12.3 of this Article.

Subject to Section 12.15, the Base Assessments shall be equally allocated to all non-exempt Units within the Community. Notwithstanding the above, the Board may, in its sole discretion, reduce the Base Assessments determined pursuant to the above formula by taking into account:

- (a) other sources of funds available to the Association; and
- (b) Assessments to be levied upon additional Units reasonably anticipated to become subject to assessment during the fiscal year.

During the Period of Administrative Control, Declarant may elect on an annual basis, but shall not be obligated, to reduce the resulting Base Assessments for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 12.1 above); provided, any such subsidy shall be conspicuously disclosed as a line item in the income portion of the Common Expense budget and shall be made available to the membership. The payment of such subsidy in any year shall under no circumstances obligate Declarant to continue payment of such subsidy in future years.

The Board shall cause a copy of the Common Expense budget and notice of the amount of the Base Assessment to be presented to the Owners. After the expiration of the Period of Administrative Control, the budget may be disapproved if, within forty-five (45) days after the

date when the budget is presented, there is a vote of disapproval by at least fifty-one percent (51%) of all of the allocated voting interests of the Owners in the Association, and the vote is taken at a special meeting called for that purpose by Owners under this Declaration or the Governing Documents. If the budget is disapproved, the budget that the Board last adopted that was not disapproved by the Owners continues as the budget until and unless the Board presents another budget to the Owners and that budget is not disapproved. During the Period of Administrative Control, Owners may not disapprove a budget.

**12.3 Computation of Townhome Assessment.** It shall be the duty of the Board, at least sixty (60) days before the beginning of each fiscal year, to prepare a budget covering the estimated Townhome Expenses of the Association during the coming year.

The Townhome Assessments shall be equally allocated to all Townhomes within the Community.

During the Period of Administrative Control, Declarant may elect on an annual basis, but shall not be obligated, to reduce the resulting Townhome Assessments for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 12.2 above); provided, any such subsidy shall be conspicuously disclosed as a line item in the income portion of the Townhome Expense budget that shall be made available to Owners of the Townhomes. The payment of such subsidy in any year shall under no circumstances obligate Declarant to continue payment of such subsidy in future years.

The Board shall cause a copy of the Townhome Expense budget and notice of the amount of the Townhome Assessment to be presented to the Owners of the Townhomes. After the Period of Administrative Control, the budget and the amount of the Townhome Assessment shall become effective unless disapproved by at least fifty-one percent (51%) of all of the allocated voting interests of the Owners of the Townhomes in the Association. The budget may also be disapproved if within forty-five (45) days after the date of the meeting where the budget is presented, there is a vote of disapproval by at least fifty-one percent (51%) of all of the allocated voting interests of the Owners of the Townhomes in the Association, and the vote is taken at a special meeting called for that purpose by Owners of the Townhomes under this Declaration or the Governing Documents. If the budget is disapproved, the budget that the Board last adopted that was not disapproved by the Owners of the Townhomes continues as the budget until and unless the Board presents another budget to the Owners of the Townhomes and that budget is not disapproved. During the Period of Administrative Control, Owners of the Townhomes may not disapprove of a budget. Notwithstanding the preceding, if the Association is required by Law to carry insurance and/or incur costs associated with the Townhomes, the Owners of the Townhomes cannot disapprove of expenses that the Association is legally obligated to incur.

Notwithstanding the foregoing, however, in the event the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

During the Period of Administrative Control, the Owners of Townhomes may not

disapprove of the budget and the amount of the Townhome Assessment.

**12.4 Computation of Detached Home Assessment.** It shall be the duty of the Board, at least sixty (60) days before the beginning of each fiscal year, to prepare a budget covering the estimated Detached Home Expenses of the Association during the coming year.

The Detached Home Assessments shall be equally allocated to all Detached Homes within the Community.

During the Period of Administrative Control, Declarant may elect on an annual basis, but shall not be obligated, to reduce the resulting Detached Home Assessments for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 12.2 above); provided, any such subsidy shall be conspicuously disclosed as a line item in the income portion of the Detached Home Expense budget that shall be made available to Owners of the Detached Homes. The payment of such subsidy in any year shall under no circumstances obligate Declarant to continue payment of such subsidy in future years.

The Board shall cause a copy of the Detached Home Expense budget and notice of the amount of the Detached Home Assessment to be presented to the Owners of the Detached Homes. After the Period of Administrative Control, the budget and the amount of the Detached Home Assessment shall become effective unless disapproved by at least fifty-one percent (51%) of all of the allocated voting interests of the Owners of the Detached Homes in the Association. The budget may also be disapproved if within forty-five (45) days after the date of the meeting where the budget is presented, there is a vote of disapproval by at least fifty-one percent (51%) of all of the allocated voting interests of the Owners of the Detached Homes in the Association, and the vote is taken at a special meeting called for that purpose by Owners of the Detached Homes under this Declaration or the Governing Documents. If the budget is disapproved, the budget that the Board last adopted that was not disapproved by the Owners of the Detached Homes continues as the budget until and unless the Board presents another budget to the Owners of the Detached Homes and that budget is not disapproved. During the Period of Administrative Control, Owners of the Detached Homes may not disapprove of a budget. Notwithstanding the preceding, if the Association is required by Law to carry insurance and/or incur costs associated with the Detached Homes, the Owners of the Detached Homes cannot disapprove of expenses that the Association is legally obligated to incur.

Notwithstanding the foregoing, however, in the event the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

During the Period of Administrative Control, the Owners of Detached Homes may not disapprove of the budget and the amount of the Detached Home Assessment.

**12.5 Special Assessments.**

12.5.1 Entire Membership. The Association may levy Special Assessments

against all the Members as follows:

(a) for purposes of defraying, in whole or in part, the cost of any action or undertaking on behalf of the Association in connection with, or the cost of, any construction or replacement of, a specific capital Improvement upon the Common Area, including the necessary fixtures and personal property related thereto; provided, however, that without the vote of a majority of a quorum (as specified in the Bylaws) of the Class A Members, and, if during the Period of Administrative Control, the written consent of Declarant, the Association shall not impose a Special Assessment for the purposes described in this Section 12.4.1 in an amount that in any one year exceeds One Thousand Dollars (\$1,000.00), which maximum amount shall increase by five percent (5%) per annum cumulatively; and

(b) for purposes of providing any necessary funds for restoration and repair of damaged or destroyed Common Area or Area of Common Responsibility in accordance with the provisions hereof, unless the Owners elect not to repair same pursuant to Section 7.2 of this Declaration.

Special Assessments levied against all the Members shall be equally allocated to the Units unless the Board determines that another method is more equitable. Special Assessments pursuant to this paragraph shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved, if the Board so determines.

12.4.2 Less Than All Members. The Association may levy a Special Assessment against any Member individually and against such Member's Unit to reimburse the Association for costs incurred in bringing a Member and his Unit into compliance with the provisions of this Declaration and the other Governing Documents, which Special Assessment may be levied upon the vote of the Board after compliance with Section 11.6.

Special Assessments as aforesaid shall also include, without limitation of the foregoing:

- (a) reasonable charges for:
- i. providing a statement of Assessments or indebtedness, including resale certificates;
  - ii. administrative fees to reflect changes of ownership, tenancy or occupancy on the records of the Association, including, but not limited to a fee for providing Association payoff information needed in connection with the financing, refinancing, or leasing of an Owner's Parcel, which amount shall not exceed the maximum amount allowed by applicable Law; and
  - iii. plan fees and other fees associated with reviewing, processing and approving applications for architectural approval, which fee may not exceed the actual cost of reviewing, processing and approving such applications;

(b) admission or usage fees applicable to any Common Area as from time to time established by applicable Rules and Regulations;

(c) fines as from time to time established by applicable Rules and Regulations for any violation of this Declaration or other Governing Documents; and

(d) all other monetary obligations established by or pursuant to this Declaration or other Governing Documents which are intended to apply to one or several Units but not to all Units, including all Compliance Assessments.

12.4.3 Parcel Assessments. In the event the Association incurs any costs associated with the maintenance or repair of any Exclusive Common Area or Exclusive Common Area Improvements, the Association may allocate such costs and expenses to the Owner of the Unit to which such Exclusive Common Area or Exclusive Common Area Improvements are appurtenant. Such Assessments are referred to herein as "*Parcel Assessments*," which are a type or category of Special Assessments, and all the terms and conditions related to Special Assessments shall apply to Parcel Assessments. If Parcel Assessments are levied on a regular basis, the Association may require an Owner to pay Parcel Assessments on a regular recurring basis concurrently with the payment of Base Assessments.

12.4.4 Payment; Waiver. Special Assessments and Parcel Assessments as authorized by Section 12.4 are due and payable immediately upon the occurrence of the event giving rise to liability for payment of same. Failure of the Association (or managing agent as applicable) to impose or collect any Special Assessment is not grounds for any action against the Association, any managing agent, or their respective directors, officers, agents or employees, and does not constitute a waiver of the right to exercise authority to collect any Special Assessments in the future. For good cause shown as determined in the sole opinion of the Board, the Board may waive, wholly or partially, imposition of any Special Assessment authorized by Section 12.4.2, provided, any such waiver must be conditioned upon payment in full of all remaining monetary obligations or receipt of written commitment that same will be paid within a specified period of time.

**12.5 Reserve Budget and Capital Contribution**. The Board shall prepare a reserve fund analysis as required by the Act to determine (a) the need for a reserve fund to accumulate money to cover the cost of repairing, replacing, and restoring Common Area to the extent required by the Act (currently Common Area Improvements that have a useful life of three (3) years or more and a remaining useful life of less than thirty (30) years), but excluding any cost that can reasonably be funded from the Association's general budget or from other Association funds, and (b) the appropriate amount of any reserve fund. The Association shall review and, if necessary, update the reserve analysis as required by the Act. Based upon the reserve analysis, the Board shall establish a reserve budget. The Board will provide a copy of the reserve analysis and any update thereto to any Member requesting the same. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Base Assessments over the period of the budget. The capital contribution required, if any, shall be fixed by the Board and included within and distributed with the applicable budget and notice of

Assessments. The reserve funds shall not be used for daily maintenance expenses, unless a majority of Owners vote to approve the use of the reserve funds for that purpose, or for any purpose other than the purpose for which the reserve fund was established. The reserve fund shall be maintained separate from other Association funds. The Board will prepare and submit the reserve fund analysis as required by the Act. The reserve fund may be invested in a prudent manner, subject to any investment constraints imposed by the Governing Documents. The above requirements do not apply to an Association during the Period of Administrative Control.

**12.6 Reinvestment Fee.** Each purchaser/Lessee of a Unit within the Community shall pay to the Association at closing a "**Reinvestment Fee**" immediately upon becoming the Owner of the Unit (i.e., at closing of the purchase or in the event of a Transfer that is the equivalent of a bona fide sale as discussed herein) in such amount as is established from time to time by the Board, to reimburse the Association for costs incurred by the Association in connection with Transfer of title to such new Owner and for the payment of other expenses and/or reserves, as the Board may determine in its sole and exclusive discretion. Currently, the Reinvestment Fee shall be one half percent (0.5%) of the Gross Sales Price of any Unit unless otherwise determined by the Board; provided, however, that in no event shall the Reinvestment Fee exceed the maximum percentage of the Gross Sales Price of any Unit that is allowed by applicable Law. The Board shall have the right to collect and enforce the payment of the Reinvestment Fee in the same manner as enforcement and collection of delinquent Assessments and further described in this Declaration. In the event that the Reinvestment Fee is not paid at closing/upon Transfer to the Association, then the Board shall have the right to impose a penalty against the new Owner of the Unit in an amount as determined by the Board from time to time in its sole discretion.

For purposes of this Section 12.6, "**Gross Sales Price**" shall mean, in the case of a Transfer that is in all respects a bona fide sale, the greater of: the Gross Sales Price stated in the agreement for purchase and sale, (b) the Gross Sales Price stated on the settlement statement prepared by a third-party escrow or title agent, or (c) the total consideration given for the Transfer (or the equivalent thereof which would have been received by the transferor had the transaction been an arms-length, third-party cash transaction, in the event the Transfer is not an arms-length, third-party cash transaction) of the Unit subject to Transfer. In case of a Transfer that is a lease for a period of twenty (20) or more years or is otherwise not in all respects a bona fide sale, the Gross Sales Price of the Unit subject to Transfer shall be the fair market value of the Unit as determined by the Board. A transferee may make written objection to the Board's determination of value for a non arms-length Transfer within fifteen (15) days after the Board has given notice of such determination, in which event the Board shall obtain an appraisal, at the transferee's sole expense, from a certified real estate appraiser of good reputation, who is qualified to perform appraisals in Utah, who is familiar with Salt Lake County and local area real estate values, and who shall be selected by the Board. The appraisal so obtained shall be binding on both the Board and the transferee. Notwithstanding any provision herein to the contrary, where a transferee does not object within the fifteen (15) day period established above, the transferee shall be deemed to have waived all right of objection concerning Gross Sales Price and the Association's determination of such shall be binding.

No such Reinvestment Fee shall be payable and a Transfer shall not be deemed to have occurred with respect to (a) the creation of any Mortgage, (b) any foreclosure of a Mortgage, (c) the exercise of a power of sale available under a Mortgage, (d) the taking of a deed or assignment in lieu of a foreclosure by a Mortgagee, (e) the conveyance by a Mortgagee of a deed to a Unit to a grantee if such Mortgagee shall have obtained title to such Unit pursuant to subclause (b), (c) or (d) above, or (f) any other closely held entity solely for estate planning purposes. For purposes of this Section 12.6, a "**Transfer**" shall mean, whether in one transaction or in a series of related transactions, any sale, conveyance, assignment, lease, or other Transfer of any beneficial ownership of or interest in any Unit, including, but not limited to, (i) the conveyance of fee simple title to any Unit, (ii) the Transfer of any ownership interest in any timeshare or fractional ownership interest or vacation club interest, (iii) the Transfer of more than fifty percent (50%) of the outstanding shares of the voting stock of a corporation which, directly or indirectly owns one or more Units, and (iv) the Transfer of more than fifty percent (50%) of the interest in net profits or net losses of any partnership, limited liability company, joint venture or other entity, which, directly or indirectly, owns one or more Units. The Declarant, prior to the organization of the Association, and thereafter the Board, shall have the right to determine in their respective sole and exclusive judgment whether or not a "Transfer" has occurred for the purposes of levying a Reinvestment Fee.

A separate notice of the Reinvestment Fee required by this Section 12.6 has been or shall be Recorded.

**12.7 Date of Commencement of Assessments.** The obligation to pay the Assessments provided for herein shall commence as to each Unit on the first day of the month following the sale of a Unit by Declarant to an Owner. Assessments shall be due and payable in a manner and on a schedule provided in this Declaration. The first annual Base Assessment levied on a Unit shall be adjusted according to the number of months remaining in the fiscal year at the time Assessments commence on the Unit.

**12.8 Written Statement of Unpaid Assessment.** The manager or Board will issue a written statement indicating any unpaid Assessment with respect to a Unit upon the written request of the Owner of such Unit and payment of a reasonable fee not to exceed the maximum amount permitted by applicable Law.

**12.9 Fines.** The Board may assess a fine against any Owner for a violation of the Governing Documents in accordance with the Act. Before assessing a fine, the Board will give the Owner a written warning (a "**Warning Notice**") that (i) describes the violation, (ii) states the rule or provision of the Governing Documents that is violated, (iii) states that the Association may assess fines against the Owner if the violation continues and is not cured or if the Owner commits similar violations within one year after the day on which the Association gives the Owner the written warning or assesses a fine against the Owner for such violation, and (iv) if the violation is a continuing violation, states a time that is not less than forty-eight (48) hours after the day on which the written warning is given by which the Owner has to cure the violation. Any unpaid fines shall be treated as Special Assessments and subject to any applicable interest and late fees commencing as of the later of (1) the date of the Assessment, or (2) if the Owner



requests a hearing, the date of the final decision following the hearing. If an Owner disputes the assessment of a fine, the Owner may request an informal hearing to protest or dispute the fine within fourteen (14) days from the date of the notice of the fine. For any of the fines imposed against the offending Owner, the offending Owner shall be barred from challenging the validity of the fine if the Owner does not deliver a written hearing request to the Board within fourteen (14) days of the notice of the fine. At any such informal hearing, the Board shall make a reasonable determination, based on the information provided by the Owner and any other information available to the Board, whether to rescind, reduce, or waive the fine. Without limiting the application of fines to violations of the Governing Documents, Fines may also be issued for violation of the following covenants:

(a) No animals, livestock, or poultry of any kind shall be permitted on Common Areas or within any Unit except such domesticated household pets or birds as are allowed pursuant to the Rules and Regulations, including leash Laws, adopted by the Management Committee pursuant to Section 14.4 of this Declaration.

(b) No parking of recreational vehicles and boats shall be permitted on the streets within the Project. Recreational vehicles and boats may not be stored within driveways within the Project. Parking in designated guest parking within the Project shall be subject to the Rules and Regulations adopted by the Management Committee pursuant to Section 11.3 of this Declaration. The provisions of this Section 12.9(b) shall be non-amendable.

(c) Except as provided in Section 14.7, no outside television or radio aerial or antenna, or other similar device for reception or transmission, shall be permitted on any Common Area or the exterior of any Unit except pursuant to written approval of the Board which approval shall be site specific and non-precedent setting.

(d) No Unit within the Project shall contain any wood burning fireplace or any window mount evaporative coolers or air conditioners.

(e) Resident's business vehicles in excess of 3/4 ton trucks shall not be parked in front of Units overnight, nor shall any vehicle be repaired, disassembled, or reassembled on any Common Area, garage apron, public street, or designated guest parking in the Project.

(f) Unit garages are to be used for the parking of automobiles and not for general storage or miscellaneous items. The garages must actually accommodate the number of cars the garage is designed to accommodate (i.e., two cars in a two-car garage). Garages shall be used for overnight vehicle parking.

(g) The Board will determine whether the Community will be serviced by trash collection through trash dumpsters or through trash receptacles that are collected on a weekly basis. In the event the Community is serviced through trash collection through trash receptacles, except for trash collection days and the evening immediately before trash collection days, trash receptacles are not to be left outside within view of the Community streets. Empty trash receptacles must be returned to garages the day of collection. In the event the Community is serviced by trash dumpsters, the trash dumpsters are to be used by Occupants to dispose of

trash contained in tied garbage bags so that trash does not accumulate within a Unit. Trash collection and disposal will be governed by Rules and Regulations established by the Association.

(h) Unit interior windows shall be covered within thirty (30) days of occupancy with permanent window coverings in color (as seen from the exterior) approved by the ACC.

(i) Unit patios and balconies shall not be used as general storage areas, for the hanging and drying of laundry, or for decorative items visible from adjoining Units or public streets.

