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DOC # 20170041780

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**DECLARATION OF COVENANTS,
CONDITIONS, EASEMENTS AND RESTRICTIONS**

FOR

THE VILLAS AT SUN RIVER ST. GEORGE

(A 55 & Older P.D. Community located in St. George, Utah)

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

THE BOARD, DECLARANT AND MANAGEMENT COMPANY SHALL ESTABLISH POLICIES AND PROCEDURES, FROM TIME TO TIME AND PURSUANT TO THEIR RESPECTIVE AUTHORITY AND OBLIGATIONS AS SET FORTH IN THIS DECLARATION AND THE COMMUNITY ASSOCIATION ACT, AS NECESSARY TO MAINTAIN THE PROJECT AS AN AGE RESTRICTED COMMUNITY INTENDED FOR HOUSING PERSONS 55 YEARS OF AGE OR OLDER UNDER STATE AND FEDERAL LAW.

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**DECLARATION OF COVENANTS,
CONDITIONS, EASEMENTS AND RESTRICTIONS
FOR
THE VILLAS AT SUN RIVER ST. GEORGE**

THIS DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS, hereinafter referred to as the "Declaration" is made and executed this day of January 19, 2017, by Sun River Villas Development, LLC a Utah limited liability company, hereinafter referred to as the "Declarant."

RECITALS

A. Declarant is the record owner of that certain real property located in the City of St. George, County of Washington, State of Utah and more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property"). Declarant includes any successor, successor-in-title, or assign who takes title to any portion of the Property, for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.

B. Declarant intends, by this Declaration, to create a residential community for persons fifty-five (55) years of age or older, which may consist of detached and attached, single-story and multi-story residential units including single family homes, twin homes, duplexes, triplexes, clustered homes, and including recreational facilities, guesthouses, rental units, maintenance facilities, management offices, etc. The community will be known as The Villas at Sun River St. George (the "Project"). The first Phase of the Project will contain approximately twenty-six (26) Units, with the option, but not the obligation, to construct additional Phases with additional Units. The Project will contain rental properties managed by a sole professional management company. The Project is more particularly described in Articles I, II, III, and IV and in the Plat(s). The Project may or may not include condominiums in the future that would include a separate owner's association and declaration or amendments to this Declaration.

C. The Project will have common areas and facilities to be managed by and through the Management Company and Homeowner's Association Board (the "Board") pursuant to their respective authority and responsibility as established by this Declaration and the Utah Community Association Act. The Project is not a cooperative and is not a condominium project. The Project is not subject to the provisions of the Utah Condominium Ownership Act of Sections 57-8-1 et seq. of the Utah Code Ann.

D. The covenants, conditions and restrictions contained in this Declaration and in the Exhibits hereto shall be enforceable equitable servitudes and shall run with the land.

NOW, THEREFORE, for the foregoing purposes, the Declarant adopts the following covenants, conditions, easements and restrictions to govern the development, use, maintenance and management of this residential Project:

ARTICLE I: DEFINITIONS

Unless the context clearly indicates otherwise, certain terms as used in this Declaration and the foregoing Recitals shall have the meanings set forth in this Article I.

1.1. "Act" shall mean and refer to the Community Association Act (Title 57, Chapter 8a, Utah Code Ann., as amended). Any provision of the Declaration that is contrary to the Act shall be governed by the Act.

1.2. "Area of Common Responsibility" shall mean the areas described in Section 9.1.

1.3. "Architectural Control Committee" shall mean the committee created and appointed by the Declarant and formed within the framework of the management company or the Association. The Architectural Control Committee will review plans, specifications, landscaping, color schemes, new construction, additions, modifications, improvements, and administer and enforce the Design Standards.

1.4. "Articles" shall mean the Articles as contained in the Declaration.

1.5. "Assessable Unit" shall mean each Unit, except for Exempt Units.

1.6. "Assessments" shall mean all assessments described in Article XV, including Regular Common Assessments, Special Common Assessments, Specific Assessments and Government Assessments.

1.7. "Association" (or "HOA") shall mean The Villas at Sun River St. George Owners Association, Inc., a Utah nonprofit corporation.

1.8. "Board" shall mean the Board of the Association appointed or elected in accordance with this Declaration and the Bylaws.

1.9. "Builder" shall mean any Person which purchases one or more Lots or Units for the purpose of constructing improvements for later sale to consumers or purchases one or more parcels of land within the Project for further subdivision, development, and/or resale in the ordinary course of such Person's business. Builder shall not necessarily be construed to be the Declarant.

1.10. "Bylaws" shall mean the Bylaws of the Association, a copy of which is attached hereto as Exhibit "D", as amended from time to time.

1.11. "City" shall mean the City of St. George, Utah.

1.12. "Common Areas and Facilities" or sometimes "Common Areas" shall mean all real and personal property for the common use and enjoyment of the Owners, as shown on the Plat. For example without limitation, the Common Areas and Facilities may include, but are not limited to, recreational facilities, amenities, parks, entry features, signage, landscaped medians, street rights-of-way, non-public roadways, common landscaping, open spaces and conservation areas.

1.12.1 Amenities include sports courts, pool, bathroom, maintenance building, parking and grass recreational area to be completed before 100 units are sold.

1.12.2 "Future Amenities" to be determined.

1.13. "Common Assessments" shall mean those assessments described in Section 15.1 to fund the Common Expenses, and include Regular Common Assessments and Special Common Assessments.

1.14. "Common Expense Account" shall mean one or more deposit or investment accounts into which are deposited the Common Assessments.

1.15. "Common Expenses" shall mean all expenses of the administration, maintenance, repair, or replacement of the Common Areas and Facilities and all other expenses denominated as Common Expenses by this Declaration, by the Bylaws or by the Act.

1.16. "Cost of Living Index" shall mean the Consumer Price Index for Urban Wage Earners and Clerical Workers: U.S. City Average, All Items 1967 = 100 compiled by the Bureau of Labor Statistics, United States Department of Labor. The Index for December 1982-1984 is the reference base index. Declarant may select any other comparable index that measures changes in the cost of living.

1.17. "Declarant" shall mean Sun River Villas Development, LLC, a Utah limited liability company.

1.18. "Declarant Affiliate" means any person directly or indirectly controlling, controlled by or under common control with Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation in which Declarant (or another Declarant Affiliate) is a general partner, managing member or controlling shareholder.

1.19. "Declarant Control Period" means the period of time until 95% of the Units are sold and title is transferred to third parties, Declarant ceases operations, or voluntarily transfers Declarant's control whichever occurs sooner.

1.20. "Design Standards" or "Architectural Standards" shall mean the design and construction standards and application and review procedures applicable to the Property promulgated and administered pursuant to Article XI.

1.21. "Detached Unit" shall mean and refer to any one of the separately numbered and individually described detached single family residential living units which does not share an interior party wall with another Unit. Detached Units are further described in Section 3.3.

1.22. "Exempt Unit(s)" shall mean each Unit in the Project while owned by Declarant or a Declarant Affiliate, until the earliest to occur of (i) the acquisition of title to the Unit by a person or entity other than Declarant or a Declarant Affiliate, or (ii) the three hundred and sixtieth (360th) day after the municipal authority having jurisdiction thereover issues a certificate of occupancy for the Unit. In addition, unsold units in inventory and each Lot that does not contain a fully-

constructed Unit shall be an "Exempt Unit," and each model Unit owned, or sold and leased back, by the Declarant shall be an "Exempt Unit" so long as the same is used as a model Unit by the Declarant, a Declarant Affiliate, or their assign(s). In addition, the "Discovery Villas" shall be exempt as more specifically defined in Article I, Section 1.47 herein.

1.23. "Government Assessments" shall mean the assessments described in Section 15.3.

1.24. "Lease" or "Leasing" shall have meaning set forth in Section 7.13.

1.25. "Limited Common Areas" shall mean a portion of the Common Areas and Facilities, if any, allocated by the Declaration or the Act, as may be shown on the Plat, for the exclusive use of one or more, but fewer than all, of the Units.

1.26. "Lot" shall mean each of the tracts of land designated as a "lot" on the Plat. As shown on the recorded Plat, each Unit will be constructed on a Lot. Ownership of the Lot and the Unit (when constructed on the Lot) shall be inseparable, and any conveyance of a Lot shall operate to convey title to the Unit constructed on the Lot. Likewise, any conveyance of a Unit shall operate to convey title to the Lot on which the Unit is located.

Prior to recordation of a subdivision plat, a parcel of vacant land or land on which improvements are under construction shall be deemed to contain the number of Lots designated for residential use for such parcel on the applicable preliminary plat or Developer Conceptual Plan approved by Declarant, whichever is more current.

1.27. "Manager" or "Management Company" shall mean the management company selected by the Declarant to manage the affairs of the Project and may include an additional and separate entity that provides property management services. After the Declarant Control Period expires, the Manager and Board retain the rights, obligations and responsibilities as provided in this Declaration and the Act. Subsequent to the Declarant Control Period, the Board assumes the authority to select and replace the Manager subject to the rights and obligations of the parties under the Declaration and the existing management agreement contract.

1.28. "Mortgage" shall mean any mortgage, deed of trust or other security instrument by which a Unit or any part thereof or interest therein is encumbered. A "First Mortgage" is a Mortgage having priority as to all other Mortgages encumbering a Unit or any part thereof or interest therein.

1.29. "Mortgagee" shall mean (i) any persons or entities named as the mortgagee or beneficiary under any Mortgage by which the interest of any Owner is encumbered, (ii) any successor to the interest of such person or entity under such Mortgage, or (iii) any insurer or guarantor of such person or entity under such Mortgage.

1.30. "Owner" shall mean any person or entity at any time owning in fee simple a Unit within the Project as such ownership is shown by the Public Records. The term "Owner" shall not refer to any Mortgagee, unless such Mortgagee has acquired title for other than security purposes.

1.31. "Person" shall mean a natural person, a corporation, a partnership, a trustee, or any other legal entity.

1.32. "Phase" shall mean all Units simultaneously subjected to this Declaration by its execution and recordation by the Declarant or by the concurrent recordation in the Public Records of a Plat and of a Supplemental Declaration. The Property described in Exhibit "B" to this Declaration shall constitute the first Phase of the Project. A Phase may be developed in small areas called "Sub phases."

1.33. "Plat" shall mean the plat for The Villas at Sun River St. George, as filed of record in the Public Records, as the same may be amended, including the plats for subsequent phases of this Project.

1.34. "Project" shall mean the Property, the Units, the Common Areas and Facilities and all improvements constructed on the Property, as approved by the applicable governmental authorities.

1.35. "Property" shall mean that certain real property situated in the City of St. George, County of Washington, State of Utah, more particularly described in Exhibit "A", on which the Units and other improvements are or will be located, together with such additional property as is annexed to this Declaration.

1.36. "Public Records" shall mean and refer to those records on file in the Office of the County Recorder of Washington County, Utah.

1.37. "Regular Common Assessments" shall mean the annual assessments levied to pay the budgeted Common Expenses.

1.38. "Monthly Rentals" may include up to 100% of the units within the Project (the "Rental Pool") and shall be managed by the "Management Company" selected by Declarant.

1.39. "Special Common Assessments" shall mean assessments in addition to the Regular Common Assessments, for unexpected Common Expenses or other purposes as provided herein.

1.40. "Special Declarant Rights" shall mean the rights of Declarant set forth in Article XVI.

1.41. "Specific Assessments" shall mean assessments against an Owner or Owner's Unit, in addition to Regular Common Assessments and Special Common Assessments, for the purposes provided herein.

1.42. "Supplemental Declaration" shall mean a supplement to this Declaration filed in the Public Records pursuant to the provisions of this Declaration which subjects additional property to this Declaration, identifies any Common Areas and Facilities within the additional property, and/or imposes, expressly or by reference, additional restrictions and obligations on the property described in such instrument.

1.43. "Total Votes of the Association" shall mean the total number of votes appertaining to all Units, as described in Article XVIII hereof, including all votes pertaining to the Class B Member for such time as Declarant owns at least one (1) Lot or Unit.

1.44. "Twin-home Unit" or "Duplex Unit" or "Townhome Unit" shall mean and refer to any one of the separately numbered and individually described residential living units which share an interior common wall or party wall with an adjoining Twin-home Unit. A Twin-home Unit shall include the Lot directly underneath the ground level of such Twin-home Unit, as well as any improvements thereon, including the exterior walls and surfaces of the Twin-home Unit, floor joists, foundations and roofs of the Twin-home Unit and the portion of interior party walls which are half way between the Twin-home Unit and an adjoining Twin-home Unit. Twin-home Units are further described in Section 3.2.