To the extent not prohibited by Law, the Board shall have the right, from time to time to adopt, revise and modify a policy related to the issuance of fines in the event of a violation of the terms and conditions of this Declaration and the other Governing Documents. The fine policy will set forth the list of covenants for which fines may be issued from time to time and the amount of the fines. If any fine is not paid within ten (10) days after notice of the Assessment, a late fee will be assessed and interest at the rate of eighteen percent (18%) per annum will accrue until paid. In the event a fine is assessed, an Owner may request a formal hearing and appeal the fine in accordance with the requirements set forth in the Act.

**12.10 Lien for Assessments.** The Association has a lien on a Unit for Assessments and, except as otherwise provided in this Declaration, for fines, fees, charges, and costs associated with collecting an unpaid Assessment, including court costs and reasonable attorney fees, late charges, interest, fines, and any other amount that the Association is entitled to recover under this Declaration, at Law, or an administrative or judicial decision. The obligation to pay Assessments hereunder is part of the purchase price of each Unit when sold to an Owner, and an express vendor's lien is hereby retained to secure the payment thereof and is hereby Transferred and assigned to the Association. Additionally, a lien with a power of sale is hereby granted and conveyed to the Association to secure the payment of Assessments and other amounts owed hereunder. The Recording of this Declaration constitutes record notice and perfection of the above-described lien. If an Assessment is payable in installments, the lien will be for the full amount of the Assessment from the time the first installment is due, unless the Association otherwise provides in a notice of Assessment. An unpaid Assessment or fine accrues interest at the rate provided in this Declaration. The lien provided in this Section 12.10 has priority over each other lien and encumbrance on a Unit except: (a) a lien or encumbrance Recorded before the Declaration is Recorded; (b) a first or second security interest on the Unit secured by a Mortgage that is Recorded before a Recorded notice of lien by or on behalf of the Association; or (c) a lien for real estate taxes or other governmental Assessments or charges against the Unit. To evidence any lien hereunder, the Association may prepare a written Notice of Assessment Lien setting forth the amount of the Assessments and other amounts due and owing, the name of the Owner of the Unit subject to such Assessments and other amounts due and owing and a description of such Unit, which shall be signed by an officer of the Association and may be Recorded.

**12.11 Enforcement of a Lien.** To enforce the lien, the Association may cause a Unit to be sold through non-judicial foreclosure as though the lien were a deed of trust, in the manner provided by U.C.A. §§57-1-24, 57-1-25, 57-1-26, and 57-1-27 (as amended from time to time) and the Act, or foreclose the lien through a judicial foreclosure in the manner provided by Law for the foreclosure of a Mortgage and the Act. For purposes of a non-judicial or judicial foreclosure, the Association is considered to be the beneficiary under a trust deed; and the Owner is considered to be the trustor under a trust deed. An Owner's acceptance of the Owner's interest in a Unit constitutes a simultaneous conveyance of the Unit in trust, with power of sale, to the trustee designated below for the purpose of securing payment of all amounts due under this Declaration. A power of sale and other powers of a trustee under this part and under U.C.A. §§57-1-19 through 57-1-34 (as amended from time to time) may not be exercised unless the Association appoints a qualified trustee. The trustee herein designated may be changed any time and from time to time by execution of an instrument in writing signed by the President or Vice President of the Association and attested to by the Secretary of the Association and Recorded pursuant to U.C.A. §57-1-22 (as amended from time to time). A Person may not be a trustee hereunder unless the Person qualifies as a trustee under U.C.A. §57-1-21(1)(a)(i) or (iv) (as amended from time to time). A trustee is subject to all duties imposed on a trustee under U.C.A. §§57-1-19 through 57-1-34 (as amended from time to time). Notwithstanding the foregoing, the Association may bring an action against an Owner to recover an amount for which a lien is created under U.C.A. §57-8a-301 (as amended from time to time) or from taking a deed in lieu of foreclosure, if the action is brought or deed taken before the sale or foreclosure of the Owner's Unit.

Declarant hereby appoints Steven L. Whitehead, Esq., a member of the Utah State Bar, as trustee (and to any substitute or successor trustee as hereinafter provided for). The Declarant hereby conveys and warrants pursuant to U.C.A. §§57-1-20 and 57-8a-304 (as amended from time to time) to Steven L. Whitehead, Esq., a member of the Utah State Bar, as trustee (and to any substitute or successor trustee as hereinafter provided for) with power of sale, the Unit, and all Improvements to the Unit for the purpose of securing payment of Assessments under the terms of this Declaration to the Association, which shall be the beneficiary under such conveyance. In the event of the election by the Board to foreclose the liens herein provided for nonpayment of sums secured to be paid by such lien, then it shall be the duty of the trustee, or his successor, as hereinabove provided, at the request of the Board (which request shall be presumed by a request by the President of the Association) to enforce this trust and to sell such Unit, and all rights appurtenant thereto.

At least thirty (30) calendar days before initiating a non-judicial foreclosure, the Association shall provide notice ("*Notice of Sale*") to the Owner of the Unit that is the intended subject of the non-judicial foreclosure. The Notice of Sale shall: (a) notify the Owner that the Association intends to pursue non-judicial foreclosure with respect to the Owner's Unit to enforce the Association's lien for an unpaid Assessment; (ii) notify the Owner of the Owner's right to demand judicial foreclosure in the place of non-judicial foreclosure; (iii) be sent to the Owner by certified mail, return receipt requested; and (iv) be in substantially the following form:

NOTICE OF NONJUDICIAL FORECLOSURE AND RIGHT TO DEMAND

## JUDICIAL FORECLOSURE

The Haven Cottages and Villas Owners Association, Inc., the association for the Project in which your Unit is located, intends to foreclose upon your Unit using a procedure that will not require it to file a lawsuit or involve a court. This procedure is being followed in order to enforce the Association's lien against your Unit and to collect the amount of an unpaid Assessment against your Unit, together with any applicable late fees, interest, and costs, including attorney fees, associated with the foreclosure proceeding. Alternatively, you have the right to demand that a foreclosure of your property be conducted in a lawsuit with the oversight of a judge. If you make this demand and the Association prevails in the lawsuit, the costs and attorney fees associated with the lawsuit will likely be significantly higher than if a lawsuit were not required, and you may be responsible for paying those costs and attorney fees. If you want to make this demand, you must state in writing that "I demand a judicial foreclosure proceeding upon my Unit," or words substantially to that effect. You must send this written demand by first class and certified U.S. mail, return receipt requested, within fifteen (15) days after the date of the postmark on the envelope in which this notice was mailed to you. The address to which you must mail your demand is [insert the Association's address for receipt of a demand]."

The Notice of Sale may be included with other Association correspondence to the Owner. The Association may not use a non-judicial foreclosure to enforce a lien if the Owner mails the Association a written demand for judicial foreclosure by U.S. mail, certified with a return receipt requested, to the address stated in the Notice of Sale sent to the Owner; and within fifteen (15) days after the date of the postmark on the envelope of the Notice of Sale sent to the Owner.

A court entering a judgment or decree in a judicial action brought by the Association shall award the prevailing party its costs and reasonable attorney fees incurred before the judgment or decree and, if the Association is the prevailing party, any costs and reasonable attorney fees that the Association incurs collecting the judgment. In a non-judicial foreclosure, the Association may include in the amount due, and may collect, all costs and reasonable attorney fees incurred in collecting the amount due, including the costs of preparing, Recording, and foreclosing a lien.

The Association's non-judicial foreclosure of a Unit is governed by U.C.A. §§ 57-1-19 through 57-1-34 (as amended or superseded) to the same extent as though the Association's lien were a trust deed and the Act. If there is a conflict between a provision of the Act and a provision of U.C.A. §§57-1-19 through 57-1-34 with respect to the Association's non-judicial foreclosure of a Unit, the Act controls. The Association may abandon a judicial foreclosure, non-judicial foreclosure, or sheriff's sale and initiate a separate action or another judicial foreclosure, non-judicial foreclosure, or sheriff's sale if the initial judicial foreclosure, non-judicial foreclosure, or sheriff's sale is not complete. In the event of an amendment to applicable Utah Law regarding the enforcement of any lien and the judicial or non-judicial foreclosure on any Unit, the President of the Association, acting without joinder of any other Owner or

Mortgagee or other Person may, by Recorded amendment to this Declaration, amend the provisions hereof so as to comply with said amendments to the applicable Utah Law.

At any judicial foreclosure or non-judicial foreclosure, the Association shall be entitled to bid up to the amount of the sum secured by its lien, together with interest, costs, and expenses of sale, including trustee's and attorney's fees and other amounts due and owing, and to apply as a cash credit against its bid all sums due to the Association covered by the lien foreclosed.

From and after any such foreclosure, the Occupants of such Unit shall be required to pay a reasonable rent for the use of such Unit and such occupancy shall constitute a tenancy-at-sufferance, and the purchaser at such foreclosure shall be entitled to the appointment of a receiver to collect such rents and, further, shall be entitled to sue for recovery of possession of such Unit by forcible detainer without further notice. During any period in which a Unit is owned by the Association following foreclosure or sale in lieu thereof: (a) no right to vote shall be exercised on its behalf; (b) no Assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual Assessment, its equal pro rata share of the Assessment that would have been charged such Unit had it not been acquired by the Association as a result of foreclosure.

The Association need not pursue a judicial foreclosure or non-judicial foreclosure to collect an unpaid Assessment but may file an action to recover a money judgment for the unpaid Assessment without waiving the lien or its rights and remedies as provided herein or available at Law or in equity.

**12.12 Subordination of the Lien.** The lien of Assessments, including interest, late charges (subject to the limitations of applicable Law), and costs (including attorney's fees and costs) provided for herein, shall be subordinate to tax liens and to the lien of any first Mortgage upon any Unit. The sale or Transfer of any Unit shall not affect the Assessment lien. However, the sale or Transfer of any Unit pursuant to judicial or non-judicial foreclosure (i.e., power of sale) of a first Mortgage shall extinguish the lien of such Assessments as to payments which became due prior to such sale or Transfer unless the Owner against whom the original Assessment was made is the purchaser at the foreclosure sale (in which event such lien shall remain in full force and effect). No sale or Transfer shall relieve such Unit from lien rights for any Assessments thereafter becoming due. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Unit obtains title pursuant to judicial or non-judicial foreclosure of the Mortgage, it shall not be liable for the share of the Common Expenses or Assessments by the Association chargeable to such Unit which became due prior to such acquisition of title. Such unpaid share of Common Expenses or Assessments shall be deemed to be Common Expenses collectible from Owners of all the Units, including such acquirer, its successors and assigns.

**12.13 Termination of Rights.** The Board may terminate a Delinquent Owner's right to receive utility service for which the Owner pays as a Common Expense and/or of access to and use of Common Area provided that the Association may not prevent vehicular or pedestrian access to the Unit across any private streets or walkways that may be part of the Common Areas. A "**Delinquent Owner**" means an Owner who fails to pay an Assessment when due. Before terminating a utility service or right of access to and use of Common Area and/or recreational

facilities, the Association's manager or Board shall give the Delinquent Owner notice ("**Termination Notice**") in a manner provided in this Declaration. The Termination Notice shall state: (a) that the Association will terminate the Owner's utility service or right of access to and use of the Common Area and/or recreational facilities, or both, if the Association does not receive payment of the Assessment within fourteen (14) days after the date of the Termination Notice, and (b) the amount of the Assessment due, including any interest or late payment fee, and may include the estimated cost to reinstate the utility service if the service is terminated or disconnected; and (c) the Owner's right to request a hearing. A Delinquent Owner may submit a written request to the Board for an informal hearing to dispute the Assessment, which request must be submitted within fourteen (14) days after the date the Delinquent Owner receives the Termination Notice. If the Delinquent Owner timely requests a hearing, the Board shall conduct an informal hearing in accordance with the standards provided in this Declaration or the Rules and Regulations. If a Delinquent Owner requests a hearing, the Association may not terminate a utility service or right of access to and use of the Common Area and/or recreational facilities until after the Board conducts the hearing and enters a final decision. If an Association terminates a utility service or a right of access to and use of the Common Area and/or recreational facilities, the Association shall take immediate action to reinstate the service or right following the Delinquent Owner's payment of the past due Assessment, including any interest and late payment fee. The Association may assess the Delinquent Owner for the cost associated with reinstating a utility service that the Association terminates as provided in this Section and demand that the estimated cost to reinstate the utility service be paid before the service is reinstated, if the estimated cost is included in the Termination Notice.

**12.14 Rent Application.** The Board may require an Occupant under a Lease with an Owner to pay to the Association all future Lease or rent payments payable and due to the Owner if the Owner fails to pay an Assessment for a period of more than sixty (60) days after the Assessment is due and payable, beginning with the next monthly or periodic payment due from the Occupant and continuing until the Association is paid in full the Amount Owing. Before requiring an Occupant to pay Lease payments to the Association, the Association's manager or Board shall give the Owner written notice in accordance with the terms of this Declaration ("**Rent Application Notice**"). The Rent Application Notice shall state: (a) the amount of the Assessment due, including any interest, late fee, collection cost, and attorney fees; (b) that any costs of collection, including attorney fees, and other Assessments that become due may be added to the total amount due and be paid through the collection of Lease payments; and (c) that the Association intends to demand payment of future Lease payments from the Occupant of the Owner's Unit if the Owner does not pay the Amount Owing within fifteen (15) days after the date of the Rent Application Notice. If an Owner fails to pay the Amount Owing within fifteen (15) days after the date of the Rent Application Notice, the Association's manager or Board may exercise the Association's rights herein by delivering a written notice to the Occupant ("**Rent Payment Notice**"). The Rent Payment Notice shall state that: (i) due to the Owner's failure to pay an Assessment within the required time, the Board has notified the Owner of the Board's intent to collect all Lease payments from the Occupant until the Amount Owing is paid; (ii) the Law requires the Occupant to make all future Lease payments, beginning with the next monthly or other periodic payment, to the Association, until the Amount Owing is paid; and (iii) the Occupant's payment of Lease payments to the Association does not constitute a default under the

terms of the Lease with the Owner. The manager of the Association or the Board shall mail a copy of the Rent Payment Notice to the Owner. An Occupant who receives a Rent Payment Notice shall pay to the Association all future Lease payments as they become due and owing to the Owner beginning with the next monthly or other periodic payment after the Rent Payment Notice is delivered to the Occupant and until the Association notifies the Occupant that the Amount Owing is paid. An Owner shall credit each payment that the Occupant makes to the Association pursuant to a Rent Payment Notice against any obligation that the Occupant owes to the Owner as though the Occupant directly made the payment to the Owner, and the Owner may not initiate a suit or other action against an Occupant that receives a Rent Payment Notice for failure to make a Lease payment that the Occupant pays to the Association as required herein. Within five (5) business days after the Amount Owing is paid in full, the manager of the Association or the Board shall notify the Occupant in writing that the Occupant is no longer required to pay future Lease payments to the Association. The manager of the Association or the Board shall mail a copy of the cessation notification to the Owner. The Association shall deposit money paid to the Association under this Section in a separate account and not disburse that money to the Association until the Amount Owing is paid and any cost of administration, not to exceed \$250.00, is paid. The Association shall, within five (5) business days after the Amount Owing is paid, pay to the Owner any remaining balance. The term "**Amount Owing**" means the total of any Assessment or lien amount that is due and owing and any applicable interest, late fee, and cost of collection. The term "**Lease**" means an arrangement under which an Occupant occupies a Unit in exchange for the Owner receiving a consideration or benefit, including a fee, service, gratuity, or emolument.

#### **12.15 Exempt Property.**

12.15.1 Common Area. Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of Base Assessments and Special Assessments:

- (a) all Common Area; and
- (b) all property dedicated to and accepted by any governmental authority or public utility, including, without limitation, public schools, public streets, storm water detention/retention basins, and public parks, if any.

12.15.2 Declarant Property. Notwithstanding anything to the contrary herein, any property and Units owned by the Declarant and not occupied, such as model homes and Units for sale, shall be exempt from payment of Assessments and any Reinvestment Fees pertaining to Transfers to Declarant or any entity controlling, controlled by, or under common control with Declarant and Declarant Affiliates.

**12.16 Property Manager.** The Board may contract with an independent third-party professional property manager to provide the services and/or to perform the duties of the Association herein, and in connection therewith, by contract or resolution, assign to such property manager the right to set the amounts of and to receive payments of the applicable charges. The property manager so engaged shall be an independent contractor of the

Association. The obligation to contract with a property manager may not be waived, cancelled, modified, or amended in any way. The right and authority of any property manager to set the amounts and receive payment as aforesaid is deemed to be assigned by virtue of contracting with a property manager to provide the associated functions and services for so long as the applicable contract remains in effect unless the applicable contract expressly provides otherwise. A property manager must give written notice to the Board as to the initial establishment of, and as to any subsequent increase in the amount of, charges. Subject to the aforesaid notice requirement as to a property manager and as required regarding Rules and Regulations, the Board or its property manager, as applicable, may adopt, amend, revise and repeal any such charges from time to time without notice.

**12.17 Enforcement.** The Board shall use its reasonable judgment to determine whether to exercise the Association's powers to impose sanctions or pursue legal action for a violation of the Governing Documents, including: (a) whether to compromise a Claim made by or against the Board or the Association; and (b) whether to pursue a Claim for an unpaid Assessment. The Association may not be required to take enforcement action if the Board determines, after fair review and acting in good faith and without conflict of interest, that under the particular circumstances: (i) the Association's legal position does not justify taking any or further enforcement action; (ii) the covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current Law; (iii) a technical violation has or may have occurred, and the violation is not material as to a reasonable person or does not justify expending the Association's resources; or (iv) it is not in the Association's best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria. If the Board decides to forego enforcement, the Association is not prevented from later taking enforcement action and any inaction by the Board or the Association shall not be deemed a waiver of any rights to take any enforcement action in the future. The Board may not be arbitrary, capricious, or against public policy in taking or not taking enforcement action.