1.45. "Unit" shall mean and refer to a portion of the Project, which may be independently owned and conveyed and which is intended for use and occupancy as an attached or detached residence for a single family, as designated and described on the Plat. The Term shall refer to both Twin-home Units and Detached Units, as applicable. A Unit shall also include the Lot on which the Unit is located, as depicted on the Plat.

1.46. "Unit Number" shall mean the number, letter or combination of numbers and letters that identifies only one Unit in the Project.

1.47. "Discovery Villa" means any Unit owned or operated by Declarant for short-term or periodic rental or for marketing or sale purposes. The occupant of such Discovery Villa may be given specified rights of use of Common Areas and Facilities per Section 16.7.

ARTICLE II: SUBMISSION OF PROJECT; EXPANSION OF PROJECT

2.1. Declarant hereby submits to the provisions of the Act the Property described in Exhibit "A" and the Project. All of said Project is and shall be held, conveyed, hypothecated, encumbered, leased, subleased, rented, used and improved as a PD-R community for Persons fifty-five (55) years of age or older known as The Villas at Sun River St. George. All of said Project is and shall be subject to the covenants, conditions, restrictions, easements, uses, limitations and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of said Project. Further, each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit on the Property and shall be binding on any Person acquiring, leasing, subleasing or owning an interest in the real property and improvements comprising the Project, their assigns, lessees, sub lessees, heirs, executors, administrators, devisees and successors.

2.2. The Project is expandable. Hence, following construction of the Units and improvements in the first Phase of the Project, subsequent Phases may also be constructed in accordance with the plat approvals and zoning requirements of the City. There is no guarantee that subsequent Phases will be constructed or that the Project will be expanded. Declarant (or its assigns) shall have the sole discretion to determine if and when to apply for Plat approval to develop and construct additional Phases. If approved and constructed, the additional Phases shall be annexed into, and made a part of, this Project, in accordance with Article XXI, to expand the Project to include the additional Phase(s).

ARTICLE III: DESCRIPTION OF UNITS

3.1. One Unit Per Lot. There shall be one Unit located on each Lot, as shown on the Plat.

3.2. Description of Twin-home Units. Each Twin-home Unit shall consist of the Lot upon which the Unit is located, as well as any improvements thereon, including the exterior walls and surfaces of the Twin-home Unit, floor joists, foundations and roofs of the Twin-home Unit and the portion of interior party wall which is half way between the Twin-home Unit and an adjoining Twin-home Unit. In addition, each Twin-home Unit shall consist of the airspace above and the subsurface below the Lot upon which the Twin-home Unit is located and all of the area and improvements above and below the surface of the land and within and part of the vertical boundaries defined by the Lot and/or Unit lines shown on the Plat, extended upwards to the heavens and downward to the center of the earth, included within the boundaries of each Lot or Unit. By this provision, the Declarant intends each Twin-home Unit to be comprised of all of the physical improvements that pertain solely to the area in which the Unit is located or pertain solely to the improvements of that Twin-home Unit, including, without limitation, all physical facilities, installations, lines, foundations, equipment, tanks, pumps, pipes, vents, ducts, shafts, flues, chutes, conduits, wires and other utility installations that connect or provide service only to the applicable Twin-home Unit. Subject to the Design Standards, Twin-home Units may consist of two (2) stories above the ground level of the Lots for such Twin-homes and Twin-home Units may also include basements. Twin-home Units shall be built and constructed in accordance with the Design Standards and subject to further limitations as defined in applicable city ordinances.

There is no guarantee about the number of Twin-home Units that will be constructed in the Project or which Phases of the Project may include Twin-home Units.

3.3. Description of Detached Units. Each Detached Unit shall consist of the Lot upon which the Unit is located, as well as any improvements thereon. In addition, each Detached Unit shall consist of the airspace above and the subsurface below the Lot upon which the Detached Unit is located and all of the area and improvements above and below the surface of the land and within and part of the vertical boundaries defined by the Lot and/or Unit lines shown on the Plat, extended upwards to the heavens and downward to the center of the earth, included within the boundaries of each Lot or Unit. Subject to the Design Standards, Detached Units may consist of two (2) stories above the ground level of the Lots for such Detached Units and Detached Units may also include basements. Detached Units shall be built and constructed in accordance with the Design Standards and subject to further limitations as defined in applicable city ordinances.

There is no guarantee about the number of Detached Units that will be constructed in the Project or which Phases of the Project may include Detached Units.

ARTICLE IV: COMMON AREAS AND FACILITIES

4.1. Conveyance of Common Areas and Facilities. The Common Areas and Facilities in the Project shall be owned by the Association and managed by the Manager and the Board pursuant to their respective authority and responsibilities as set forth in this Declaration and the Community Association Act.

4.2. Common Area and Facilities Easement. Every Owner shall have a right and nonexclusive easement of use, access and enjoyment in and to the Common Areas and Facilities, subject to the rights of the Declarant provided under the Community Association Act and:

4.2.1. The provisions of the Articles, this Declaration and its Exhibits, the Bylaws and the Plat;

4.2.2 Any restrictions or limitations contained in any deed conveying such property;

4.2.3. The rules, regulations or policies regulating the use and enjoyment of the Common Areas and Facilities, including rules restricting use of recreational facilities within the Common Areas and Facilities to occupants of Units and their guests, rules limiting the number of occupants and guests who may use the Common Areas and Facilities, rules to set hours of operation for recreational facilities, and restrictions on the use of Common Areas and Facilities by minors;

4.2.4. The right of the Declarant or Manager to suspend the right of an Owner to use Common Areas and Facilities pursuant to Section 22.4.1;

4.2.5 The right of the Declarant to dedicate or transfer all or any part of the Common Areas and Facilities;

4.2.6. The right of the Declarant or Manager to impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Areas and Facilities; which may be included as part of the association dues and/or activity fees.

4.2.7. The right of the Declarant or Manager to permit use of any Common Areas and Facilities by non-Owners upon payment of established use fees;

4.2.8. The right of the Declarant to create, enter agreements with, and grant easements to tax-exempt organizations under Section 8.13;

4.2.9. The right of the Declarant to mortgage, pledge, or hypothecate any or all of its real or personal property as security for Project obligations;

4.2.10. The right of the Declarant or Manager to rent or lease any portion of any recreational facilities within the Common Areas and Facilities on a short-term basis to any Person for the exclusive use of such Person and such Person's family and guests.

4.2.11. The right of the Declarant to add future amenities. If additional amenities are added, assessments may be increased for the cost and maintenance of such amenities.

Ownership of each Unit shall entitle the Owner thereof to receive a maximum of two membership cards. The cards for each Unit shall be renewed on an annual basis without charge, provided that all applicable assessments and other charges have been paid. The Declarant, Developer or Manager may establish policies, limits and charges with regard to the issuance of additional cards and guest privilege cards, including privileges for multiple owners of lots as described in Section 8.1.

Subject to reasonable rules set by the Declarant or Manager, any Owner may assign the right to receive membership cards to residents of his or her Unit; provided such residents are occupying such Unit in compliance with this Declaration. An Owner who leases his or her Unit shall be deemed to have assigned such rights to the lessee of such Unit, unless the Owners reserve such rights and such Owner provided the Manager with written notice of such reservation. Any Owner may reassign the right to receive membership cards by providing the Manager with written notice of such reassignment and surrender previously issued cards.

4.3. Limited Common Areas. Each Unit Owner is hereby granted an irrevocable and exclusive license to use and occupy the Limited Common Areas appurtenant to certain Units and identified on the Plat. The exclusive right to use and occupy each Limited Common Area shall be appurtenant to and shall pass with the title to every Unit with which it is associated. A Unit Owner's exclusive right of use and occupancy of Limited Common Areas reserved for their Unit shall be subject to and in accordance with this Declaration and the Bylaws.

4.4. No Partition or Alteration. Except as permitted in this Declaration, the Common Areas and Facilities shall remain undivided, and no Person shall bring any action for partition of the whole or any part thereof without the written consent of all Owners and Mortgagees. No Owner, directly or indirectly, shall make any alterations to any of the Common Areas and Facilities without the prior written consent of the Manager, including, without limitation, the landscaping of the Project or any other Common Areas and Facilities.

4.5. Obstruction. Except as otherwise provided herein, there shall be no obstruction of the Common Areas and Facilities by any Owner. Owners shall neither store nor leave any of their property in the Common Areas and Facilities, other than Limited Common Areas and Facilities appurtenant to their Unit, except with the prior consent of the Manager.

4.6. Maintenance of Common Areas and Facilities. The Association is responsible for the costs of maintenance, all other responsibilities, of the Common Areas and Facilities and all those provided for and allowable under the Community Association Act. The Developer or Manager are delegated the responsibility for the actual maintenance, repair, and snow removal of the Common Areas and Facilities and non-public roadways within the Project, if any.

ARTICLE V: NATURE AND INCIDENTS OF UNIT OWNERSHIP

Each Unit is a parcel of real property which may be separately held, conveyed, devised, mortgaged, encumbered, leased, rented, used, occupied, improved and otherwise affected in

accordance with the provisions of this Declaration. Owners of adjoining Units may not reallocate or change the boundaries of such Units. Except as otherwise provided herein, no Owners may subdivide their Unit(s).

ARTICLE VI: TITLE TO UNITS

6.1. Manner in Which Title May be Held. Title to a Unit may be held or owned by any person or entity and in any manner in which title to any other real property may be held or owned in the State of Utah.

6.2. Title to Unit May not be Separated. Title to part of a Unit may not be separated from any other part thereof during the period of ownership, and each Unit shall always be conveyed, devised, encumbered and otherwise affected only as a complete Unit. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Unit, or any part thereof, shall be construed to be a gift, devise, bequest, transfer, encumbrance or conveyance, respectively, of the entire Unit, together with all appurtenant rights created by law and by this Declaration, including appurtenant membership in the Association as herein set forth.

6.3. Encumbrance of Unit. Each Owner shall have the right to encumber his interest in a Unit with a Mortgage. However, no Owner shall attempt to or shall have the right to encumber the Common Areas and Facilities or any part thereof. Any Mortgage of any Unit within the Project shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise.

6.4. Liens Against Units. No labor performed or services or materials furnished with the consent of or at the request of an Owner may be the basis for the filing of a lien against the Unit of any other Owner, or against any part thereof, or against any other property of any other Owner, unless the other Owner has expressly consented to or requested the performance of such labor or furnishing of such services. Express consent shall be deemed to have been given by the Owner in the case of emergency or other repairs deemed necessary by the Manager and not attended to by the Owner thereto, with the cost of such repairs chargeable to the Owner. Labor performed or services or materials furnished for the Project, if authorized by the Declarant or Manager and provided for in the Declaration, shall be deemed to be performed or furnished with the express consent of each Owner. The Owner may remove his Unit from a lien against two or more Units or any part thereof by payment to the holder of the lien of the fraction of the total sums secured by such lien which is attributable to his Unit.

6.5. Description of Unit. Every contract for the sale of a Unit and every other instrument affecting title to a Unit within the Project may describe a Unit by the name of the Project, the county wherein the Project is located and its Unit Number (or Lot Number) as indicated in this Declaration or as shown on the Plat. Such description will be construed to describe the Unit, the applicable Lot, and to incorporate all the rights incident to ownership of a Unit within the Project and all of the limitations on such ownership as described in this Declaration.

ARTICLE VII: RESTRICTIONS ON USE

The Units and Common Areas and Facilities, including but not limited to the Limited Common Areas, except as otherwise permitted in writing by the Declarant or Manager, shall be used in accordance with the following restrictions:

7.1. Age Restriction – Housing for Persons 55 Years of Age or Older Under HOPA. THE VILLAS AT SUN RIVER ST. GEORGE ARE INTENDED TO, AND SHALL BE MANAGED TO, PROVIDE HOUSING FOR PERSONS FIFTY-FIVE (55) YEARS OF AGE OR OLDER AS DEFINED UNDER THE FEDERAL HOUSING FOR OLDER PERSONS ACT. EACH AND EVERY UNIT WITHIN THE PROJECT, IF OCCUPIED, SHALL BE OCCUPIED BY AT LEAST ONE PERSON THAT IS FIFTY-FIVE (55) YEARS OF AGE OR OLDER. WITHOUT LIMITING THE FOREGOING, AT LEAST EIGHTY PERCENT (80%) OF THE OCCUPIED UNITS SUBJECT TO THIS DECLARATION SHALL BE OCCUPIED BY AT LEAST ONE PERSON FIFTY-FIVE (55) YEARS OF AGE OR OLDER. NO PERSONS UNDER AGE OF EIGHTEEN (18), AS WELL AS ALL OTHERS FALLING WITHIN THE DEFINED TERM OF FAMILIAL STATUS UNDER FEDERAL LAW, SHALL OCCUPY ANY UNIT; EXCEPT THAT PERSONS UNDER AGE EIGHTEEN (18) MAY RESIDE AS A VISITOR IN ANY UNIT BUT NOT FOR A PERIOD EXCEEDING THIRTY(30) CONSECUTIVE DAYS NOR MORE THAN NINETY (90) DAYS IN ANY CALENDAR YEAR. THE BOARD SHALL RECOMMEND TO THE MANAGER POLICIES AND PROCEDURES FROM TIME TO TIME AS NECESSARY TO MAINTAIN THE PROJECT AS AN AGE RESTRICTED COMMUNITY INTENDED FOR HOUSING PERSONS FIFTY-FIVE (55) YEARS OF AGE OR OLDER UNDER STATE AND FEDERAL LAW.

7.2. Quiet Enjoyment; Nuisances. No noxious, destructive or offensive activity shall be carried on or placed in or upon any Unit, or in the Common Areas, or Limited Common Areas, or any part thereof, which shall interfere with the legal rights of other Owners nor shall anything be done therein which is or may become an annoyance or nuisance to any other Owner or to any Person at any time lawfully residing in the Project. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any Person or property. No activity shall be conducted in or upon any part of the Project which materially disturbs or destroys the vegetation, wildlife, or air quality within the Project or which result in unreasonable levels of sound or light pollution. The Common Areas and Facilities shall be used only in a manner which is consistent with their community nature and the use restrictions applicable to the Units.

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

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

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

7.5. Signs. No sign shall be erected within the Project without the written consent of the Declarant, Developer or Manager, except those required by law and those permitted by the Design Standards. This restriction shall not apply to signs installed by Declarant. If permission is granted to any Person to erect a sign within the Project, the Architectural Control Committee shall have the right to restrict the size, color, lettering and placement of such sign. The Declarant, Developer or Manager shall have the right to erect signs as they, in their discretion, deem appropriate.

7.6. Occupants Bound. All provisions of the Articles, this Declaration, the Bylaws, the Design Standards and any rules and regulations adopted by the Declarant, Developer or Manager shall also apply to all occupants, guests, and invitees of any Unit. Every Owner shall cause all occupants of his or her Unit to comply with the foregoing, and every Owner shall be responsible for all violations and losses to the Common Area and Facilities caused by such occupants, notwithstanding the fact that such occupants of a Unit are fully liable and may be sanctioned for any violation.

7.7. Animals and Pets. No pets, animals, livestock or poultry of any kinds shall be bred in or kept on or about the Project, except as may be allowed in accordance with rules and regulations governing pets which may be promulgated by the Declarant, Developer or Manager. Pets shall not create a nuisance, and the following acts may constitute a nuisance: (a) causing damage to the property of anyone other than the pet owner; (b) causing unsanitary conditions; (c) defecating on any Common Areas and Facilities when the feces are not immediately cleaned up by the responsible party; (d) barking, howling, whining or making other disturbing noises in an excessive or continuous fashion; (e) harassing passersby by lunging at them or chasing vehicles; (f) attacking or threatening to attack people or other domestic pets; or (g) otherwise acting so as to unreasonably bother, annoy or disturb other residents or unreasonably interfering with their right of peaceful and quiet enjoyment of their Units. Pets in the Common Areas must be in a cage or on a leash at all times. Pets may not be tied or tethered in any Common Areas. The Declarant, Developer or Manager may establish and enforce rules and regulations governing pets within the Project and may charge a deposit for pets within the Project.

7.8. Subdivision of Unit. No Unit, or portions thereof, may be further divided or subdivided, or its boundary lines changed except with the prior written approval of the Declarant, Developer or Manager. Declarant, its successors and assigns hereby expressly reserve the right unilaterally to subdivide, change the boundary line of, and replat any Unit(s) owned by Declarant, its successors and assigns during the Declarant Control Period, to the extent allowed by Utah law. 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. However, the Declarant hereby reserves the right for itself and its assigns to operate such a program with respect to Units which it owns.

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

7.10. Occupancy. Units shall not be occupied by more than two (2) persons per bedroom in the Unit. For the purposes of this provision, "occupancy" shall be defined as staying overnight in the Unit more than thirty (30) days in any ninety (90) day period.

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

7.12. Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Unit.

7.13. Business Use/Rentals/Leasing. No Business, trade, estate sale, garage sale, moving sale, rummage sale, or similar activity may be conducted in or from any Unit, except that an Owner or occupant 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 Project; (c) the business activity does not involve regular visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Project; and (d) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents in the Project, as may be determined in the sole discretion of the Declarant, Developer or Manager.

This Section shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Project or its use of any Units which it owns within the Project.

Monthly rentals are permitted pursuant to Section 1.38 herein and the Units in the Rental Pool are subject to additional and different assessments than non-rental pool Units. The Manager may impose different assessments on owner-occupied and renter occupied Units. No lockout type

rental rooms shall be permitted. The Project shall meet all requirements of the City's rental ordinance. Any rental or lease is not permitted by private residence Owners, but must be through the Manager or its assign.

The rental or leasing of a Unit shall not be considered a business or trade within the meaning of this Section. "Rental" or "Leasing," for purposes of this Declaration, is defined as regular, exclusive occupancy of a Unit by any person other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. Units may be leased only in their entirety. No fraction or portion may be rented or leased. No structure on a Lot other than the primary residential Unit shall be leased or otherwise occupied for residential purposes. There shall be no subleasing of Units or assignment of leases unless prior written approval is obtained from the Manager. All leases shall be in writing and in form and substance approved by the Manager. Lease agreements must require the lessee to comply with the Articles, this Declaration, the Bylaws, the Design Standards and any rules and regulations adopted by the Declarant or Manager and provide that non-compliance with any provisions thereof shall constitute a default under the lease agreement.