**12.18 Conflict Resolution Regarding Claims against Association or Declarant.**

12.18.1 Statement of Intent. Every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, any inspection on any Unit that Owner is purchasing or owns or any aspect of the Project; all prior to purchasing a Unit. Moreover, if any warranty has been provided, an Owner Warranty has been provided to each Owner identifying those items that are warranted by the Contractor. Having had the ability to inspect prior to purchasing a Unit, having received a written warranty if any warranty is provided, and having paid market price for a Unit in the condition it and the Units and Common Area are in at the time of purchase, it is acknowledged that it is unfair and improper to then seek to have the Declarant, a builder, a contractor, and/or any subcontractor performing work in the Project to change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, the Owners (by purchasing a Unit) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving certain conflicts in that it is slow, expensive, uncertain, and can often negatively impact the sale value and ability to obtain financing for the purchase of Units for years, unfairly prejudicing those Owners who must or want to sell their Unit during any period when litigation is pending. For this reason, the Owners



by purchasing a Unit and the Declarant agree and acknowledge that certain disputes simply shall not be pursued, to the extent permitted by Law, and that others shall be pursued only through certain specific alternative dispute resolution mechanisms and only after full disclosure, Right to Cure Periods, and knowing approval of the Owners. Consistent with this dispute avoidance intent and mandate and in an effort to provide an avenue of recovery against the party responsible for faulty construction, the Declarant may obtain and provide warranties to the Association, or that the Association may enforce, from subcontractors related to the construction of the Project. It is the intent of the Parties hereto, as agreed to by the Owners by and upon the purchase of a Unit, that these warranties (from subcontractors), if they are obtained, whatever they might cover and whomever they are from, are the sole remedy to the extent permitted by Law, in case of any defects or damages arising from defects of any kind related to construction or development of the Project, including any Unit or the Common Area. The intent of this Section is to eliminate, to the extent possible, Claims against or involving the Declarant and Claims related to the construction of the buildings and fixtures on the Project, and, when and if any such Claim is permitted as a matter of Law or pursuant to this Declaration, to ensure that every opportunity is made to resolve the Claim outside of a normal court procedure. This effort shall include, but not be limited to, the right to cure and the requirements for mediation and arbitration.

12.18.2 Association Warranties. The Declarant may, but is not obligated to, provide for certain warranties from subcontractors to the Association related to the construction of the Project ("*Association Warranties*" or an "*Association Warranty*"). The Association shall have the right, as provided for in any such warranties, to directly enforce and seek performance of these warranties from the subcontractors who performed the work in the construction of the Project. There is no guarantee or warranty by the Declarant that any warranties will be provided or that the warranties will cover any particular component or aspect of the Project.

12.18.3 Owner Warranties. The Declarant, builder, or contractor may have provided certain warranties to the Owners related to the Unit purchased ("*Owner Warranties*" or an "*Owner Warranty*"). The first Owner of a Unit to whom any warranty is issued or with whom a legal warranty arises, and only that Owner, shall have the right to directly enforce and seek performance from the entity providing such warranty of any terms of the warranty and only consistent with the warranty itself. The Association shall have no right to seek the performance of or take assignment of any rights in any warranties granted to any Owner and the Owner shall have no right to assign any rights of any kind arising under a warranty to the Association.

12.18.4 Waiver of Subrogation and Release. The Association and each Owner waives, and shall cause its insurance carrier to waive, any right to subrogation against the Declarant or any builder or contractor of any portion of the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner or of the Association from pursuing or exercising any subrogation rights, whether arising by contract, common Law, or otherwise, against the Declarant, a builder or a contractor, and their officers, employees, owners, and representatives. To the fullest extent permitted by Law, the Association and Owners hereby release Declarant and builder and contractors, their officers, employees, owners, and representatives from any and all liability to the Association and all

Owners, and anyone claiming through or under them by way of subrogation or otherwise, for any loss, injury, or damage to property, caused by fire or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of Declarant, builder, or contractor, their officers, employees, owners, and representatives. The Association and each Owner agrees that all policies of insurance shall contain a clause or endorsement to the effect that this release and waiver of subrogation shall not adversely affect or impair such policies or prejudice the right of the Association or any Owner to recover thereunder. The Association and all Owners shall indemnify and defend the Declarant, the builder, the contractor and any of their officers, employees, owners, or representatives from any Claims barred or released by this provision, including but not limited to any Claim brought under any right of subrogation.

#### 12.18.5 Declarant and/or Builder Litigation.

12.18.5.1 Declarant, Association, the Board, its officers and directors, and all Owners (each a “**Bound Party**” as used in this Section) agree to encourage the amicable resolution of any disputes, grievances, and Claims regarding the design, construction, condition, or sale of any part of the Community or any Improvements thereon involving any Bound Party without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to the following mandatory procedures for resolving all Claims as set forth in this Section 12.18.5.

12.18.5.2 An Owner, the Association and/or the Board may only make a Claim against the Declarant, the builder, the contractor, or a subcontractor to the extent allowed herein or by Law after the following efforts at dispute resolution have been completed: (1) the Owner, the Association and/or the Board shall provide to the Declarant, the builder, the contractor, or a subcontractor a Notice of Claim (defined below) and permit the Declarant, the builder, the contractor, or a subcontractor, as the case may be, one hundred eighty (180) days (“**Right to Cure Period**”) to cure or resolve the Claim or defect or to try to get the builder, the contractor or the appropriate subcontractor to cure or resolve the Claim or defect, prior to initiating any lawsuit, legal proceeding, or dispute resolution process; (2) if the dispute is not resolved within the 180-day Right to Cure Period, the parties agree to mediate the dispute prior to taking further action. In such an event, the parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claims by good faith negotiation through a mutually acceptable mediator. If additional, different, or modified Claims, damages, calculations, supporting information, or descriptions are added, provided to, or asserted against the Declarant, the builder and/or the contractor that were not included in any previously submitted Notice of Claim, the Right to Cure Period provided for in this Section shall immediately apply again and any pending action, including any mediation or arbitration, shall be stayed for the 180-day period.

12.18.5.3 For any Claim allowed by Law or by this Declaration, the parties agree to binding arbitration of all Claims asserted against the Developer, builder, or contractor by either the Association or any Owner, with the initiating party advancing all arbitration costs subject to assignment of those costs by the arbitrator in a final decision on the merits. The parties to any such arbitration shall mutually work, in good faith, to agree upon the

arbitrator, mediator, arbitration service, and all aspects of the arbitration and mediation proceedings. In case of any disagreement regarding the mediation or arbitration service, the American Arbitration Association shall administer the mediation and arbitration and the rules applicable to construction disputes shall apply. The arbitration rules shall be subject to the requirements of this Declaration and shall be modified accordingly in case of any conflict between the Rules and this Declaration.

12.18.5.4 “*Notice of Claim*” shall mean a written notice that includes the following information: (1) The nature of the Claim, including the persons involved in the Claim and the respondent’s role in the Claim, (2) the legal basis of the Claim (i.e. the specific authority out of which the Claim arise), (3) a specific breakdown and calculation of any alleged damages, (4) a specific description of the Claim along with any supporting opinions, information, or other factual evidence upon which the Claim are based, (5) photographs of any alleged condition, if applicable, (6) samples of any alleged defective conditions or materials, (6) all efforts taken to avoid, mitigate, or minimize the Claim or any alleged damages arising therefrom, (7) the names, phone numbers, and address of every Person providing factual information, legal or factual analysis, or legal or factual opinions related to the Claim, (8) the proposed remedy, (9) the fact that claimant will meet with respondent to discuss in good faith ways to resolve the Claim, and (10) a statement that the person alleged to be responsible shall have one hundred eighty (180) days to cure or resolve the Claim.

12.18.5.5 Notwithstanding any other provision in this Declaration, except as to an Owner Warranty and to the fullest extent permitted by the Law, an Owner shall not and agrees not to commence or maintain any litigation, arbitration, or other action against the Declarant, the builder and/or the contractor, or any of their officers, directors, members, employees, or agents for any reason, including but not limited to alleged construction defects, any related damages, or any damages arising therefrom.

12.18.5.6 Notwithstanding any other provision in this Declaration, and to the fullest extent permitted by the Law, the Association, the Board, or any officer of the Association shall not and cannot commence or maintain any litigation, arbitration, or other action against the Declarant, a builder, and/or the contractor or any of their officers, directors, members, employees, or agents for any reason, including but not limited to for alleged construction defects, any related Claims, or any damages arising therefrom other than arising from an Association Warranty.

12.18.5.7 The Association shall indemnify and defend the Declarant, the builder, and/or the contractor and their officers, directors, members, employees, and agents against any litigation, arbitration, or the assertion of any Claim arising out of any alleged construction defect in or related to the Project and/or any damages arising therefrom, except to the extent covered by an Association Warranty. By purchasing a Unit, the Owner specifically disclaims and releases the Declarant, the builder and/or the contractor from any Claim, known or unknown, related to any defect in the Project not specifically covered by either an Association Warranty or an Owner Warranty, except only as limited by Law. The Association and each Owner acknowledges and agrees that the Association Warranties and the Owner Warranties, if

provided, and whatever coverage they might provide are the sole remedy of the Association related to any alleged or actual construction defects. In case of any Claim, litigation or legal proceeding asserted related to any construction defect arising in any Unit, the Owner agrees to defend the Declarant, builder and/or contractor (which shall permit the Declarant, builder, and/or contractor to select counsel and require the Owner to advance all costs and fees related to any such Claim) from any such Claim and to indemnify Declarant, builder and/or contractor from any liability arising therefrom.

12.18.5.8 Subject only to the provisions in the Owner Warranties and any Association Warranties (if any), the Association and the Owners take ownership and possession of the Units, Common Areas, and Limited Common Areas and Exclusive Common Areas "AS IS" and "WITH ALL FAULTS" with no warranties of any kind except as otherwise required as a matter of Law. The Declarant specifically disclaims, and the Association and any Owner hereby waive, any warranties of merchantability, fitness for a particular use, or of habitability, to the full extent allowed by Law.

12.18.5.9 If otherwise allowed by Law notwithstanding the terms of this Declaration or if allowed in this Declaration; prior to the Association making any demand or commencing any mediation, arbitration, or litigation (any "**action**") against a Declarant or any builder or contractor involved in the original construction of the Project, other than a Claim made solely upon an Association Warranty against a subcontractor, the Association must have a meeting of the Owners, with proper prior written notice, which must be at least three (3) business days prior to the proposed meeting, and have all attorneys, experts, and other Persons expected to be involved in the Claim present at the meeting. Those people present, including the Board and the Association officers, must permit discussion among the Owners and questions from the Owners and must respond to all reasonable questions of the Owners related to the proposed Claims. The notice for the meeting must include the following information:

(i) a statement must be made on the first page of such notice in bold, upper case, and not less than 22-point font:

The Association is contemplating serious and potentially time-consuming and expensive litigation against the Declarant of this Project. This litigation could cost you money in the form of increased Assessments and will likely impact the resale value of your unit and your ability to sell your unit while this litigation is pending. This litigation could take years to resolve. You should think seriously about this issue and attend the meeting on this issue.

(ii) a budget and detailed breakdown of all costs and legal fees reasonably estimated to be caused by the expected litigation including a breakdown of any costs and fees to be advanced by anyone including any attorney or other representative of the Association under any contingency arrangement, and all those costs and fees to be paid directly by the Association, all of which shall assume the litigation will last five years (unless it is reasonably expected to last longer in which case the longer period shall be used for this estimate) and require a trial on the merits,

(iii) a detailed explanation of where any money to be paid by the Association will be obtained including a per Unit breakdown of all costs and fees per year, assuming the litigation will last five years,

(iv) a written statement of each Board member indicating that Person's position on the litigation,

(v) a legal opinion on the likelihood of success of any such litigation or arbitration from an attorney not associated with the attorney or law firm who is anticipated to bring any such action, analyzing the applicable Law, Governing Documents, and all relevant and known factual information,

(vi) all terms of the agreement between the Association and the attorney or law firm prosecuting the action including a copy of any engagement letter, contract, or agreement related to that representation,

(vii) a detailed description of the alleged Claims against the Declarant and of all efforts by the Association to resolve those Claims prior to commencing any action, and a statement describing any demands, notices, offers to settle or responses to offers to settle made either by the Association or the Declarant or the builder or contractor, if applicable;.

In addition to the requirements above and as a condition precedent to commence any action, the Association must obtain the approval of 85% of all of the Owners (not 85% of those present); provided that if the percentage is greater than that required by applicable Laws, the greatest percentage required by applicable Laws, by vote, at a lawfully called and properly noticed special meeting for that purpose only. Such a special meeting must occur no sooner than thirty (30) days after the meeting required above for notice, and no later than sixty (60) days after the meeting required above. The Association cannot specially assess, borrow money, or use any reserve funds to fund any such action or to pay for any costs associated with any such action, including but not limited to copying costs, deposition costs, expert witness costs, and filing fees.

12.18.5.10 Any agreement with a law firm or attorney under which the law firm would represent the Association in an action (as defined in the prior subsection) must have, at a minimum, the following terms: (1) the law firm or attorney will apply sufficient resources, attorneys, time, and administrative support to the action as necessary to prosecute the action as quickly as the court system will allow; (2) the attorney or law firm will provide monthly status reports, in writing, describing at a minimum the following: (a) the work that was completed in the last month, (b) the time, in hours and minutes, incurred by each attorney or billable staff member in the last month broken down by time entry, person performing the work, and a description of each time entry, (c) the costs incurred by the attorneys and any experts in the prior month, (d) a running tally of all costs and time, by attorney and staff member, since the beginning of the action updated monthly, (e) a list of what is needed to move the action toward resolution, (f) the projected dates for each action that is needed to move the action toward resolution, (g) an explanation of why any projected action cannot be completed immediately; (3) the attorney or law firm will provide an opinion letter regarding the Association's claims prior to commencing any action that will, at a minimum, explain each Claim, cite the Law supporting the

Claim, cite the facts supporting the Claim, provide an application of the Law to the facts and analysis of each Claim, cite any potential defenses or weaknesses to any Claim including an analysis of each potential defense or weakness, an opinion of the lawyer or law firm as to the Association's likelihood of success on each Claim, an analysis of potential damages including citations to the Law and facts supporting that analysis, and an opinion of the lawyer or Law firm on the damages the Association would likely be awarded for each Claim, (4) a requirement that the Association be permitted to terminate the engagement of the law firm or attorney at any time with no requirement to pay any attorney fees incurred under a contingency arrangement up to that date if, in the Association's sole discretion, (a) the attorney or law firm is not prosecuting the action as rapidly as the court system will allow, (b) the burden of the action on the Owners through the inability to sell or refinance, through costs, or through any disruption to the operations of the Association is not worth the continuation of the action, (c) the Association determines, at any time, that the legal and factual risks associated with the action are such that the action should not be pursued further, (d) the law firm or attorney fails to keep the Association informed as to the course of the action and effect of proceedings on the likelihood of success, including any failure to provide required monthly reports.

12.18.5.11 The existence of procedures and/or requirements in this Section applicable to Claims against the Declarant and its affiliates, the builder, the contractor and/or the subcontractors that are barred or limited in other provisions of this Declaration shall not be construed as permitting any such Claims or as contradictory to a prohibition or limit on such Claims in other provisions in this Declaration. The procedures and requirements to assert a Claim (including but not limited to the right to cure requirements, the meeting and Owner approval requirements, the mediation requirement, and the arbitration requirements) that is prohibited by this Declaration are provided solely in case any such Claim is permitted by Law notwithstanding the terms of this Declaration.

12.18.5.12 Prior to engaging any lawyer or firm to represent the Association related to any litigation described in this Section, the Association shall obtain independent counsel to review the engagement letter governing that representation and advise the Association to ensure that the requirements in this Declaration are satisfied related to that engagement. The Association shall continue the representation of independent counsel to monitor the representation by that counsel and to ensure that any proceeding is prosecuted diligently, competently, and consistent with the requirements of the engagement letter and this Declaration. Any action involving the Association and the Declarant and its affiliates, the builder and/or the contractor shall strictly comply with each of the provisions of this Section.

12.18.5.13 The Bound Parties hereby covenant, stipulate, and agree that in the event the Bound Parties fail to satisfy the prerequisites set forth herein, the non-compliant party will indemnify, defend, hold harmless, and exculpate the other Bound Parties to the fullest extent permissible by Law, and the non-breaching Bound Party shall be entitled to recover any and all attorneys' fees and costs expended as a result of enforcing this Section, which fees and costs may include, without limitation, pre-litigation attorneys' fees, costs incurred in connection with investigation of potential Claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. The Bound Parties further

covenant, stipulate, and agree that failure to comply with this Section herein will result in damages to Declarant including, without limitation, reputational harm, and may result in damages to Declarant including lost revenues, and loss of business and sales opportunities.

12.18.5.14 Any provision in this Declaration notwithstanding: (1) other than as set forth in this Section, the Association, the Board, and any officers of the Association shall have no power whatsoever to institute, prosecute, maintain or intervene in any action, (2) any institution, prosecution or maintenance of, or intervention in, an action by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Section, shall be unauthorized and ultra vires (i.e., an unauthorized and unlawful act, beyond the scope of authority of the corporation or of the person(s) undertaking such act) as to the Association, and shall subject any member of the Board or officer of the Association who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Section to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution or maintenance of, or intervention in, the Proceeding; and (3) this Section 12.18.5 may not be amended or deleted at any time without the express prior written approval of the following: (a) Members representing not less than sixty-seven percent (67%) of the total voting power of the Association, (b) not less than unanimous voting power of the Board; and any purported amendment or deletion of this Section or any portion hereof, without both of such express prior written approvals shall be void, and (c) the Declarant.

ALL PARTIES HEREBY AGREE TO RESOLVE ANY CLAIM ACCORDING TO THE PROVISIONS OF THIS SECTION AND SUCH PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE THE CLAIM IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION.

### **ARTICLE XIII** **Architectural Standards and Review Committees**

#### **13.1 Architectural Control Committee.**

13.1.1 Organization. There is hereby established an Architectural Control Committee (herein sometimes referred to as the "ACC"). The ACC shall be composed of three persons who will be appointed by the Board. Members of the ACC need not be Members of the Association. The ACC may from time to time designate any one of its members to act in its stead. After the Period of Administrative Control a majority of the persons serving on the ACC must be Owners. All such persons serving on the ACC serve at the discretion of the Board. All decisions of the ACC are subject to review and modification by the Board except as herein otherwise expressly provided, including specifically the right of any Owner to appeal any decision of the committee to the Board as provided in the Bylaws. In the event of the death or resignation of any person serving on the ACC, the Board shall designate a successor or successors who will have all of the authority and power of his or their predecessor(s). Until such successor has been appointed, the remaining member or members have full authority to exercise all rights, duties and powers of the ACC. The ACC shall keep the Board informed as to its

activities on a continuing basis, and shall submit a written report to the Board regarding same semi-annually or as otherwise required by the Board.

13.1.2 Jurisdiction. The ACC has exclusive jurisdiction on behalf of the Association regarding: (a) implementation of all provisions of this Article XIII; and (b) promulgation of all Architectural Guidelines pertaining to the development and construction of Improvements within the Community.

13.1.3 Compensation. No person serving on the ACC is entitled to compensation for services performed; provided, the ACC may employ one or more architects, engineers, attorneys or other consultants to assist the ACC in carrying out its duties, and the Association shall pay such consultants for services rendered. Members of the ACC may also be reimbursed for reasonable expenses in such manner and amounts as may be approved by the Board.