Any Owner that leases his or her Unit shall use the services of the professional property management company which shall be the Manager or a management company or a property management company appointed by the Manager to manage and administer the leasing of such Unit. Any rentals are subject to the conditions imposed by the City or other conditions imposed on rentals contained in the rules and regulations.

Notice of any lease, together with such additional information as may be required shall be given to the Manager within ten (10) days of execution of the lease. The Owner must make available to the lessee copies for online access to, this Declaration, the Bylaws, the Design Standards and any rules and regulations adopted by the Declarant, Developer or Manager.

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

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

7.14.2. Solar panels and solar energy systems, as further defined in the Design Standards, are prohibited on any Unit or Lot.

7.14.3. Walls, dog runs, animal pens, or fences of any kind on any Lot except as approved in accordance with Article XI;

7.14.4. Garage doors shall remain closed at all times except when entering and exiting the garage;

7.14.5. Excessive exterior lighting on any Unit. Exterior lighting fixtures shall be dark-sky configured fixtures.

7.14.6. Tents, shacks, or other structures of a temporary nature on any Lot except as approved in accordance with Article XI or as may be authorized by the Declarant during initial construction within the Project. Temporary structures used during the construction or repair of a Unit or other improvements shall be removed immediately after the completion of construction or repair; and

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

7.15. Compliance with Law; Waste. Nothing shall be done or kept in any Unit or in the Common Areas and Facilities or any part thereof which would be in violation of any statute or rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas and Facilities or any part thereof shall be committed by any Owner or guest, lessee, licensee or invitee of any Owner, and each Owner shall indemnify and hold the Declarant, Developer, Manager, Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his guests, lessees, licensees or invitees.

ARTICLE VIII: ASSOCIATION, BOARD OF DIRECTORS AND MANAGER

8.1 Membership. Each Owner shall be entitled and required to be a member of the Association. There shall be two (2) classes of membership in the Association, as set forth in Article XVIII herein. Membership will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Unit is held by more than one person, the membership appurtenant to that Unit shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Unit is held. An Owner shall be entitled to one membership for each Unit owned by him. However, if a Unit is owned by more than one Person, all co-Owners shall share the privileges of such membership such as reasonable fees as may be established pursuant to Section 4.2 and any restrictions on voting set forth in this Declaration or the Bylaws. Each membership shall be appurtenant to the Unit to which it relates and shall be transferred automatically by conveyance of that Unit. Ownership of a Unit within the Project cannot be separated from the Association membership appurtenant thereto, and any devise, encumbrance, conveyance or other disposition of a Unit shall constitute a devise, encumbrance, conveyance or other disposition, respectively, of such Owner's membership in the Association and the rights appurtenant thereto. No person or entity other than an Owner may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Unit.

8.2. Board Authority; Appointment and Election. Except as otherwise specifically provided in the Articles, the Bylaws or this Declaration, all delegable rights, powers and obligations of the Association will be exercised by the Manager with the Board acting in an advisory capacity. The Board shall consist of at least three (3) natural Persons as provided in the Bylaws. The Board shall be appointed as provided in this Declaration and in the Bylaws. Notwithstanding the foregoing, the Declarant shall have the exclusive right to appoint, remove and

replace all members of the Board. The Manager shall be an ex-officio member of the Board. All matters addressed with this Section are subject to the Act.

8.3. Powers and Duties of Board and Manager. To make ownership and membership in the community more enjoyable and management of the Project more efficient, Declarant and Manager will retain greater authority and the Board will have lesser authority as permitted by law. Except as otherwise provided herein, the Declarant reserves and grants to the Manager all delegable powers, duties and obligations of the Association and Board as are now or may hereafter be provided by the Act, the Articles, this Declaration and the Bylaws, including but not limited to the following:

8.3.1. To make and enforce reasonable rules and regulations covering the use, operation and maintenance of the Project and the Units, consistent with the rights and duties established by the Articles, this Declaration and the Bylaws. Such rules and regulations shall be binding upon all Owners, occupants, invitees, and licensees. To amend these Declarations to comply with changes in State law. Amendments that affect the Owner's contractual rights shall be approved by the Association.

8.3.2. To engage the services of accountants, attorneys or other employees or agents and to pay to said persons a reasonable compensation therefore, and to appoint committees as recommended by the Board.

8.3.3. To operate, maintain, repair, improve and replace the Common Areas and Facilities.

8.3.4. To determine and pay the Common Expenses.

8.3.5. To assess and collect the proportionate share of Common Expenses from the Owners, as provided in Article XV hereinafter.

8.3.6. To levy Specific Assessments on Owners or Units, as provided in Section 15.2.

8.3.7. To enter into contracts, deeds, leases and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.

8.3.8. To open bank accounts on behalf of the Association and to designate the signatories therefore.

8.3.9. To purchase, hold, sell, convey, mortgage or lease any one or more Units in the name of the Association or its designee.

8.3.10. To bring, prosecute and settle litigation for itself, the Association and the Project, provided that it shall make no settlement which results in a liability against the Board, the Association or the Project in excess of \$20,000 (as measured in 2017 dollars and thereafter adjusted by the Cost of Living Index) without the prior approval of a majority of the Total Votes of the Association at a meeting or by written ballot distributed to Owners by mail; provided, any settlement which would be paid from proceeds of insurance which

may be settled by the Association's insurance carrier and which in either case results in no actual liability of funds of the Association in excess of \$20,000 shall not require Association approval.

8.3.11. To obtain insurance for the Association with respect to the Units and the Common Areas and Facilities, as well as worker's compensation insurance, as required herein or as otherwise recommended as necessary by the Board.

8.3.12. To repair or restore the Common Areas and Facilities following damage or destruction or a permanent taking by the power of, or power in the nature of, eminent domain, or by an action or deed in lieu of condemnation not resulting in the removal of the Project from the provisions of the Act.

8.3.13. To own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the Owners, items of personal property necessary to or convenient to the management of the business and affairs of the Association and the Board and to the operation of the Project, including without limitation furniture, furnishings, fixtures, maintenance equipment, appliances and office supplies.

8.3.14. To keep adequate books and records and implement the policies and procedures for the inspection of the books and records of the Project by Owners in accordance with the terms of this Declaration and the Bylaws.

8.3.15. To do all other acts necessary for the operation and maintenance of the Project, including the maintenance and repair of any Unit if the same is necessary to protect or preserve the Project.