13.2 Submission of Plans Required. No Regulated Modification may be commenced, constructed, erected, placed, maintained or made upon any Unit or within or upon any part of the Community unless and until complete plans and specifications have been submitted to and approved in writing by the ACC, as applicable, as to compliance with applicable Architectural Review Criteria as set forth in Section 13.5. Two complete sets of plans and specifications must be submitted with each request for approval. In addition to any other applicable requirements per applicable Architectural Guidelines, any plans and specifications to be submitted must specify, in such detail and form as the ACC may reasonably require:

(a) the location upon the Unit or within the Community where the Regulated Modification will occur or be placed;

(b) the dimensions, nature, kind, shape, height, and color scheme of, and all materials to be used in connection with, the Regulated Modification;

(c) appropriate information concerning structural, mechanical, electrical, plumbing, grading, paving, decking and landscaping details;

(d) intended uses; and

(e) such other information, plans or specifications as may be requested or required by the ACC that in the sole opinion of the ACC is reasonably necessary to fairly and fully evaluate all aspects of the proposed Regulated Modification.

13.3 Architectural Guidelines. The Board or the ACC, subject to Board approval, may, from time to time, effective immediately, adopt, modify, amend and repeal such reasonable Architectural Guidelines applicable to the Community, including Units and any Common Area. Such authority includes, but is not limited to, the right to specify:

(a) specific procedural guidelines for submission of requests for, and plans, specifications and other information and documentation necessary to obtain, ACC approval, and procedural requirements for the conducting of all activities necessary to accomplish same;



(b) the amount and manner of payment of any fees or charges reasonably anticipated to cover administrative costs, fees for architectural, engineering, construction, legal or other expert advice or consultation, and all other costs and expenses in connection with review and evaluation of an application;

(c) specific types of Regulated Modifications which may be commenced, constructed, erected or maintained upon any Unit or anywhere within the Community;

(d) a limited number of acceptable exterior materials and finishes that may be utilized in construction or repair of a Regulated Modification;

(e) minimum setbacks;

(f) the location, height, and extent of fences, walls or other screening devices, walks, decks, patios or courtyards;

(g) the orientation of structures and landscaping with respect to streets, walks, driveways and structures on adjacent properties; and

(h) in general, all requirements reasonably deemed necessary to maximize compliance with Architectural Guidelines as set forth in Section 13.3.

WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, THE ARCHITECTURAL GUIDELINES MAY PROVIDE FOR A FINE OF UP TO \$10,000.00 AGAINST ANY OWNER AND UNIT SUBJECT TO THIS DECLARATION FOR FAILURE TO OBTAIN REQUIRED APPROVAL FROM THE ACC OR FOR FAILURE TO COMPLY WITH ANY APPROVAL OF THE ACC, OR MAY REQUIRE A SECURITY DEPOSIT TO ASSURE COMPLIANCE WITH APPLICABLE REQUIREMENTS.

**13.4 Manner and Effect of Adoption of Architectural Guidelines.** The Association shall make Architectural Guidelines available to Owners upon request. Architectural Guidelines may also be (but are not required to be) Recorded. Architectural Guidelines are of equal dignity with, and shall be enforceable in the same manner as, other provisions of this Declaration, provided: (a) such Architectural Guidelines shall not be deemed a waiver, modification, or repeal of any of the provisions of this Declaration; (b) such Architectural Guidelines shall not be enacted retroactively except that all repairs, modifications or maintenance performed subsequent to adoption shall be performed in such manner as to bring the Regulated Modification, so far as practicable, in compliance with all then applicable Architectural Guidelines; and (c) such Architectural Guidelines shall not conflict with this Declaration.

**13.5 Architectural Review Criteria.** The ACC will evaluate all submitted applications for approval on the individual merits of the particular application, and based on evaluation of the compatibility of the proposed Regulated Modification with Community-Wide Standards as of the date of submission of an application and compliance with applicable Governing Documents, including this Declaration and applicable Architectural Guidelines and other Rules and Regulations. The ACC must use reasonable efforts to achieve consistency in the

approval or disapproval of specific types of Regulated Modifications. To this end, consideration will be given to (but the ACC is not bound by) similar applications for architectural approval and the decisions and actions of the ACC with regard thereto. The ACC shall be subject to the limitations and conditions placed upon the Board and the Association regarding Rules and Regulations as set forth in Section 11.3 of this Declaration regarding the adoption, amendment, modification, cancelation, limitation, creation of exceptions to, expansion, or enforcement of Architectural Guidelines and the review criteria.

**13.6 Disapproval by ACC.** It is understood and agreed by each Person having or acquiring an interest in the Community that the ACC will include aesthetic judgment in its decision making process, and approval of submitted plans will not be required simply because the plans satisfy stated objective requirements. The ACC may disapprove any request for approval for any reasons, including the following: (i) failure to comply with any applicable Architectural Review Criteria as set forth in Section 13.3; (ii) lack of sufficient information, plans or specifications as reasonably determined by the ACC to enable the ACC to fairly and fully evaluate the proposed Regulated Modification or the uses thereof; or (iii) failure to include any information, plans or specifications required by applicable Governing Documents, or as may be reasonably requested by the ACC. In the event of disapproval, the ACC shall so notify the applicant in writing; and if disapproval is based on lack of sufficient information, plans or specifications, then the ACC shall also notify applicant of the additional information, plans or specifications required.

**13.7 Approval and Conditional Approval by ACC.**

13.7.1 Manner. The ACC may fully approve any request for approval or approve any such request subject to compliance with conditions stated in a conditional approval. Conditions for approval may include, without limitation, requirements for modifications to plans and specifications such as upgrading or other changes as to materials or changes as to color or design or location, or requirements for addition of other Improvements such as sight barrier landscaping or other devices to screen a proposed Regulated Modification from Public View. A conditional approval is effective only upon full compliance with the stated condition(s). The ACC shall notify the applicant in writing of such approval (together with any qualifications or conditions of approval).

13.7.2 Effect. Except for fraud, misrepresentation, accident or mistake, the ACC's approval or conditional approval is final as to each Regulated Modification covered thereby, and may not be revoked or rescinded once given except as stated in Section 13.7.1 regarding conditional approvals. Except as to compliance with this Article XIII, the ACC's approval or conditional approval of an application does not constitute a waiver, modification or repeal of any covenant contained in this Declaration or other Governing Documents, or preclude by estoppel or otherwise full enforcement of all provisions hereof. The ACC's approval or conditional approval of an application may not be deemed a waiver of the right of the ACC to subsequently disapprove similar requests for approval, or any of the features or elements included therein.

**13.8 Submission and Response; Failure of ACC to Act.**

13.8.1 Submission and Response. Applications for ACC approval are deemed submitted to the ACC only upon actual receipt. All responses by the ACC shall be in writing, and are deemed given when delivered to, or when deposited in the United States mail, postage prepaid and addressed to, the applicant at the address specified in the application or the last known address of the applicant according to the records of the Association. The ACC has no duty to respond to, and the provisions of this Section do not apply regarding, any application if the Person(s) identified in the application do not appear as Members or Owners according to the books and records of the Association unless and until receipt of such confirmation of ownership as is satisfactory in the sole opinion of the ACC. Lessees/Occupants shall file applications or requests for variance in the name of the Owner, and such Owner shall either appoint the Lessee/Occupant as their agent in a letter to the ACC or join the application. Where more than one Owner applies for approval, the delivery or mailing of a response to any one of the Owners as aforesaid constitutes notice to all such Owners.

13.8.2 Failure to Respond. In the event the ACC fails to approve, conditionally approve or disapprove an application or fails to request additional information and/or documentation reasonably required within sixty (60) days after receipt of the application, then the application shall be deemed denied.

**13.9 Variances.** In the event an Owner is denied approval for a Regulated Modification by the ACC, within ten (10) calendar days after denial the Owner may apply for a variance from the ACC's decision with the Board. Failure of an Owner to timely apply for a variance shall be deemed a waiver of the Owner's right to seek a variance. Applications for variances are deemed submitted to the Board only upon actual receipt. The Board may grant specific variances to Architectural Guidelines and to any architectural or use restrictions set forth in this Declaration upon specific findings of compliance with the grounds for granting of a variance as set forth hereafter. The Board may grant a variance only in writing and only with respect to specific instances upon written request therefor, is not binding with respect to any other request for a variance whether or not similar in nature, and does not constitute a waiver, modification or repeal of any of the provisions of this Declaration or other Governing Documents except for the limited purpose of and to the extent of the specific variance expressly granted. The Board may grant a variance only upon specific findings that the variance is necessary due to unusual circumstances that are reasonably beyond the control of the applicant to mitigate or rectify, and that the granting of a specific variance will not materially and adversely affect the architectural, aesthetic or environmental integrity of the Community or the scheme of development therein. The Board's decision to grant or deny an application for a variance is final. In the event the Board fails to approve, conditionally approve or deny a request for a variance or to request additional information and/or documentation reasonably required within sixty (60) days after receipt of the request for a variance, then the request for a variance shall be deemed denied.

### **13.10 Implied Conditions of Approval.**

13.10.1 Applicability. Unless expressly waived or modified by the ACC (or the Board as to variances) in writing, each and every approval or conditional approval of a

Regulated Modification is subject to all provisions of this Article XIII whether or not stated in the approval or conditional approval.

13.10.2 Commencement and Completion of Work. Approval of an application for a Regulated Modification is effective for one (1) year from the date of approval or grant of a variance. If work on a Regulated Modification is not commenced within one (1) year after approval or conditional approval or grant of a variance, such approval or grant will become null and void and the Owner must submit a new application and obtain a new approval for the Regulated Modification. Prior approval of a Regulated Modification shall not bind the ACC or the Board or require the ACC or the Board to approve a re-submitted application for the same Regulated Modification. Upon commencement, the Owner must diligently prosecute and complete all work as soon thereafter as reasonably possible. The ACC (or the Board as to variances) is authorized to set specific schedules for completion of a Regulation Modification on a case-by-case basis and/or pursuant to applicable Architectural Guidelines.

13.10.3 New Construction Materials Required. Only new construction materials may be used in construction of any Regulated Modification except as otherwise approved by the ACC (such as the use of used brick). Any Regulated Modification shall be done in good and workmanlike manner using licensed contractors.

13.10.4 Compliance With Plans. All work on a Regulated Modification must proceed in strict compliance with: (i) the application and plans and specifications approved by the ACC (or variance granted by the Board), (ii) any and all conditions stated by the ACC (or the Board as to variances) in the approval, (iii) any and all applicable governmental Laws, rules, regulations, ordinances, and building codes, and (iv) all applicable Governing Documents.

13.10.5 Permit Requirements. Each Owner is solely responsible for full compliance with all permitting requirements of all governmental agencies having jurisdiction, and shall apply for and diligently pursue obtaining of all required permits promptly after approval or conditional approval is received. Without limitation of the foregoing, the ACC may deny approval pending, or conditional approval upon, prior compliance with applicable permitting requirements or upon receipt of certification satisfactory to the ACC that no such permitting requirements exist.

13.10.6 Compliance With Laws and Governing Documents. Each applicant is solely responsible for insuring that (and nothing in the Governing Documents or any written decision of the ACC (or the Board as to variances) shall be construed as a covenant, representation, guaranty or warranty that) any proposed Regulated Modification will be in compliance with applicable governmental Laws, ordinances or regulations (including building codes or permit or licensing requirements), or with applicable requirements of the Governing Documents except as provided in Section 13.7.2.

**13.11 Inspection Rights.** Upon reasonable notice (oral or written), any member of the ACC or the Board, or their designated representatives, may enter a Unit without liability for trespass or otherwise for purposes of inspecting work in progress and/or as to completion of any Regulated Modification in compliance with the approved plans, specifications, information and

documentation for same, and as to compliance with any applicable provisions of the Governing Documents.

**13.12 Records.** The ACC is not required to maintain records of any of its meetings. The ACC and the Board, however, must keep and maintain records evidencing their respective final decision(s) regarding all requests for approval and requests for variance for not less than four years. The ACC must also maintain a record of all current Architectural Guidelines, and must provide copies to Owners upon request.

**13.13 Limitation of Liability.** Neither Declarant, the Association, the Board, the ACC, nor their respective Related Parties, are liable to any Owner, Lessee, Occupant, or any of their Related Parties, or to any other Person for any actions or failure to act or in connection with any approval, conditional approval or disapproval of any application for approval or request for variance, including without limitation, mistakes in judgment, negligence, malfeasance, or nonfeasance. No approval or conditional approval of an application or related plans or specifications and no publication of Architectural Guidelines may ever be construed as representing or implying that, or as a covenant, representation, warranty or guaranty that, if followed, the Regulated Modification will comply with applicable legal requirements, or as to any matters relating to the health, safety, workmanship, quality or suitability for any purpose of the Regulated Modification. The provisions hereof are cumulative of the provisions of Sections 12.18 and 15.189.

**13.14 Limitation of Applicability.** None of the provisions of this Article XIII apply to any activities of Declarant, Declarant Affiliates or the Association.

## **ARTICLE XIV** **Architectural and Use Restrictions**

### **14.1 Signs.**

14.1.1 General. No signs, billboards, posters, banners, pennants or advertising devices of any kind, including without limitation business, professional, promotional or institutional signs, are permitted on any Unit or within any Unit if in Public View, or within or upon any portion of the Community without the prior written consent of the ACC except as otherwise provided in this Section. The Board or ACC may remove or cause to be removed any sign, billboard, poster, banner, pennant or advertising device of any kind which is not approved as aforesaid or is otherwise prohibited under this Declaration or other Governing Documents and may dispose of same as debris without liability for trespass or otherwise.

14.1.2 Prohibited Signs. No sign is permitted that is vulgar, obscene or otherwise patently offensive to persons of ordinary sensibilities. Permitted signs must be professionally printed and prepared, and must be properly installed and maintained, to avoid unsightly appearance. The good faith determination of the Board or ACC as to any of the foregoing is final. No sign is permitted to be larger than four square feet. No sign may be illuminated. No sign may be placed on any Common Area closer than ten feet from any street or any side or back lot line, or within any traffic sight line area as defined in Section 14.15. No Owner (or their

tenants, guests or invitees) is permitted to place any sign on another Owner's Unit or upon any Common Area except for any Exclusive Common Area appurtenant to the Owner's Unit. Distressed, foreclosures and bankruptcy references are specifically prohibited.

14.1.3 Permitted Signs. To the extent required by Law or in any event upon prior approval of the ACC, but subject to applicable provisions of Section 14.1.2 above, each Owner is permitted to place upon (and only upon) such Owner's Unit (or within a window of such Owner's Unit) or upon the lawn/landscaping within the Common Area immediately in front of such Owner's Unit, as determined by policies adopted by the Board (i) one sign advertising the particular Unit on which the sign is located for sale or for rent, (ii) "political signs" whereby such Owner is promoting a political candidate, party or issue, (iii) "school" signs at the discretion of the Board and (iv) security monitoring signs. The ACC may reasonably regulate the period(s) of time political signs may be permitted, and the number of permitted political signs and in relationship thereto their size and location. The Declarant may construct, place, install, and maintain such signs, billboards, banners, pennants, and advertising devices as are customary in connection with the sale of newly constructed residential dwellings.

## **14.2 Parking, Garages and Prohibited Vehicles.**

14.2.1 Parking/Garages. No garage shall be enclosed, modified or otherwise used so as to reduce its capacity for parking vehicles below that originally approved by the ACC, nor may any portion of a garage be diverted to any use other than the parking of vehicles and other generally accepted and customary uses of a garage. Garages may not be used for general storage and must accommodate, in addition to any belongings, the number of automobiles designed for the garage (i.e., two-car garage will accommodate two automobiles). In particular, but not in limitation of the foregoing, no portion of any garage may be used as a Residence or as living quarters. Notwithstanding the foregoing, however, Declarant may temporarily convert a garage into a sales or construction office, provided that it is converted back to a garage within thirty (30) days after cessation of construction and sale of new homes within the Community by Declarant. All vehicles must be parked within the garage for a Unit or temporarily on the driveway servicing the Unit. Vehicles owned or used by any Owner or Occupant may not be parked within the guest parking areas provided in the Common Area. Vehicles of guests shall be parked within the garage or on the driveway of the Unit visited or within the designated guest parking areas provided in the Common Area. The use of guest parking areas shall be governed by Rules and Regulations adopted by the Board.

14.2.2 Prohibited Vehicles. Commercial vehicles, vehicles with commercial writing on their exteriors (except those of a size to be parked in a home's garage), vehicles primarily used or designed for commercial purposes, tractors, mobile homes, recreational vehicles, trailers (either with or without wheels), campers, camper trailers, boats and other watercraft, and boat trailers shall be parked only in enclosed garages or areas, if any, designated by the Board or by the Association, if any, having jurisdiction over parking areas within a particular Community. Stored vehicles and vehicles which are either obviously inoperable or do not have current operating licenses shall not be permitted on the Community except within enclosed garages. Notwithstanding the foregoing, vehicles that become inoperable while on the

Community must be removed within seventy- two (72) hours thereof. For purposes of this Section, a vehicle shall be considered "stored" if it is put up on blocks or covered with a tarpaulin and remains on blocks or so covered for fourteen (14) consecutive days without the prior approval of the Board. Notwithstanding the foregoing, service and delivery vehicles may be parked in the Community during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Area. Any vehicle parked in violation of this Section or parking rules promulgated by the Board may be towed in accordance with the Bylaws.

**14.3 Occupants Bound.** All provisions of this Declaration or any other Governing Documents which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Related Parties of any Owner. Each Owner shall comply, and shall cause all of such Owner's Related Parties to comply, with this Declaration and the other Governing Documents, and shall be responsible for all violations thereof and/or all damage or loss to the Association caused by such Occupants, notwithstanding the fact that such Related Parties are fully liable and may be sanctioned for any violation of this Declaration or the other Governing Documents. Any failure in compliance shall be grounds for an action to recover sums due, for damages or injunctive relief, or for any other remedy available at Law or in equity, maintainable by the Association or, in a proper case, by any aggrieved Unit Owner or Owners. In addition, the Association may avail itself of any and all remedies provided in this Declaration or the other Governing Documents.

**14.4 Animals and Pets.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any portion of the Community, except that dogs, cats, or other usual and common household pets, not to exceed the number as may be permitted in a Unit pursuant to the Laws, codes, and ordinances of the Municipal Authority. However, those pets which are permitted to roam free, or, in the sole discretion of the Association, endanger the health of safety of persons, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Units or the Owner of any portion of the Community shall be removed upon request of the Board; if the Owner fails to honor such request, the pet may be removed by the Board. No pets shall be kept, bred, or maintained for any commercial purpose. Dogs shall at all times whenever they are outside a Unit be confined on a leash held by a responsible person or attached to a secured pole or other fixed Improvement.

**14.5 Quiet Enjoyment; Nuisances.** No portion of the Community shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any portion of the Community that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might unreasonably disturb the peace, quiet, safety, comfort, or serenity of the Occupants of surrounding property. Noise typically associated with ball fields, swimming pools, hot tubs, playgrounds, and recreational centers, normal amounts of dogs barking and children playing is not prohibited.