8.3.16. To prepare, adopt, amend and disseminate budgets and other information from time to time in accordance with the terms of this Declaration and the Bylaws.

8.3.17. To grant conveyances, easements and rights-of-way over the Common Areas and Facilities.

8.3.18. To exercise any right or privilege reasonably implied from or reasonably necessary to effectuate any right or privilege expressly granted to the Board by the Articles, the Bylaws or this Declaration.

8.4. Liability of Board Members and Officers. Members of the Board, the officers and any assistant officers, agents and employees of the Association (i) shall not be liable to the Owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own willful misconduct or bad faith; (ii) shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Association in their capacity as such; (iii) shall have no personal liability in tort to any Owner or any person or entity, direct or imputed, by virtue of acts performed by them, except for their own willful misconduct or bad faith, nor for acts performed for them in their capacity as such; and (iv) shall have no personal liability arising out of the use, misuse or condition of the Project, which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such.

8.5. Indemnification of Board Members. When a member of the Board is sued for liability for actions undertaken in his role as a member of the Board, the Association shall indemnify him for his losses or claims, and undertake all costs of defense, until and unless it is proven that he acted with willful or wanton misfeasance or with gross negligence. After such proof the Association is no longer liable for the cost of defense, and may recover costs already expended from the member of the Board who so acted. Members of the Board are not personally liable to the victims of crimes occurring at the Project. Punitive damages may not be recovered against the Association, but may be recovered from persons whose gross negligence gave rise to the damages.

8.6. Delegation to Manager. The Board shall delegate to, and carry out through, the Manager those of its functions which are subject to delegation. The Manager so engaged shall be an independent contractor and not an agent or employee of the Association or Board, shall be responsible for managing the Project for the benefit of the Declarant, Developer, Association and the Owners, and shall, to the extent permitted by law and be authorized to perform any of the functions or acts required or permitted to be performed by the Board itself. The cost of retaining or employing the Manager shall be a Common Expense.

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

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

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

8.10. Change of Use of Common Area. During the Declarant Control Period without the approval or consent of the Owners, and thereafter, with the consent of a majority of the Total Votes of the Association, and the consent of Declarant (so long as Declarant owns any property in the Project), the Board may recommend change in the use of portions of the Common Areas. Any such recommendation shall be made by Board resolution stating that: (a) the present use or service is no

longer in the best interest of the Owners, (b) the new use is for the benefit of the Owners, and (c) the new use is consistent with any deed restrictions and zoning regulations restricting or limiting the use of the Common Areas.

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

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

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

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

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

8.14. Merger. The Association may recommend that it merge and consolidate with another common interest community, under the terms of Utah law and subject to the approval of Declarant and Manager.

8.15. Assumption of Risk. Each Owner and occupant of a Unit and each tenant, guest and invitee of any Owner or occupant shall assume all risks associated with the use and enjoyment of the Project, including all recreational facilities, if any.

Neither the Association, the Board, the Manager, nor the Declarant shall be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence or malfunction to utility lines or utility sub-stations adjacent to, near, over, or on the Project. Each

Owner and occupant of a Unit and each tenant, guest, and invitee, of any Owner or occupant shall assume all risk of personal injury, illness, or other loss or damage arising from the presence of utility lines or utility sub-stations and further acknowledges that the Association, the Board, the Manager, the Declarant or any successor Declarant have made no representations or warranties, nor has any Owner or occupant, or any tenant, guest, or invitee of any Owner or occupant relied upon any representations or warranties, expressed or implied, relative to the condition or impact of utility lines or utility sub-stations.

No provision of the Articles, this Declaration, the Bylaws, the Design Standards or any rules or regulations adopted by the Board shall be interpreted as creating a duty of the Association, the Board, the Manager, nor the Declarant to protect or further the health, safety or welfare of any Person(s), even if the funds of the Association are used for any such purpose.

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

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

Neither the Association, the Manager, nor the Declarant shall in any way be considered insurers or guarantors of security within the Project. None of them shall be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any fire protection system, entry gate, patrol, burglar alarm system or other security system or measures, including any mechanism or system for limiting access to the Project, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in any case prevent loss or provide the detection or protection for which the system is designed or intended.

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

ARTICLE IX: MAINTENANCE, ALTERATION AND IMPROVEMENT

9.1. Responsibility. The Association is a non-profit corporation with the powers granted by this Declaration and administered by a single professional management company. The Association, through delegation to the management company, is responsible for the maintenance of the open spaces, landscaping along its side of the public roads, amenity parcel facilities, private roads, rental management, and all “engineered” or “load-bearing” walls.

The Manager shall maintain and keep in good repair the Area of Common Responsibility, which shall include, but need not be limited to:

- (a) All Common Areas and Facilities;
- (b) All perimeter walls or fences constructed by the Declarant or Developer surrounding the Project or which separate a Unit from the Common Areas, regardless of whether such wall or fence is located on the Common Areas or on a Unit; provided that Owners shall be responsible for maintaining the interior surface of the perimeter wall or fence located on such Owner's Unit as provided in Section 9.2. A perimeter wall or fence shall not be a party wall or party fence as set forth in Section 9.3;
- (c) Private streets, landscaping, street lights and signage within public rights-of-way abutting the Project, and entry features;
- (d) Landscaping and other flora within any public utility easements and scenic easements within the Common Areas (subject to the terms of any easement agreement relating thereto).
- (e) Any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, any Plat of any portion of the Project, or any contract or agreement for maintenance thereof entered into by the Association;
- (f) Any property or facility owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Owners and identified by written notice from the Declarant to the Association until Declarant revokes such privilege by written notice to the Association.
- (g) All front yard landscape maintenance for each Unit.
- (h) The Manager shall also have the right and power, but not the obligation, to take such actions and adopt such rules as may be necessary for control, relocation and management of wildlife, snakes, rodents, pests, range cattle, or Gila monsters within the Area of Common Responsibility. Also included are areas of threatened or endangered plants or animals.

Except as otherwise specifically provided herein, all costs for maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense allocated among all Units as part of the Regular Common Assessment, without prejudice to the right of the Declarant or Manager to seek reimbursement from the Persons responsible for such work pursuant to this Declaration, other recorded covenants, or agreements with such Persons.