No noxious, illegal, or offensive activity shall be carried on upon any portion of the Community, nor shall anything be done thereon tending to cause embarrassment, discomfort,

annoyance, or nuisance to any person using any portion of the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted within the Community. No speaker, horn, whistle, bell or other sound device, except alarm devices used exclusively for security purposes, shall be installed or operated on any Unit. The use and discharge of firecrackers and other fireworks is prohibited within the Community.

**14.6 Unsightly or Unkempt Conditions.** It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her Unit. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Community. Notwithstanding the above, the disassembly and assembly of motor vehicles to perform repair work shall be permitted provided such activities are not conducted on a regular or frequent basis, and are either conducted entirely within an enclosed garage or, if conducted outside, are begun and completed within twelve (12) hours.

**14.7 Antenna and Satellite Dish Systems.** No exterior antennae, aerials, satellite dish receivers or other devices designed to transmit or receive television, radio, satellite or other signals of any kind shall be placed, allowed or maintained upon a Visible Location unless a Visible Location is the only location on a Unit where signals may be received or transmitted without substantial interference with reception. If a Visible Location is the only location on a Unit where signals may be received or transmitted without substantial interference with reception, such a device may be placed in a Visible Location approved by the ACC, which approval shall not be unreasonably withheld. The ACC may require screening of any device placed in a Visible Location, unless such screening (i) unreasonably delays installation or unreasonably increases the cost of installation, maintenance or use of the antenna, or (ii) precludes reception of an acceptable quality signal. To the extent permitted by the Telecommunications Act of 1996, as amended from time to time (the "*Telecommunications Act*"), without ACC approval: (a) no direct broadcast satellite dish or multipoint distribution service antenna larger than one (1) meter in diameter will be allowed on a Unit, (b) no television broadcast antenna mast may extend above the height of the center ridge of the roof of the Residence on the Unit, and (c) no multipoint distribution service antenna mast may exceed the height of twelve feet (12') above the center ridge of the roof. This Section 14.7 shall be interpreted to be as restrictive as possible, while at all times complying with the provisions of the Telecommunications Act. Terms used in this Section 14.7, shall be deemed to have the meanings set forth in the Over-The-Air Reception Devices Rule ("*OTARD*") promulgated under the Telecommunications Act or other Rules and Regulations promulgated pursuant thereto, and where OTARD, the Telecommunications Act, or any other rule or regulation promulgated thereunder requires the ACC to act reasonably, or respond promptly, such obligation shall be deemed a part of the ACC's obligations under this provision. In the event of an amendment to the Telecommunications Act which conflicts with this provision, the conflicting provision herein



automatically shall be deemed deleted, and Declarant, without the joinder of any other Owner(s), may amend this provision so as to comply with the amended Telecommunications Act.

**14.8 Garbage Cans.** All garbage cans, above-ground storage tanks, mechanical equipment, woodpiles, yard equipment and other similar items on Units shall be located or screened so as to be concealed from Public View. Unless a dumpster is provided by the Association, the Owners shall place all rubbish, trash, and garbage in rat-proof garbage cans or containers, which will be stored inside each Unit (such as in the garage), and shall cause such garbage cans or containers to be placed on the curb or other area for pick-up/emptying when the garbage is scheduled to be picked-up and emptied; garbage cans are to be returned to the "inside" by 6:00 pm the day of trash pick-up. In the event the City, Salt Lake County or the applicable governmental entity will only pick-up and empty dumpsters servicing the Community, each Owner shall cause any rubbish, trash and garbage to be regularly deposited in the dumpsters servicing the Community.

**14.9 Subdivision of Unit and Time Sharing.** No Unit shall be subdivided or its boundary lines changed except with the prior written approval of the Board. Notwithstanding anything herein to the contrary, Declarant expressly reserves and shall have the right to replat any Unit or Units owned by Declarant without the approval of the Board or any Owner and may amend or modify the Plat for the Community, including modification of the Common Area. Each Owner hereby appoints Declarant as its attorney-in-fact, which shall be vested with an interest, to sign any Plat on behalf of such Owner in the event such Owner's signature or consent is required. Upon request by Declarant, each Owner will sign a power of attorney or such other documents to facilitate the amendment to the Plat. Each Owner agrees that it shall not oppose any amendment to the Plat or any re-platting of the Community by Declarant. No division, boundary line change, or replatting shall violate applicable subdivision or zoning regulations. No Unit shall be made subject to any type of timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Unit rotates among members of the program on a fixed or floating time schedule over a period of years, except that Declarant hereby reserves the right for Declarant and its assigns to operate such a program with respect to Units which it owns.

**14.10 Firearms.** The discharge of firearms within the Community is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size. Notwithstanding anything to the contrary contained herein or in the Bylaws, the Association shall not be obligated to take action to enforce this Section.

**14.11 Irrigation.** No sprinkler or irrigation systems of any type which draw upon water from creeks, streams, rivers, lakes, ponds, canals or other ground or surface waters within the Community shall be installed, constructed or operated within the Community, except that the Association shall have the right to draw water from such sources for the purpose of irrigating the Common Area. All sprinkler and irrigation systems serving Units shall draw upon public water supplies only and shall be subject to approval in accordance with Article XIII of this Declaration. Private irrigation wells are prohibited within the Community. This Section 14.11 shall not apply to Declarant or its activities within the Community.

**14.12 Tents, Mobile Homes and Temporary Structures.** Except as may be permitted

by Declarant or the ACC during initial construction within the Community and except as set forth in Article XVII, no tent, shack, mobile home, or other structure of a temporary nature shall be placed upon a Unit or any part of the Community. The foregoing prohibition shall not apply to restrict the construction or installation of a single utility or similar outbuilding to be permanently located on a Unit, provided it receives the prior approval of the ACC, as appropriate, in accordance with Article XIII hereof. In addition, party tents or similar temporary structures may be erected for a limited period of time for special events with prior written approval of the Board.

**14.13 Drainage and Septic Systems.** Catch basins, drainage swales, and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Person other than Declarant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. No Owner may interfere with the established drainage pattern over any part of the Community unless adequate provision is made for property drainage and is approved in advance by the ACC. Established drainage shall mean and refer to the drainage which exists at the time the overall grading and development of the Community is completed by Declarant. Septic tanks and drain fields, other than those installed by or with the consent of Declarant, are prohibited within the Community. No Owner or its Related Parties shall dump grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances, in any storm drain, drainage ditch, stream, pond or lake within the Community.

**14.14 Tree Removal.** No trees shall be removed, except for diseased or dead trees and trees needing to be removed to promote the growth of other trees or for safety reasons, unless approved in accordance with Article XIII of this Declaration. In the event of an intentional or unintentional violation of this Section, the violator may be required, by the committee having jurisdiction, to replace the removed tree with one (1) or more comparable trees of such size and number, and in such locations, as such committee may determine necessary in its sole discretion, to mitigate the damage.

**14.15 Sight Distance at Intersections.** All Property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

**14.16 Air Conditioning Units.** There shall not be installed or operated in any Unit any window mounted air-conditioning or heating units.

**14.17 Lighting.** Except for traditional holiday decorative lights located on the exterior roof line or around windows of a Residence, which may be displayed for two (2) months prior to and one (1) month after any commonly recognized holiday for which such lights are traditionally displayed (subject to weather conditions), all exterior lights must be approved in accordance with Article XIII of this Declaration. No holiday decorative lights are permitted on the roof of any Residence or on the landscaping or lawn within the Common Area in front of or adjacent to any Unit without the prior approval of the ACC.

**14.18 Artificial Vegetation, Exterior Sculpture, and Similar Items.** No artificial

vegetation or permanent flagpoles shall be permitted in a Visible Location on a Unit. No exterior sculpture, holiday displays, fountains, flags and temporary flagpoles (except on traditional flag flying holidays such as the 4<sup>th</sup> of July and Memorial Day), birdhouses, birdbaths, other decorative embellishments or similar items shall be permitted on any Unit or on any Common Area adjacent to a Unit unless approved in accordance with Article XIII of this Declaration.

**14.19 Energy Conservation Equipment.** It is acknowledged that the Townhomes are attached dwelling units. To the extent not prohibited by Law, no solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Unit unless it is an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the appropriate committee pursuant to Article XIII hereof. No solar energy collector panels may be constructed on a roof, if they extend above the roofline or have panel frames, support brackets, piping and/or conduit that has a color or texture that is different than the roof materials. No windmills, wind generators or other apparatus for generating power from the wind shall be erected or installed on any Unit unless approved pursuant to Article XIII. Any solar energy collector panels and attendant hardware and other equipment shall be deemed the personal property of the Owner. The Owner shall be responsible for and shall indemnify and hold the Association and the Declarant harmless from any damage, harm, or loss (including any and all costs and expenses and attorneys' fees and legal related costs) caused to the Unit or any personal property as a result of or in any way resulting from or associated with the installation, removal, use or operation of such system, and shall be responsible for the maintenance, repair, and replacement of such solar energy collection system. In the event the Association incurs any additional costs associated with or as a result of solar energy collector panels or system, the Owner shall reimburse the Association for such costs through special Assessments. The Association may adopt reasonable Rules and Regulations regarding solar energy systems on the roof of Residences to the extent compliant with applicable Laws and the Act.

Notwithstanding anything herein to the contrary contained herein, this Declaration shall not be amended, and the Association shall not adopt rules, to prohibit or have the effect of prohibiting reasonably sited and designed solar collectors, clotheslines, or other energy devices based on renewable resources on Detached Homes erected on Parcels in the Community in accordance with Section 701 of the Act. To the extent permitted by applicable law, this Section shall not be amended or deleted without the City's approval.

**14.20 Playground.** No jungle gyms, trampolines, basketball standards, sport courts, tennis courts, swing sets, club houses, or similar playground equipment shall be erected or installed on the Common Area adjacent to any Unit, except as installed by Declarant or authorized by the Board in a non-discriminatory manner.

**14.21 Fences/Walls.** No hedges, walls, dog runs, animal pens or fences of any kind shall be permitted on any Unit or within the Common Area adjacent to any Unit, except as approved in accordance with Article XIII of this Declaration.

**14.22 Exclusive Common Area Improvements.** Subject to the terms and conditions of

this Declaration, Owners, at their sole cost and expense, may install Exclusive Common Area Improvements within the Exclusive Common Area appurtenant to their respective Unit, in accordance with the following requirements:

14.22.1 The Owner shall submit an application to the Board requesting that a portion of the Common Area adjacent to the Unit be converted from Common Area to Exclusive Common Area. The application shall include a plan showing the exact location of the Exclusive Common Area and a description of the proposed Exclusive Common Area Improvements to be placed thereon.

14.22.2 The Owner shall be solely responsible for all costs and expenses associated with or relating to such Exclusive Common Area Improvements, including, without limitation, all costs and expenses of installation, design, permits, insurance, construction, maintenance, repair, and replacement thereof, and the Exclusive Common Area and the Exclusive Common Area Improvements shall otherwise be considered part of the Unit for purposes of maintenance, repair, reconstruction, and insurance.

14.22.3 The Owner shall obtain the required approvals from the ACC and comply with the requirements of Article XIII; provided, however, that the ACC may only withhold approval for installation of Exclusive Common Area Improvements if:

(a) The ACC has reason to believe that the Exclusive Common Area, patio, deck or other supporting structure will not support the size or weight of the Exclusive Common Area Improvements. If the ACC has such concerns, the Owner may overcome the same and obtain approval if the Owner, at the Owner's sole cost and expense, obtains and submits to the committee a written opinion from a licensed structural engineer providing the ACC with reasonably satisfactory assurances that the Exclusive Common Area, patio, deck or other supporting structure will structurally support the proposed Exclusive Common Area Improvements;

(b) The proposed Exclusive Common Area Improvements has a color scheme that detracts from and is not reasonably consistent with the appearance and colors of the exteriors of the Units in the Community; or,

(c) The size of the proposed Exclusive Common Area Improvements is unusually large for the proposed location, such that it detracts from the consistency and aesthetic visual appeal of the Community.

(d) There is a risk of damage or harm to person or property.

14.22.4 The Owner shall be responsible for ensuring that the patio, deck or other Exclusive Common Area on which the proposed Improvement will be located will structurally support the proposed Improvement, and that the proposed Improvement will not jeopardize the structural integrity of the Exclusive Common Area or the Unit.

14.22.5 The Owner shall indemnify, hold harmless, and agree to defend the Association, the Board, and Declarant from and against any and all Claims arising from or relating to the installation, use, presence, repair, or removal of the Exclusive Common Area Improvements.

14.22.6 The Owner, at its sole cost and expense, shall obtain and maintain adequate and appropriate insurance coverage relating to the Exclusive Common Area Improvements. The Association shall not have any responsibility to obtain any form of insurance coverage relating to the Exclusive Common Area Improvements.

14.22.7 If the Owner removes the Exclusive Common Area Improvements, the Owner shall be responsible for all costs of removal. The Owner shall restore the Exclusive Common Area or the Unit on which the Exclusive Common Area Improvements were located to its original condition, and shall pay for all costs and expenses relating to such restoration.

**14.23 Chimneys.** All wood, pellet or coal burning fireplaces, stoves, chimneys or similar devices to the extent authorized herein will be equipped with appropriate spark screens as approved by the ACC and the Municipal Authorities and shall comply with all applicable Laws.

**14.24 Use.**

14.24.1 General. The Community shall be used only for residential, recreational, and related purposes (which may include, without limitation, offices for any property manager retained by the Association or business offices for Declarant or the Association). The Association may impose more stringent use prohibitions and standards within the Community. The Association, acting through its Board, shall have standing and the power to enforce such standards. Except for uses by Declarant or the Association, as described in the preceding sentences, each and every Unit is hereby restricted to residential use only. All Units shall comply with the applicable zoning and land use Laws, including restrictions that may restrict the use as a single family dwelling, as such term may be defined by the applicable ordinances of the Municipal Authority. Notwithstanding the above or anything contrary in this Declaration, the leasing of Units shall not be deemed a business or commercial use and multiple Units may be leased to a business to facilitate a corporate retreat.

14.24.2 No Business, Professional, Commercial or Manufacturing Use. No business, professional, commercial or manufacturing use may be made of any Unit or any Improvement located thereon, even though such business, professional, commercial or manufacturing use be subordinate or incident to use of the Unit as a Residence, and regardless of whether or not done for profit or remuneration. Notwithstanding the foregoing, an Owner or Owner's Related Parties residing in a Unit may conduct business activities within the Unit so long as:

- (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit;

(b) the business activity conforms to all zoning requirements for the Unit;

(c) the business activity does not involve persons coming onto the Community or the Unit or door-to-door solicitation of residents of the Community or the Community;

(d) the business activity is consistent with the residential character of the Community and the Community and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Community or the Community, as may be determined in the sole discretion of the Board;

(e) any and all vehicles associated with the business, including the vehicle of the Owner or Occupant and all employees, servants and contractors are parked within the garage or on the driveway and no vehicles are parked on any public or private street or any guest or visitor parking provided within the Community.

Notwithstanding anything in this Declaration to the contrary, the Common Area facilities, including the clubhouse, may be reserved and used for business meetings and business related functions.

**14.24.3 Residential Use Only.** Without limitation of the foregoing, as used herein the term "residential use" shall be construed to prohibit the use of any Unit or the Residence thereon for operation of a boarding or rooming house or residence for transients, or the use of any garage or permitted outbuilding as an apartment or residential living quarters.

**14.24.4 Maximum Occupancy.** In addition to the limitations above set forth, in no event may a Unit be occupied by more persons than permitted by applicable Law.

**14.24.5 Additional Standards and Regulations.** The Association, acting through the Board, shall have authority to make and to enforce additional Rules and Regulations governing the use of Units within the Community. Such Rules and Regulations shall be binding upon all Owners and their Related Parties until and unless overruled, canceled or modified in a regular or special meeting of the Association by the vote of both Members representing a majority of the total Class "A" votes in the Association and by the Class "B" Member, so long as such membership shall exist.

**14.25 On-Site Fuel Storage.** No on-site storage of gasoline, heating or other fuels shall be permitted on any part of the Community except that up to five (5) gallons of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

**14.26 Golf Carts/ATVs/Motorbikes.** No gasoline-powered golf carts shall be operated within the Community. All golf carts shall be powered by electricity or by similar non-combustion means. All motorcycles, trail bikes, tree-wheel and four-wheel powered devices,

automobiles, and two or four-wheel drive recreational type vehicles are to be operated only on established streets and parking areas and are specifically prohibited from all other portions of the Common Area.

**14.27 Leasing of Units/Restriction on Rentals.** The leasing of Units shall be subject to any applicable Laws, including, but not limited to, the U.S. Fair Housing Act, the Act, and the ordinances of the Municipal Authority. All Leases shall be in writing and shall disclose and include the 55 year and older age restrictions as set forth herein. The Lessee shall be subject to the terms and conditions of this Declaration and the other Governing Documents. The Board may adopt reasonable rules regulating leasing and subleasing. Notwithstanding the above, an Owner and its Parcel shall be exempt from any restrictions on leasing as follows: (a) if the Owner is in the military, the Owner may lease its Unit for the period of the Owner's deployment, (b) any lease to the Owner's parent, child, or sibling, (c) if the Owner has been relocated by its employer for a period of no less than two (2) years, or (d) if the Owner is a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for (i) the estate of a current Owner or resident of the Unit, or (ii) the parent, child, or sibling of the current Owner or resident. The Association shall create a procedure, by rule or resolution, to determine and track the number of rentals and Units that are subject to the exclusions as described in the preceding sentences and to ensure consistent administration and enforcement of the rental restrictions.

**14.28 Laws and Ordinances.** Every Owner and such Owner's Related Parties, shall comply with all Laws, statutes, ordinances and rules of federal, state and municipal governments applicable to the Unit and the Community and the Community, including any and all applicable zoning and land use Laws and ordinances, and any violation thereof may be considered a violation of this Declaration; provided, the Board shall have no obligation to take action to enforce such Laws, statutes, ordinances and rules.

**14.29 Unoccupied Residences.** The Owner of a Unit with an unoccupied Residence, including any Mortgagee in possession and any Mortgagee obtaining title to a Unit by foreclosure or by any deed or other arrangement in lieu of foreclosure, is liable for full observance and performance of all terms and conditions of this Declaration and all other Governing Documents, including in particular but without limitation: (i) proper maintenance of the Unit and all Improvements thereon; (ii) securing of the unoccupied Residence, including fastening of windows and locking of all entry and garage doors, and maintenance of appropriate curtains or other permitted window covers in order to prevent unauthorized entry or use; and (iii) such other maintenance as required to avoid an appearance of abandonment or other unsightly or unkempt appearance.

**14.30 Maintenance of Utilities Required.** All utility services intended to be provided to each Unit as originally constructed, including without limitation water, sewage, electric and gas services, must be maintained by the Owner at all times when a Residence is occupied.

## **ARTICLE XV**

### **General Provisions**

**15.1 Term.** The covenants and restrictions of this Declaration shall run with the land and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association, each Owner, and their respective legal representatives, heirs, successors, and assigns, for a term of fifty (50) years from the date this Declaration is Recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been Recorded within the twelve month period preceding the renewal of this Declaration, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated as specified therein.

**15.2 Amendment.** During the Period of Administrative Control, Declarant, acting alone, shall have the sole and unilateral right to amend this Declaration. After the Period of Administrative Control, this Declaration may be amended or terminated by the affirmative vote or written consent, or any combination thereof, of Owners of Units representing sixty-seven percent (67%) of the total votes in the Association. Notwithstanding the above to the extent not prohibited or restricted by applicable Law, such as Section 57-8a-104 of the Act, after the Period of Administrative Control, any amendment concerning lot boundaries, any Owner's voting rights or modification of Section 12.18 shall require the affirmative vote or written consent, or any combination thereof of Owners of Units representing seventy-five (75%) of the total votes in the Association, including the vote of the affected Owner. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment or termination of this Declaration must be Recorded to be effective.

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

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

**15.3 Easements for Utilities, Drainage, Etc.** There is hereby reserved unto Declarant, during the Period of Administrative Control, the Association, and the designees of each (which may include, without limitation, the City, and any water district, municipal utility district or other utility), blanket easements upon, across, over, and under all of the Community for ingress, egress, installation, replacing, repairing, and maintaining cable television systems, master television antenna systems, security, and similar systems, roads, walkways, bicycle pathways, lakes, ponds, wetlands, drainage systems (including altering drainage and water flow), levees, street lights, signage, and all utilities, including, but not limited to, water, sewers, meter boxes, telephones, gas, and electricity; provided, the exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry into any Unit shall be made only after reasonable notice to the Owner or Occupant thereof.

Without limiting the generality of the foregoing, there are hereby reserved for the local water supplier, electric company, and natural gas supplier, easements across the Common Area



for ingress, egress, installation, reading, replacing, repairing, and maintaining utility meters and boxes. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Community, except as may be approved by the Board or as provided by Declarant.

Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate Recordable document, the Board shall have the right to grant such easement over the Common Area without conflicting with the terms hereof. The easements provided for in this Article shall in no way adversely affect any other Recorded easement on the Community.

The Board shall have, by a two-thirds (2/3) vote, the power to dedicate portions of the Common Area to the City, or to any other local, state, or federal governmental entity.

**15.4 Easements to Serve Adjacent Property.** Declarant and its duly authorized agents, representatives, and employees, as well as its successors, assigns, licensees and Mortgagees, shall have and there is hereby reserved an easement over the Common Area for the purposes of enjoyment, use, access and development of any adjacent Property. This easement includes but is not limited to a right of ingress and egress over the Common Area for construction of roads and for tying in and installation of utilities on the adjacent Property. Declarant agrees that if the easement is exercised for permanent access to adjacent Property and such Property or any portion thereof is not made subject to this Declaration, Declarant, its successors, or assigns shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving the adjacent Property. Such agreement shall provide for sharing of costs based on the ratio which the number of residential dwellings on that portion of the adjacent Property which is served by the easement and is not made subject to this Declaration bears to the total number of residential dwellings within the Community and on such portion of the adjacent Property.

**15.5 Perimeter Wall Easement.** There is hereby created an affirmative easement in favor of Declarant, the Association, and their Related Parties, upon, over and across each Parcel adjacent to the perimeters boundaries of the Community (and each Parcel adjacent to public right of way or the perimeter boundaries of the Community) for reasonable ingress, egress, installation, replacement, maintenance and repair of any perimeter wall that is located along a perimeter boundary of the Community or a public right of way.

**15.6 Declarant Easement.** There is hereby created a nonexclusive easement for ingress and egress over, for the right to go over, under and across, and for the right to enter and remain upon, all portions of the Community, including but not limited to, the Common Area (including, but not limited to any private streets and a right of access through any guard gates, key gates or other access control points) for the purpose of enabling Declarant, and Declarant's Related Parties and their respective invitees, licensees, contractors and guests to exercise Declarant's rights and obligations hereunder, and to engage in activities reasonably related to the development, management, administration, operation, maintenance, advertisement and sale or rental of the portions of the Community owned by Declarant. This easement shall be in favor of Declarant and its Related Parties and appurtenance to portions of the Community owned by

Declarant. The rights of access established in this Section shall be exercised so as to reasonably minimize interference with the quiet enjoyment of a Unit by its Owner or any Occupant.

**15.7 Association Easement.** There is hereby created a nonexclusive easement in favor of the Association for ingress and egress over the entire Community (except the interior of an occupied dwelling Unit) for the purpose of enabling the Association and its contractors and Related Parties to implement the provisions of this Declaration. The rights of access established in this Section shall be exercised so as to reasonably minimize interference with the quiet enjoyment of a Unit by its Owner and any Occupant. Every Unit is also hereby subjected to a nonexclusive easement for overspray and runoff of water from any irrigation systems serving the Common Area or Areas of Common Responsibility. Under no circumstance will the Association or any Related Part of the Association be responsible for any property damage or personal injury resulting from any overspray or from the operation of the irrigation systems serving the Common Area or Areas of Common Responsibility.

**15.8 Utility Cross Easements.** Each Unit shall be subject to and benefit from easements under, above and through the Unit and adjoining Units for utilities, such as, culinary water, sanitary sewer, electricity, natural gas, air conditioner lines, ventilation lines, telecommunication lines, etc. to the extent necessary for the proper construction and operation of the Units in accordance with the design and architectural style of such Units and the Community. Such utilities shall be placed within the exterior walls, Party Walls, attic, and/or under the foundation. Any work performed related to such utilities shall be performed by the Association and an Owner shall not have the right to modify or interfere with such utilities. The Association shall have the benefit of the easements granted herein and shall have the right to reasonably access each Unit to the extent necessary to access, inspect, install, place, repair, maintain, and remove such utilities. The Association shall repair any damage to a Unit caused by such entry and activity by the Association. The Association shall provide prior written notice to the Owner of any Unit that is subject to any work related to the installation, placement, or maintenance of any such utilities. The Association shall use good faith efforts to minimize any disturbance to the Owner's use and enjoyment of the Owner's Unit related to the installation, placement, maintenance, or removal of such utilities.

**15.9 Services Easement.** The Common Area shall be subject to a license granted to the City and other Municipal Authorities for ingress to and egress from and across the Common Areas, including any sidewalks and parking areas for the purpose of providing police, fire and emergency services.

**15.10 Encroachment Easements.** Each Unit shall be subject to and benefit from (a) an easement for encroachment of eaves, roof overhangs and other architectural and design features that may encroach over the vertical plane of any Unit; (b) an easement for storm water drainage from the roof and rain gutter from one Unit to another Unit and the natural drainage of water from Unit to Unit in accordance with the architectural design of the Units; and (c) an easement within Party Walls for utilities, electrical cables, telecommunication cables and lines, and other similar Improvements that are commonly located in interior and/or exterior walls.

**15.11 Access Control.** The Association, or its duly delegated representative, may

operate an access control system for the Community or any portion of the Community.

**15.12 Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

**15.13 Right of Entry.** In addition to any other rights set forth herein, the Association shall have the right, but not the obligation, to enter into any Unit for emergency, security, and safety reasons, which right may be exercised by the Board, or the Association's officers, agents, employees, or managers, and all policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner consistent with the terms and conditions of this Declaration.

**15.14 Perpetuities.** Pursuant to U.C.A. § 57-8a-108, the rule against perpetuities and the rule against unreasonable restraints on alienation of real estate may not defeat a provision of this Declaration. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England; provided, however, to the extent applicable, this Declaration is subject to the Utah Statutory Rule Against Perpetuities (U.C.A. §75-2-1201, et. seq.). The covenants, conditions, restrictions, or other provisions of this Declaration shall continue the longest period permitted by applicable Law.

**15.15 Litigation.** In addition to the requirements in Article XII, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by Declarant (if during the Period of Administrative Control) and a vote of seventy-five percent (75%) of the Class "A" Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of Assessments as provided in Article XII hereof, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it.

**15.16 Cumulative Effect; Conflict.** In the event of a conflict between or among this Declaration and the Governing Documents, the more restrictive covenants and restrictions shall govern.

**15.17 Use of the Words "The Haven Cottages and Villas".** No Person shall use the term "The Haven Cottages and Villas" or any derivative thereof in any printed or promotional material without the prior written consent of Declarant. However, any Owner may use the term "The Haven Cottages and Villas" in printed or promotional matter where such term is used solely to specify that their particular Property is located within the "The Haven Cottages and Villas" development. The Association shall be entitled to use the term "The Haven Cottages and Villas" in its name.

**15.18 Limitation of Liability; Indemnification.**

15.18.1 In General. To the maximum extent permitted by the Utah Revised Nonprofit Corporation Act (U.C.A. §16-6a-101 et. seq.), the Association shall indemnify the following Persons against all expenses and liabilities actually incurred by such Persons in connection with a proceeding (as defined in U.C.A. §16-6a-102(37)), including but not limited to, attorney's fees, witness fees (including expert witness fees), costs, and litigation related expenses, reasonably incurred or imposed upon them in connection with any proceeding to which they may be parties, or in which they may become involved, by reason of their being or having served in those capacities on behalf of the Association (or by reason of having appointed, removed or controlled or failed to control members of the Board or the ACC), or any settlement of any such proceeding: (i) every director and officer of the Association, (ii) every member of the ACC or other committees of the Association, (iii) Declarant and the Declarant Related Parties, and (iv) all employees of the Association. The Board further may elect to indemnify any agent of the Association. Any Person described in phrases (i), (ii), (iii) and (iv) of the first sentence of this Section shall be entitled to indemnification whether or not such Person is serving in the specified capacity at the time the expenses are incurred, and the Association shall pay or reimburse reasonable expenses incurred by any such Person who was, is or is threatened to be made a party in a proceeding, in advance of the final disposition of the proceeding, to the maximum extent permitted by Section 16-6a-904 of the Utah Revised Nonprofit Corporation Act (as amended from time to time); provided, however, that payment or reimbursement of expenses pursuant to the procedures set forth in the Utah Revised Nonprofit Corporation Act may be conditioned upon a showing, satisfactory to the Board in its sole discretion, of the financial ability of the Person in question to make the repayment referred to in such Section. This right of indemnification shall be in addition to, and not exclusive of, all other rights to which the Person to be indemnified may be entitled at Law or otherwise.

15.18.2 Non-Liability of Officials. To the fullest extent permitted by Law, none of the following Persons (the "**Released Persons**") shall be liable to any Member, Owner, Lessee, Occupant, the Association or any other Person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, inaction, omission, error, negligence or the like made in good faith and which the following Persons reasonably believed to be within the scope of their representative duties: (i) every director and officer of the Association, (ii) every member of the ACC, or other committees of the Association, (iii) Declarant and the Declarant Related Parties, and (iv) all employees of the Association. Each Owner, Occupant and other Person having any interest in the Community or entering upon or using any portion of the Community is deemed to acknowledge and accept the following:

(a) None of the Released Persons shall be liable or responsible for, or in any manner be guarantor or insurer of, the health, safety, or welfare of any Owner, Occupant or other Person entering upon or making use of any portion of the Community. Each Owner, Occupant and other Person assumes all risks associated with the use and enjoyment of the Community, including but not limited to, any recreational facilities upon or within the Community, including, but not limited to, any Community Amenities and Townhome Amenities.

(b) None of the Released Persons shall be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence or malfunction of any utility line, equipment or substation, adjacent to, near, over, or on the Community. Each Owner, Occupant and other Person assumes all risks of personal injury, illness or other loss or damage arising from the presence of malfunction of any utility line, equipment or substation adjacent to, near, over or on the Community.

(c) No provision of this Declaration or any other Governing Document shall be construed or interpreted as creating a duty by any of the Released Persons to protect or further the health, safety or welfare of any Person, even if funds of the Association are used for such a purpose.

15.18.3 Liability Arising From Conduct of Owners. Each Owner, Lessee, Occupant, and their respective Related Parties hereby indemnifies, holds harmless, and agrees to defend (with counsel reasonably acceptable to the indemnified party) the Declarant, the Association, and their Related Parties from and against all Claims and all other legal actions caused through the willful or negligent act or omission of an Owner, a Lessee, an Occupant, or their respective Related Parties.

15.18.4 Subsequent Statutory Authority. If any applicable Law, whether state or federal, is construed or amended to further eliminate or limit liability or authorizing further indemnification than as permitted or required by this Section 15.18, then liability will be limited or expanded to the fullest extent permitted by such applicable Law.

15.18.5 No Impairment. Any repeal, amendment or modification of this Section 15.18 may not adversely affect any rights or protection existing at the time of the amendment.

**15.19 Request for Payoff Information.** An Owner may request payoff information from the Association needed in connection with the financing, refinancing, or closing of an Owner's Parcel by: (a) providing written notice to the designated manager for the Association requesting the payoff information, which notice must contain (i) the name, telephone number, and address of the person making the request, and (ii) the facsimile number or email address for delivery of the payoff information, and (b) a written consent for the release of the payoff information, which identifies the person requesting the information as a person to whom the payoff information may be released, and signed and dated by the Owner of the Parcel for which the payoff information is requested. The Association may charge a fee associated with providing the payoff information, which fee shall not exceed the amount permitted under applicable Law and shall be subject to any requirements set forth in applicable Law.

**15.20 Notice of Sale or Transfer of Title.** In the event that any Owner desires to sell or otherwise Transfer title to his or her Unit, such Owner shall give the Association at least seven (7) days prior written notice of the name and address of the purchaser or transferee, the date of such Transfer of title, and such other information as the Board may reasonably require. A "**Transfer**" shall include the following: (a) a conveyance, sale, or other Transfer of a lot by deed, (b) the granting of a life estate in a Unit, (c) if the Unit is owned by a limited liability company, corporation, partnership, or other business entity, the sale or Transfer of more than seventy-five

percent (75%) of the business entity's share, stock, membership interests, or partnership interests in a twelve (12) month period. Until such written notice is received by the Association, the transferor shall continue to be jointly and severally responsible for all obligations of the Owner of the Unit hereunder, including payment of Assessments, notwithstanding the Transfer of title to the Unit.

**15.21 Notices.** Any notice provided under this Declaration shall be provided in writing and sent or transmitted by one of the following means: (a) personally served, (b) sent by overnight courier by a national delivery service that maintains tracking information, or (c) sent by United States certified mail, return receipt requested, with postage prepaid; addressed to the Owner at the address provided by the Owner to the Association or to the Association at the address of the Association. An Owner may by notice at any time and from time to time designate a different address to which notices shall be sent. Such notices, demands or declarations shall be deemed sufficiently served or delivered for all purposes hereunder when delivered or when delivery is denied if attempted to be delivered at the appropriate address. The Association may provide notice by electronic means, including text message, email, or through the Association's website; provided, however, an Owner, upon written notice to the Association, may require the Association to provide secondary notice to the Owner by First Class United States mail.

**15.22 Security.** The Association shall in no way be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Project, including any Common Area that the Association may have an obligation to maintain. The Association shall not be held liable for any loss, theft, harm, or damage by reason of criminal conduct arising for any reason including any failure to provide security or any ineffectiveness of security measures undertaken. Each and every Owner or Person entering the Project acknowledges that the Association has no duty to any Owner or Occupant related to security or criminal conduct and expressly acknowledges that no duty is owed to anyone. By purchasing a Unit in this Association and/or being a Member of the Association, Owners and Occupants agree that the Association and the Board are not insurers of the safety or well-being of Owners or Occupants or of their personal property as it relates to criminal conduct, and that each Owner or Occupant specifically waives any such Claim and assumes all risks for loss or damage to Persons or property resulting from criminal conduct, to the extent any such damages are not covered by insurance.

## **ARTICLE XVI**

### **Mortgagee Provisions**

The following provisions are for the benefit of holders of first Mortgages on Units in the Community. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

**16.1 Notices of Action.** An institutional holder, insurer, or guarantor of a first Mortgage who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its

Mortgage relates, therefore becoming an "*Eligible Holder*"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder or any Common Area serving the Community within which such Unit is located;

(b) any delinquency in the payment of Assessments or charges owed on a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of this Declaration or other Governing Documents relating to such Unit or the Owner or Occupant thereof which is not cured within sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association and covering the Unit upon which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder; or

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

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

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

**16.4 Applicability of Article XVI.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under this Declaration, Bylaws, or Utah Law for any of the acts set out in this Article.

**16.5 Mortgagee Rights.** The Board may condition the effectiveness of an Owner's actions specified in this Declaration on the approval of a specified number or percentage of Mortgagees holding a security interest in the Units within the Project; or condition the effectiveness of the Association actions specified in this Declaration on the approval of a specified number or percentage of Mortgagee's that have extended credit to the Association. Notwithstanding the foregoing, such action or condition may not: (a) deny or delegate the Owners' or the Board's control over the Association's general administrative affairs; (b) prevent the Association or Board from commencing, intervening in, or settling any litigation or proceeding; or (c) prevent an insurance trustee or the Association from receiving or distributing insurance proceeds. The Board, however, may (i) require the Association to deposit the Association's Assessments before default with the Mortgagee's assigned the income; or (ii) require the Association to increase an Assessment at the Mortgagee's direction by an amount reasonably necessary to pay the loan in accordance with the loan terms.

If a Mortgagee's consent is required to amend this Declaration or the Bylaws or for another Association action, such consent is presumed to have been granted if: (a) the Association sends written notice of the proposed amendment or action by certified or registered mail to the Mortgagee's address stated in a Recorded document evidencing the security interest; and (b) the person designated in a notice to receive the Mortgagee's response does not receive a response within sixty (60) days after the Association sends the notice as provided herein. If a Mortgagee's address for receiving notice is not stated in a Recorded document evidencing the security interest, the Association shall use reasonable efforts to find a mailing address for the Mortgagee and may send the notice to any address obtained through such efforts. If a Mortgagee responds in writing within sixty (60) days after the Association sends notice as provided above that the security interest has been assigned or conveyed to another person, the Association shall: (i) send a notice to the person assigned or conveyed the security interest at the address provided by the security holder in the security holder's response; or (ii) if no address is provided: (1) use reasonable efforts to find a mailing address for the person assigned or conveyed the security interest; and (2) send notice by certified or registered mail to the person at the address that the Association finds. The Association may not presume the Mortgagee's consent is obtained unless the person designated in a notice to receive the response from the person assigned or conveyed the security interest does not receive a response within sixty (60) days after the Association sends the notice.

Subject to applicable Law, a Mortgagee which has extended credit to an Association secured by an assignment of income or an encumbrance of the Common Area may enforce the Mortgagee's security agreement as provided in the agreement.

## **ARTICLE XVII**

### **Declarant's Rights**

**17.1 Transfer of Rights.** Any or all of the special rights and obligations of Declarant set forth in this Declaration or the other Governing Documents may be Transferred to other Persons, provided that the Transfer shall not reduce an obligation nor enlarge a right beyond that contained herein or in the other Governing Document, as applicable, and provided further, no such Transfer shall be effective unless it is in a written instrument signed by Declarant and duly Recorded in the public records of Salt Lake County, Utah.

**17.2 Construction and Sale Activity.** Notwithstanding any provisions contained in this Declaration to the contrary, so long as construction and initial sale of Units shall continue, it shall be expressly permissible for Declarant and any builder designated by Declarant to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of such Units, including, but not limited to, business offices, signs, model Units, and sales offices, and Declarant and such designated builder(s) shall have easements for access to and use of such facilities. The right to maintain and carry on such facilities and activities shall include specifically, without limitation, the right to use Units owned by Declarant and any clubhouse or Community center which may be owned by the Association, as models and sales offices, respectively. The Declarant shall also have the right to maintain any number and size of



promotional, advertising, or directional signs, banners, or similar structures or devices at any place or places in the Project. The Declarant shall also have the right to designate by signs or otherwise any street or other parking as parking for sales only or to otherwise restrict and use any Common Area parking. The Declarant shall have the right from time to time to relocate, move, remove, or add to any of its sales offices, parking restrictions, model Units, signs, banners or similar structures or devices.

**17.3 Application to Declarant.** Notwithstanding anything contained in this Declaration to the contrary, none of the restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any act of Declarant, Declarant's Related Parties or contractors, or parties designated by Declarant in connection with the construction, completion, sale or leasing of the Units, Common Area, or the Community (whether or not annexed under this Declaration). Without limiting the generality of this Article XVII in any way, and notwithstanding anything to the contrary contained in this Declaration, (a) Declarant is expressly exempted from the provisions of this Declaration requiring submission to or authorizations by the ACC, (b) Declarant shall have the right to erect, operate and maintain one or more administrative and sales offices on any portion of the Community owned by or leased to Declarant or the Association (including but not limited to Units), and (c) neither the provisions of Article XIII, nor the Architectural Guidelines, nor any comparable provisions in any Governing Document shall apply to Improvements built by Declarant, and any Improvements built by Declarant may have an architectural style and present general aesthetics that are quite different from the architectural style and aesthetics elsewhere in the Community or the Community.

**17.4 No Recordation.** So long as Declarant continues to have rights under this paragraph, no Person shall Record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Community without Declarant's review and written consent thereto, and any attempted Recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by Recorded consent signed by Declarant.

**17.5 Other Special Declarant Rights.** Special Declarant Rights are those rights reserved for the benefit of the Declarant in this Declaration and the Governing Documents and shall include, among others, and regardless of anything in the Declaration to the contrary, the following rights which shall remain in effect for the maximum period allowed by Law:

- (a) the right to maintain sales offices, model Units, and signs advertising the Project or any Unit at any location in the Project;
- (b) the right to use easements through the Common Areas as set forth in this Declaration;
- (c) the exclusive right to act as the Board of Directors, or appoint or remove Board Members in Declarant's sole discretion, during the Period of Declarant Control;
- (d) unless expressly and specifically bound by a provision of the Governing

Documents, Declarant shall be exempt from the provisions of the Governing Documents;

(e) the right to exert any right allowed to the Board or the Association pursuant to the Act and this Declaration;

(f) the right to make and adopt Rules and Regulations without being subject to the requirements of Utah Code § 57-8a-217;

(g) the right to replat or amend, modify, or supplement the Plat for the Community, the right to grant and convey portions of the Common Area, and/or the right to grant easements through the Common Area. In the event an Owner's consent is legally required to effectuate any of the foregoing, the Owners hereby appoint Declarant as their attorney-in-fact, which shall be coupled with an interest, to consent and approve such actions. The Owner's agree to cooperate and not oppose such actions and to sign such instruments to confirm the above.

**17.6 Exercising Special Declarant Rights.** Declarant may exercise the Special Declarant Rights at any time prior to the later to occur of the date on which the Period of Declarant Control expires or the date when the Declarant relinquishes such rights in writing. Declarant may exercise its Special Declarant Rights in any order, and no assurance is given as to the order in which Declarant will exercise them. If Declarant exercises any Special Declarant Right with respect to any portion of the Project, Declarant may, but is not obligated to, exercise that Special Declarant Right with respect to any other portion of the Project. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this Article and any other right reserved to the Declarant in this Declaration, without the consent of the Association or any of the Owners.

**17.7 Interference with Special Declarant Rights.** Neither the Association nor any Owner may take any action or adopt any Rules and Regulations that interferes with or diminishes any of Declarant's right contained in this Declaration without Declarant's prior written consent. Any action taken in violation of this Section shall be null and void and have no force or effect.

**17.8 Limitation on Improvements by Association.** Until such time as the earlier of the following events occur: (a) termination of the Period of Declarant Control, or (b) such time as Declarant chooses, neither the Association nor written consent of Declarant, make any improvement to or alteration in any of the Common Areas created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally constructed or created by Declarant.

**17.9 Transfer of Special Declarant Rights.** The Declarant may Transfer, convey, or assign its rights created or reserved under this Declaration to any Person. Such Transfer, conveyance, or assignment shall be effective upon Recording in the office of the Salt Lake County Recorder.

**ARTICLE XVIII**  
**HUD APPROVAL**

**18.1 HUD and FHA Project Approval.** The Declarant and the Association desire that the Project shall become and remain an approved project by the U.S. Department of Housing and Urban Development (“*HUD*”) and the Federal Housing Administration (“*FHA*”). It is acknowledged that the requirements for approval by HUD and FHA may change over time. In the event of any conflict between the terms and conditions of this Declaration and the Governing Documents and the HUD and/or FHA approval guidelines for the Project, the terms and conditions of this Declaration and the Governing Documents shall be modified to be in compliance with the then existing requirements of FHA and HUD subject to the Act and any applicable Laws. In the event of any conflict between the Act (and any applicable Laws), the Declaration, and any HUD and/or FHA approval guidelines, the Act (and any applicable Laws) shall control and govern. Notwithstanding the above, the Declarant during the Period of Administrative Control or at least sixty-seven percent (67%) of the Owners at a meeting of the Association may modify this provision whereby the Declaration and other Government Documents shall no longer be subject to the then existing requirements of FHA and HUD.

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IN WITNESS WHEREOF, Declarant has executed this Declaration this 10<sup>th</sup> day of February, 2020.

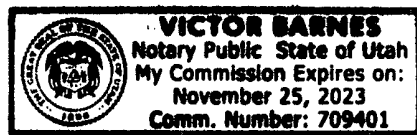
Haven SJ LLC,  
a Utah limited liability company

By: Ryan Peterson  
Name: RYAN PETERSON  
Title: PRESIDENT

STATE OF UTAH )  
                                  ) ss.  
County of Salt Lake

On the 10<sup>th</sup> day of February, 2020, before me Victor Barnes, a notary public, personally appeared Ryan Peterson, proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged that he executed the same in his capacity as manager of Haven SJ LLC.

Victor Barnes  
Notary Public



## EXHIBIT "A"

### Legal Description

Parcel 1: [27-17-401-006]

Beginning North 0°11'01" East 852.52 feet from the South 1/4 Corner Section 17, Township 3 South, Range 1 West, Salt Lake Meridian; North 0°03'07" West 1491.44 feet more or less; North 89°57'07" East 1066.10 feet; Northeasterly 104.38 feet along a 2948 feet radius curve to the Left (chord North 14°54'48" East 104.37 feet); NE'LY 179.03 feet along a 2948 feet radius curve to Left; North 89°57'07" East 43.21 feet more or less; SWLY along a 2990.50 feet radius curve to Right 717.57 feet more or less; SWLY along a 2990.50 feet radius curve to Right 163.94 feet (chord South 25°39'57" West 163.92 feet); South 27°14' West 1343 feet more or less; North 89°57'07" West 47.97 feet more or less; North 28°45'05" East 30.89 feet; North 27°28'51" East 95.51 feet; North 62°31'09" West 320.71 feet to the point of beginning.

Less and Excepting therefrom:

Lot 1, Haven at Harvest Village Commercial Plaza Commercial Subdivision, according to the plat thereof as recorded in the office of the Salt Lake County Recorder

Parcel 2: [27-17-378-003]

Commencing at the section corner common with Sections 17 and 20, Township 3 South, Range 1 West, Salt Lake Base and Meridian and running thence North 00°11'01" East, along the north-south quarter section line of Section 17, a distance of 852.52 feet to the point of beginning for this description; thence, North 62°31'09" West, a distance of 164.41 feet, to the easterly sideline of Bangerter Highway (150.00 feet wide); thence, northerly along the arc of a curve to the left, having a radius of 2945.73 feet, through a Central Angle of 17°10'31", to said north-south quarter section line, a distance of 883.03 feet; thence, South 00°11'01" West, along said section quarter line within section 17, a distance of 942.91 feet to the point of beginning.

Subject to general property taxes for the current year and thereafter.

Subject to easements, conditions, covenants, restrictions and reservations of record.

**EXHIBIT "B"**

**OVERALL BOUNDARY DESCRIPTION**

**Haven at Harvest Village  
Overall Boundary**

**October 29, 2019**

A part of the South Half of Section 17, Township 3 South, Range 1 West, Salt Lake Base and Meridian, U.S. Survey in Salt Lake County, Utah:

Beginning at the Southwest Corner of River Heights Commercial Subdivision Amended on the Easterly Line of the Bangerter Highway located 302.39 feet South  $0^{\circ}11'01''$  West along the Quarter Section Line from the Center of said Section 17; and running thence South  $89^{\circ}43'02''$  East 600.60 feet along the South Line of said Subdivision; thence South 179.17 feet; thence South  $62^{\circ}50'37''$  East 380.69 feet to the Northwesterly Line of River Heights Drive; thence along said Northwesterly Line the following two courses: Southwesterly along the arc of a 2948.00 foot radius curve to the right a distance of 204.68 feet (Center bears North  $66^{\circ}30'07''$  West, Central angle equals  $3^{\circ}58'41''$  and Long Chord bears South  $25^{\circ}29'14''$  West 204.64 feet) to a point of tangency; and South  $27^{\circ}28'34''$  West 1238.53 feet to the Northeasterly Line of Thatcher Park Subdivision; thence North  $62^{\circ}31'09''$  West 485.15 feet along said Northeasterly Line to the Easterly Line of Bangerter Highway; thence along said Easterly Line the following three courses: Northerly along the arc of a 2945.72 foot radius curve to the left a distance of 882.75 feet (Center bears North  $71^{\circ}40'20''$  West, Central Angle equals  $17^{\circ}10'12''$  and Long Chord bears North  $9^{\circ}44'34''$  East 879.45 feet); North  $0^{\circ}10'57''$  East 50.34 feet to the Quarter Section Line; and North  $0^{\circ}11'01''$  East 498.45 feet along said Quarter Section Line to the point of beginning.

**Contains 1,061,991 sq. ft.  
or 24.380 acres**

**EXHIBIT "C"**  
[Bylaws]

**Bylaws  
of  
The Haven Cottages and Villas Owners Association, Inc.**

**As Adopted**

*February 10*, 2020

**Bylaws of  
The Haven Cottages and Villas Owners Association, Inc.**

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**Bylaws of  
The Haven Cottages and Villas Owners Association, Inc.**

**ARTICLE I – PURPOSES**

**Section 1.01 Purpose.** This corporation is organized for any and all lawful purposes for which a nonprofit corporation may be organized under the Utah Revised Nonprofit Corporation Act, as amended, as set forth in the corporations Articles of Incorporation, including, without limitation, the operation and management of the Common Areas and elements of a neighborhood known as The Haven Cottages and Villas.

**ARTICLE II – OFFICES**

**Section 2.01 Offices.** The principal office of the corporation may be located at any place, either in or outside the State of Utah, as designated in the corporation's most current Annual Report filed with the Utah Division of Corporations and Commercial Code. The corporation may have such other offices, either in or outside the State of Utah, as the Board of Directors may designate or as the business of the corporation may require from time to time. The corporation shall maintain at its principal office a copy of certain records, as specified in Section 16-6a-1601 of the Utah Revised Nonprofit Corporation Act. The initial address of the corporation's principal office shall be 225 S. 200 E., Suite 200, Salt Lake City, Utah, 84111.

**Section 2.02 Registered Office.** The registered office of the corporation, required by Section 16-6a-501 of the Utah Revised Nonprofit Corporation Act, shall be located in the State of Utah and may be, but need not be, identical with the corporation's principal office (if located in the State of Utah). The address of the registered office may be changed from time to time.

**Section 2.03 Definitions.** The words used in these Bylaws shall have the same meaning as set forth in the Declaration of Covenants, Conditions, Restrictions, and Easements for The Haven Cottages and Villas filed simultaneously in the official records of Salt Lake County, Utah (said Declaration, as amended, renewed, or extended from time to time, is hereinafter sometimes referred to as the "**Declaration**"), unless the context indicates otherwise.

**ARTICLE III – MEMBERS**

**Section 3.01 Membership.** The qualifications, privileges and obligations of membership in the Association shall be as set forth in the Declaration, the terms of which pertaining to membership are specifically incorporated herein by reference.

**Section 3.02 Place of Meetings.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board of Directors either within the Properties or as convenient thereto as possible and practical.

**Section 3.03 Annual Meetings.** Annual meetings of the Association shall be held during each year on a date and at a time set by the Board of Directors.

**Section 3.04 Special Meetings of Membership.** The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board of Directors or upon a petition signed by Members representing at least ten percent (10%) of the total votes of the Association. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

**Section 3.05 Notice of Meetings.** Written or printed notice stating the place, day, and hour of any meetings of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than ten (10) nor more than fifty (50) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting. In the case of a special meeting or when required by statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at the Member's address as it appears on the records of the Association, with postage thereon prepaid.

Notices for any Board meetings during the period after the Period of Administrative Review will be provided pursuant to Utah Code Ann. Section 57-8a-225 or any replacement statute.

**Section 3.06 Waiver of Notice.** Waiver of notice of a meeting of the Members shall be

deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member or its proxy shall be deemed a waiver by such Member of notice of the time, date and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted at such meeting unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

**Section 3.07 Adjournment of Meetings.** If any meeting of the Association cannot be held because a quorum is not present, a majority of the Members who are represented at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

The Members represented at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

**Section 3.08 Voting.** The voting rights of the Members shall be as set forth in the Declaration, and such voting rights provisions are specifically incorporated herein.

**Section 3.09 Proxies.** At all meetings of the Members, Members may vote in person or by proxy and, in the case of a Member which is a corporation, partnership or other legal entity, such Member shall vote by proxy. Every proxy shall be in writing, dated, signed and filed with the Secretary prior to the meeting for which it is to be effective. Except as otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two (2) or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. No proxy shall be valid more than eleven (11) months after its execution unless otherwise provided in the proxy. Every proxy shall be revocable and shall automatically cease upon conveyance of the Member's Parcel. Proxies shall be valid even if presented in facsimile form.

**Section 3.10 Majority.** As used in these Bylaws, the term "majority" shall mean those votes, Owners, or other group as the context may indicate totaling more than fifty percent (50%) of the total number.

**Section 3.11 Quorum.** Those Owners present, either in person or by proxy, at a meeting shall constitute a quorum for the adoption of decisions.

**Section 3.12 Conduct of Meetings.** The President shall preside at all meetings of the Association, and the Secretary or designated managing agent shall keep the minutes of the meeting and Record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting.

**Section 3.13 Action Without a Meeting.** Any action required by Law to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting if written consent setting forth the action so taken is signed by all of the Members entitled to vote with respect to the subject matter thereof, and any such consent shall have the same force and effect as a unanimous vote of the Members. During the Period of Administrative Control, the Declarant may take action without providing notice or having a meeting, and may sign documents, including Amendments to the Declaration and these Bylaws, without the necessity of any other approval or signature.

#### **ARTICLE IV – BOARD OF DIRECTORS**

**Section 4.01 General Powers.** The business and affairs of the corporation shall be managed under the direction of its Board of Directors, each of whom shall have one (1) vote. Directors need not be Members of the Association.

**Section 4.02 Period of Administrative Control.** Notwithstanding anything to the contrary contained in these Bylaws, the Class "B" Member shall be entitled to appoint all members of the Board of Directors during the Period of Administrative Control as set forth in the Declaration.

**Section 4.03 Nomination of Directors.** Commencing with the election of the first Board of Directors to be elected by the Members, nominations for election to the Board of Directors may be made by any Member. Nominations shall also be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

**Section 4.04 Number and Term of Office.** Notwithstanding any other provisions contained herein:

(a) The initial Board of Directors shall consist of three (3) directors, as identified in the Articles of Incorporation, who shall serve from the date of incorporation of the Association until the annual meeting of the membership after the expiration of the Period of Administrative Control.

(b) At the first annual meeting of the membership after termination of the Period of Administrative Control pursuant to Section 2 of this Article, two (2) directors shall be elected by the Class "A" Members. The Class "B" Member shall be entitled to decide which director seats will be up for election. The two (2) directors so elected shall serve for a term of two (2) years. The remaining director shall serve for a term of one (1) year. At the expiration of the initial term of office of each member of the Board of Directors and at each annual meeting thereafter, a successor shall be elected to serve for a term of two (2) years.

**Section 4.05 Election.** Each Member shall be entitled to cast, with respect to each vacancy to be filled, the total number of votes to which it is entitled under the Declaration. There shall be no cumulative voting. The candidates receiving the most votes shall be elected. The directors elected by the Members shall hold office until their respective successors have been elected by the Association. Directors may be elected to serve any number of consecutive terms.

**Section 4.06 Term.** The term of office of each director shall continue until the earlier of the expiration of the appointed term, his or her death, resignation or removal from office.

**Section 4.07 Qualifications.** Each director must be a natural person 18 years of age or older. Directors need not be residents of the State of Utah.

**Section 4.08 Resignation.** Any director of the corporation may resign at any time by giving written notice to the corporation. A resignation is effective when the notice is received by the corporation unless the notice specifies a later effective date.

**Section 4.09 Vacancies.** Vacancies in the Board caused by any reason other than removal of a member by a vote of the Association shall be filled by vote of the majority of the remaining members of the Board at a special meeting of the Board held for that purpose after the occurrence of any such vacancy, even though the total members remaining may constitute less than a quorum of the Board; and each person so elected shall be a member for the remainder of

the term of the member so replaced. A vacancy created by the removal of a member by a vote of the Association shall be filled by the election and vote of the Association.

**Section 4.10 Removal.**

(a) All directors appointed by the Declarant shall serve, and may be removed and replaced, at the discretion of the Declarant, and shall not be subject to removal or replacement by the Members generally.

(b) Any director elected by the Members may be removed, with or without cause, by the vote of Members holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall then and there be elected by the Members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director.

(c) Any director elected by the Members who has three (3) consecutive unexcused absences from Board meetings may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board to fill the vacancy for the remainder of the term. In the event of the death, disability, or resignation of a director, a vacancy may be declared by the Board, and the Board may appoint a successor.

**Section 4.11 Right to Disapprove Actions.** This Section 4.10 may not be amended without the express, written consent of the Class "B" Member as long as the Class "B" membership exists.

So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove actions of the Board and any committee, as is more fully provided in this Section. No action authorized by the Board of Directors or any committee shall become effective, nor shall any action, policy or program be implemented until and unless the following requirements have been met:

(a) The Class "B" Member shall be given written notice of all meetings and proposed actions approved at meetings of the Board or any committee thereof by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice complies as to the Board of Directors meeting with Article III, Sections 8, 9, and 10 of these Bylaws and which notice shall, except in the case of the regular meetings held pursuant to the Bylaws, be set forth in reasonable particularity in the agenda to be followed at said meeting;



(b) The Class "B" Member shall be given the opportunity at any such meeting to join in or have its representatives or agents join in discussion from the floor of any prospective action, policy, or program to be implemented by the Board, any committee thereof, or the Association. The Class "B" Member, its representatives or agents shall make its concerns; thoughts, and suggestions known to the members of the subject committee and/or the Board. The Class "B" Member shall have and is hereby granted a right to disapprove any such action, policy, or program authorized by the Board of Directors or any committee thereof and to be taken by the Board, such committee, the Association, or any Member of the Association at any time within ten (10) days following the meeting held pursuant to the terms and provisions hereof. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or prevent capital repairs or any expenditure required to comply with applicable Laws and regulations.

**Section 4.12 Regular Meetings.** Regular Meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the time and place of the meeting shall be communicated to directors not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any director who has signed a waiver of notice or a written consent to holding of the meeting.

**Section 4.13 Special Meetings.** Special meeting of the Board of Directors shall be held when called by written notice signed by the President of the Association or by any two (2) directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one of the following methods: (a) by personal delivery, (b) written notice by first class mail, postage prepaid, (c) by telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (d) by telegram, charges prepaid. All such notices shall be given at the director's telephone number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) business days before the time set for the meeting. Notices given by personal delivery, telephone or telegraph shall be delivered, telephoned or given to the telegraph company at least seventy-two (72) hours before the time set for the meeting.

**Section 4.14 Action Without a Meeting.** Any action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting if consent in writing,

setting forth the action so taken, is signed by all of the directors. Such consent has the same force and effect as a unanimous vote of the directors. Action taken under this provision is effective at the time the last director signs a writing describing the action taken, unless, prior to that time, any director has revoked a consent by a writing signed by the director and received by the secretary or any other person authorized by the Bylaws or the Board of Directors to receive the revocation, or unless the consent specifies a different effective time.

**Section 4.15 Waiver of Notice.**

(a) Written Waiver. Any director may waive notice of any meeting before or after the date and time of the meeting stated in the notice. Except as provided in subsection (b), below, the waiver must be in writing and signed by the director entitled to notice. The waiver shall be delivered to the corporation for filing with the corporate records, but delivery and filing are not conditions to its effectiveness.

(b) Waiver by Attendance. The attendance of a director at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting, or promptly upon the director's arrival, objects to the holding of the meeting or the transacting of business at the meeting because of lack of notice or defective notice, and does not thereafter vote for or assent to action taken at the meeting.

**Section 4.16 Quorum.** At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a majority of the directors who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

**Section 4.17 Manner of Acting.** The act of a majority of the directors present at a meeting at which a quorum is present is the act of the Board of Directors. Voting by proxy is not permitted.

**Section 4.18 Meetings by Telecommunication.** The Board of Directors may permit any or all directors to participate in a regular or special meeting by, or conduct the meeting

through the use of, any means of communication by which all directors participating may hear each other during the meeting. A director participating in a meeting by this means is considered present in person at the meeting.

**Section 4.19 Action Without a Formal Meeting.** Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

**Section 4.20 Powers and Duties.** The Board of Directors shall be responsible for the affairs of the Association and shall have all the powers and duties necessary for the administration of the Association's affairs and, as provided by Law, may do or cause to be done all acts and things as are provided by the Declaration, Articles, or these Bylaws directed to be done and exercised exclusively by the Members. The Board of Directors shall delegate to one of its members the authority to act on behalf of the Board of Directors on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board of Directors.

In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to establish policies relating to, and shall be responsible for performing or causing to be performed, the following, by way of explanation, but not limitation:

(a) preparation and adoption, in accordance with the Declaration, of annual budgets in which there shall be established the contribution of each Owner to the Association's Common Expenses;

(b) making Assessments to defray the Association's expenses (including expenses incurred by virtue of cost sharing agreements entered into with entities such as a residential owner's association, establishing the means and methods of collecting such Assessments, and establishing the period of the installment payments of the annual Assessment, if permitted);

(c) designating, hiring, and dismissing the personnel necessary for the operation of the Association and the maintenance, operation, repair, and replacement of its property and any other property for which it has responsibility and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(d) collecting the Assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to operate the Association; provided,

any reserve fund may be deposited, in the director's best business judgment, in depositories other than banks;

- (e) making and amending Rules and Regulations;
- (f) opening of bank accounts on behalf of the Association and designating the signatories required;
- (g) making or contracting for the making of repairs, additions, and Improvements to or alterations of the property of the Association in accordance with the provisions of the Declaration and these Bylaws after damage or destruction by fire or other casualty;
- (h) enforcing by legal means the provisions of the Declaration, these Bylaws, and the Rules and Regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;
- (i) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;
- (j) paying the cost of all services rendered to the Association or its Members and not chargeable directly to specific Owners;
- (k) keeping books with detailed amounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred,
- (l) making available to any prospective purchaser of a Unit, any Owner of a Unit, and the holders, insurers, and guarantors of Mortgages or deeds of trust on any Unit, current copies of the Declaration, the Articles of Incorporation, the Bylaws, rules and all other books, records, and financial statements of the Association;
- (m) permitting utility suppliers to use portions of the Association's property, if any, as reasonably necessary to the ongoing development or operation of the Properties;
- (n) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by Utah Law, the Articles of Incorporation or the Declaration; and
- (o) employing a professional property manager to carry out its duties under the Declaration, these Bylaws and any Rules and Regulations.

**Section 4.21 Management.** The Board of Directors shall retain for the Association a professional property manager at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The obligation of the Board to retain a professional property manager may not be amended or modified. The Board of Directors may delegate to the property manager, subject to the Board's supervision, all of the powers granted to the Board of Directors by these Bylaws, other than the powers set forth in

subparagraphs (b), (e), (f) and (h) of Section 4.20 of this Article.

**Section 4.22 Accounts and Reports.** The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise.

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform to generally accepted accounting principles;

(c) cash accounts of the Association shall not be commingled with any other accounts;

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

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

(f) financial reports shall be prepared for the Association at least quarterly containing;

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

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

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

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

(v) a delinquency report listing all Owners who are delinquent in paying any Assessments at the time of the report and describing the status of any action to collect such Assessments which remain delinquent (Any Assessment or installment thereof shall be considered to be delinquent on the tenth (10th) day following the due date unless otherwise determined by the Board of Directors); and

(g) financials consisting of at least the following shall be made available to all Members within one hundred twenty (120) days after the close of the fiscal year, (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year.

**Section 4.23 Borrowing.** The Board of Directors shall have the power to borrow for

any legal purpose, provided, the approval of the Members holding at least fifty-one (51%) percent of the votes represented in person or by proxy at a duly constituted meeting shall be required in the event that the proposed borrowing, together with all other debt incurred within the previous twelve (12) month period, exceeds or would exceed five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. Notwithstanding anything to the contrary contained in the Declaration, these Bylaws, or the Articles of Incorporation, no mortgage lien shall be placed on any portion of the Association's property without the affirmative vote or written consent, or any combination thereof, of Members representing at least fifty-one percent (51%) of the total Association vote.

**Section 4.24 Rights of the Association.** The Association shall have the right to contract with any person or entity for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operational or other property owners' agreements with trusts, condominiums, and cooperatives, of other property owners or similar associations, both within and without the Properties. Such agreements shall require the consent of a majority of the total number of directors of the Association.

**Section 4.25 Enforcement.** The Board shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the violating Owner, and to suspend an Owner's right to vote for violation of any duty imposed under the Declaration, these Bylaws, or any Rules and Regulations duly adopted hereunder in accordance with the terms of the Declaration.

(a) Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Board of Directors, may elect to enforce any provision of the Declaration, these Bylaws, or the Rules and Regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking Rules and Regulations), or by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity of compliance with the procedures set forth above. In any such action, to the maximum extent permissible, the Owner or Occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred.

## **ARTICLE V – OFFICERS**

**Section 5.01 Number.** The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The Association officers shall be elected from among the

members of the Board. The Board of Directors may appoint such other officers to have the authority and perform the duties prescribed from time to time by the Board of Directors. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

**Section 5.02 Appointment and Term of Office.** Initial officers of the Association shall be elected by the Board of Directors after formation of the Association. The officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the Members, as herein set forth in Article III. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

**Section 5.03 Removal.** Any officer, assistant, agent or employee may be removed, with or without cause, at any time by the Board of Directors, or by any officer to whom or committee of the Board of Directors to which such power of removal has been delegated, but such removal shall be without prejudice to the contract rights, if any, of the person so removed.

**Section 5.04 Resignation.** An officer may resign at any time by giving written notice of resignation to the corporation. A resignation of an officer is effective when it is received by the corporation, unless the notice specifies a later effective date. An officer's resignation does not affect the corporation's contract rights, if any, with the officer.

**Section 5.05 Vacancies.** A vacancy in any office because of death, resignation, removal, disqualification or otherwise, may be filled by the Board of Directors or by any officer to whom or committee of the Board of Directors to which such power has been delegated.

**Section 5.06 The President.** The president, unless otherwise specified by the Board of Directors, shall be the chief executive officer of the corporation and, under the direction of the Board of Directors, shall in general supervise and control all the business and affairs of the corporation. The president shall, when present, preside, in the absence of the chair of the Board, at meetings of the Board of Directors. The president may hire, prescribe the duties of, and fire employees, and may delegate such authority in whole or in part to any other officer or employee. The president may sign, with the secretary or any other proper officer of the corporation thereunto authorized by the Board of Directors, certificates for shares of the corporation, and any deeds, Mortgages, bonds, contracts, or other instruments which the Board of Directors has authorized to be executed, except in cases where the signing and execution thereof shall be expressly delegated by the Board of Directors or by these Bylaws to some other officer or agent

of the corporation, or shall be required by Law to be otherwise signed or executed; and in general shall perform all duties incident to the office of president and such other duties as may be prescribed by the Board of Directors from time to time.

**Section 5.07 The Vice President.** In the absence of the president, or in the event of the president's death, inability or refusal to act, the vice president (or in the event there is more than one vice president, the vice presidents in the order designated at the time of their election, or in the absence of any designation, then in the order of their election) shall perform the duties of the president, and when so acting, shall have all the powers of and be subject to all the restrictions upon the president. Any vice president may sign, with the secretary or an assistant secretary, certificates for shares of the corporation; and shall perform such other duties as from time to time may be assigned to him or her by the president or by the Board of Directors.

**Section 5.08. The Secretary.** The secretary shall (a) keep the minutes of the Board of Directors' meetings in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these Bylaws or as required by Law; (c) be custodian of the corporate records and of the seal of the corporation and affix such seal to documents when authorized; (d) maintain the records required under Section 16-6a-1601 of the Utah Revised Nonprofit Corporation Act, and (e) in general perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to him or her by the president or by the Board of Directors. In the absence of a secretary and any assistant secretaries, the president shall perform these duties.

**Section 5.09 The Treasurer.** If required by the Board of Directors, the treasurer shall give a bond for the faithful discharge of his or her duties in such sum and with such surety or sureties as the Board of Directors shall determine. He or she shall: (a) have charge and custody of and be responsible for all funds and securities of the corporation; (b) receive and give receipts for moneys due and payable to the corporation from any source whatsoever, and deposit all such moneys in the name of the corporation in such banks, trust companies or other depositories as shall be selected in accordance with the provisions of Section 8.04 of these Bylaws; and (c) in general perform all of the duties incident to the office of treasurer and such other duties as from time to time may be assigned to him or her by the president or by the Board of Directors. In the absence of a treasurer, the secretary shall perform such duties.

**Section 5.10 Assistant Secretaries and Assistant Treasurers.** The assistant secretaries, when authorized by the Board of Directors, may sign with the president or vice president certificates for shares of the corporation, the issuance of which shall have been



authorized by a resolution of the Board of Directors. The assistant treasurers shall respectively, if required by the Board of Directors, give bonds for the faithful discharge of their duties in such sums and with such sureties as the Board of Directors shall determine. The assistant secretaries and assistant treasurers, in general, shall perform such duties as shall be assigned to them by the secretary or the treasurer, respectively, or by the president or the Board of Directors.

**Section 5.11 Agreements, Contracts, Deeds, Leases, Checks, Etc.** All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Board of Directors.

#### **ARTICLE VI – COMMITTEES**

**Section 6.01 General.** Committees are hereby authorized to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the directors present as a meeting at which a quorum is present. Each committee shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

**Section 6.02 Architectural Control Committee.** In addition to any other committees which may be established by the Board pursuant to Section 1 of this Article, the Board of Directors will appoint an Architectural Control Committee or ACC consistent with the terms and conditions of the Declaration, which ACC shall act in accordance with the provisions of the Declaration, these Bylaws, and resolutions the Board may adopt.

#### **ARTICLE VII – INDEMNIFICATION**

**Section 7.01 Indemnification.** The corporation shall indemnify each person who is or was a director, officer, employee or agent of the corporation or an individual who, while serving the indicated relationship to the corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee fiduciary, or agent of another corporation or other person or of an employee benefit plan, to the fullest extent permitted by the Utah Revised Nonprofit Corporation Act.

**Section 7.02 Authorization of Indemnification.** The corporation shall be deemed to have authorized such indemnification whenever as determination has been made under Section 16-6a-906 of the Utah Revised Nonprofit Corporation Act that indemnification of an individual

is permissible in the circumstances because the person has met the applicable standard of conduct.

**Section 7.03 Advance of Expenses.** The corporation shall accept the undertaking required by Subsection 16-6a-904(1)(b) of the Utah Revised Nonprofit Corporation Act without reference to financial ability to make repayment.

**Section 7.04 Insurance.** The corporation may purchase and maintain liability insurance on behalf of a person who is or was a director, officer, employee, fiduciary, or agent of the corporation, or who, while serving as a director, officer, employee, fiduciary, or agent of the corporation, is or was serving at the request of the corporation as a director, officer, partner, trustee, employee, fiduciary, or agent of another foreign or domestic corporation or other person, or of an employee benefit plan, against liability asserted against or incurred by him or her in that capacity or arising from his or her status as a director, officer, employee, fiduciary, or agent, whether or not the corporation would have power to indemnify him or her against the same liability.

**Section 7.05 Savings Clause.** If this Article or any portion thereof shall be invalidated on any ground by any court of competent jurisdiction, then the corporation shall nevertheless indemnify each officer and director as to expenses, including attorneys' fees, judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative or investigative, and whether internal or external, including without limitation a grand jury proceeding and an action or suit brought by or in the right of the corporation, to the full extent permitted by any applicable portion of this Article that shall not have been invalidated, or by any other applicable Law.

#### **ARTICLE VIII – MISCELLANEOUS**

**Section 8.01 Fiscal Year.** The fiscal year of the Association shall be set by resolution of the Board of Directors. In the absence of a resolution, the fiscal year shall be the calendar year.

**Section 8.02 Parliamentary Rules.** Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with Utah Law, the Articles of Incorporation, the Declaration, or these Bylaws.

**Section 8.03 Conflicts.** If there are conflicts between the provisions of Utah Law, the

Articles of Incorporation, the Declaration, and these Bylaws, the provisions of Utah Law, the Declaration, the Articles of Incorporation, and the Bylaws (in that order) shall prevail. If any provision of these Bylaws is in conflict with Utah Law, the provision will be interpreted to be consistent with Utah Law and the remainder of these Bylaws shall remain in full force and effect.

**Section 8.04 Books and Records.**

(a) Inspection by Members and Mortgagees. The Declaration and Bylaws, membership register books of account, and minutes of meetings of the Members, the Board, and committees shall maintained in accordance with applicable Law and the Board and/or the Association may redact information as permitted by applicable Law. Subject to the preceding and in accordance with applicable Law, the records shall be made available for inspection and copying by any Mortgagee, Member of the Association, or by the duly appointed representative of any Member at any reasonable time and for a purpose reasonably related to his or her interest in a Unit at the office of the Association or at such other place within the Properties as the Board shall prescribe. In the event any records are copies, the Association may recover copying costs as permitted by applicable Law.

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

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made;

and

- (iii) payment of the cost of reproducing copies of documents requested.

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

**Section 8.05 Notices.** Unless otherwise provided in these Bylaws, all notices, demands, bills, statements, or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States Mail, first class postage prepaid;

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

(b) If to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall

be designated by notice in writing to the Members pursuant to this Section.

**Section 8.06 Amendment.**


(a) By Declarant. So long as the Class "B" membership exists, the Declarant, as the Class "B" Member, may unilaterally amend these Bylaws for any purpose. Thereafter, the Declarant may unilaterally amend these Bylaws at any time and from time to time if such amendment is (i) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which is in conflict therewith; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any portion of the Properties; or (iii) required by an institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans to enable it to make, purchase, insure or guarantee mortgage loans on any portion of the properties within the Community; provided, however, any such amendment shall not adversely affect the title to any property unless the owner thereof shall consent thereto in writing. Further, so long as it still owns property within the Community, the Declarant may unilaterally amend these Bylaws for any purpose provided such amendment has no material adverse effect upon any right of any Owner.

(b) By Members. Except as provided above, these Bylaws may be amended only by the affirmative vote or written consent or any combination thereof, of Members holding seventy-five percent (75%) of the total Class "A" votes in the Association, and the consent of the Class "B" Member, so long as such membership exists. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the prior written consent of Declarant (or its assignee of such right or privilege) or the Class "B" Member, respectively.

(c) Validity and Effective Date of Amendments. Amendments to these Bylaws shall become effective upon Recordation in the public records of Salt Lake County, Utah, unless another date is specified therein. Any procedural challenge to an amendment must be made within thirty (30) days of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws. If an Owner consents to any amendment to these Bylaws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary position in any Mortgage or contract between Owner and a third party will affect the validity of such amendment.

**Secretary's Certificate**

I, THE UNDERSIGNED, being the secretary of The Haven Cottages and Villas Owners Association, Inc., do hereby certify the foregoing to be the Bylaws of such corporation, as adopted by written consent of its Board of Directors dated as of February 10, 2020.

  
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Secretary