9.2. Owner's Responsibility.

Each Owner shall maintain, at his or her sole expense, his or her Lot, Unit and all other improvements on the Lot in a manner consistent with the Design Standards and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to, this Declaration, any Supplemental Declaration or other declaration of covenants applicable to such Unit. Additionally, each Owner shall keep the Common Areas and Limited Common Areas designated for use in connection with his Unit in a clean, sanitary and attractive condition. Each Owner shall also be responsible for maintaining the interior surface of any perimeter wall or fence, unless such maintenance is assumed by the Association.

The Owner, and not the Association unless assumed by separate written agreement, has the obligation to maintain, repair and replace the landscaping in the side and rear yard areas.

In addition to any other enforcement rights, if an Owner fails to perform properly his or her maintenance responsibility, the Manager may perform such maintenance responsibilities and assess all costs incurred as a Specific Assessment in accordance with Section 15.2. The Manager shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

9.3. Party Walls. A party wall is any wall or fence built as a part of the original construction of the Units, other than a perimeter wall or fence as provided in Section 9.1:

- (a) Any part of which is built upon or straddling the boundary line between two adjoining Units, between a Unit and the Common Areas; or
- (b) Which is constructed within four feet of the boundary line between adjoining Units, between a Unit and the Common Areas, has no windows or doors, and is intended to serve as a privacy wall for the benefit of the adjoining Unit; or
- (c) Which, otherwise serves and/or separates two adjoining Units, or a Unit and a Common Area, regardless of whether constructed wholly within the boundaries of one Unit, shall constitute a party wall or party fence (herein referred to as "party structures").

The owners of the property served by a party structure (the "Adjoining Owners") shall own that portion of the party structure lying within the boundaries of their respective properties and shall have an easement for use and enjoyment and, if needed, for support, in that portion, if any, of the party structure lying within the boundaries of the adjoining property. Each Adjoining Owner shall be responsible for maintaining property insurance on that portion of any party structure lying within the boundaries of such Owner's Unit, as more particularly provided in Section 10.2, and shall be entitled to all insurance proceeds paid under such policy on account of any insured loss.

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

9.4. Manager's Access to Units. Some of the Common Areas and Facilities and Limited Common Areas are or may be conveniently accessible only through the Units. The Manager shall have the irrevocable right to have access to each Unit and to all Common Areas and Facilities and Limited Common Areas from time to time during such reasonable hours as may be necessary for the cleaning, repair or replacement of any Common Areas and Facilities and Limited Common Areas or for making any emergency repairs at any time and when necessary to prevent damage to the Common Areas and Facilities, Limited Common Areas or to any Unit. The Manager shall also have the irrevocable right to have access to any Unit when necessary in connection with any cleaning, maintenance, repair, replacement, painting, landscaping, construction or reconstruction for which the Association is responsible or for the purpose of abating a nuisance or a known or suspected dangerous or unlawful condition. Such entry shall be made with as little inconvenience to the Owners as is practicable under the circumstances and any damage caused thereby shall be repaired by the Manager.

ARTICLE X: INSURANCE

10.1. Insurance.

10.1.1. Required Coverage. The Declarant, Developer or Manager shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonable available, the most nearly equivalent coverages as are reasonably available:

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

10.1.1.2. Commercial general liability insurance on the Area of Common Responsibility, insuring the Manager, Association and its Members for the

damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least \$2,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonable prudent person would obtain, the Manager shall obtain such additional coverages or limits;

10.1.1.3. Workers compensation insurance and employers liability insurance, if and to the extent required by law;

10.1.1.4. Directors and officers liability coverage;

10.1.1.5. Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Manager's best business judgment but not less than an amount equal to one-sixth of the annual Regular Common Assessments on all Units plus reserves on hand. Fidelity insurance policies shall obtain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

10.1.1.6. Such additional insurance as the Declarant or Manager, in their best business judgment, determines advisable.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Regular Common Assessments.

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

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 10.1.1. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Manager reasonably determines, after notice and an opportunity to be heard in accordance with the requirements of the Bylaws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Manager may specifically assess the full amount of such deductible against such Owner(s) and their Units as Specific Assessment(s) pursuant to Section 15.2.

All insurance coverage obtained shall:

(a) Be written with a company authorized to do business in the State of Utah which satisfies the requirements of the Federal National Mortgage Association, or such

other secondary mortgage market agencies or federal agencies as the Manager deems appropriate;

(b) Be written in the name of the Manager as trustee for the benefitted parties. Policies on the Common Areas and Facilities shall be for the benefit of the Association and its Members;

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

(d) Contain an inflation guard endorsement;

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

(f) Provide that each Unit Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Areas and Facilities or membership in the Association;

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

(h) Include an endorsement precluding cancellation, invalidation, or condition to recovery under the policy on account of any act or omission of any one or more individual Owners.

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

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

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

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

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

(e) A cross liability provision; and

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

10.1.3. Damage and Destruction. Immediately after damage or destruction to all or any part of the Project covered by insurance, the Manager or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this Subsection, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Areas and Facilities shall be repaired or reconstructed unless at least sixty-seven percent (67%) of the Total Votes of the Association, and the Declarant, during the Declarant Control Period, decide within sixty (60) days after the loss not to repair or reconstruct.

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

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

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be deposited in the Association operating account.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Manager may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 15.1.3.

10.2. Owner's Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless the Association carries such insurance (which they may, but are not obligated to do hereunder). If the Association assumes responsibility for obtaining any insurance coverage on behalf of Owners, the premiums for such insurance shall be levied as a Specific Assessment against the benefitted Unit and the Owner thereof pursuant to Section 15.2.

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI. The Owner shall rebuild or repair such damage in a reasonable time period and pay any costs which are not covered by insurance proceeds.

ARTICLE XI: ARCHITECTURAL STANDARDS

11.1. **General.** No improvements, exterior alterations, posting of anything or planting or removing landscaping shall take place except in compliance with this Article, the Design Standards and upon approval of the Architectural Control Committee.

11.1.1. Any Owner may remodel, paint or redecorate the interior of his or her Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Lot shall be subject to approval. Approval shall be required by the Architectural Control Committee to repaint the exterior of a structure.

11.1.2. This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Areas by or on behalf of the Association if approved by the Declarant during the Declarant Control Period.

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

11.1.4. This Article may not be amended without the Declarant's written consent as long as the Declarant owns any land subject to this Declaration or any property in the Project.

11.1.5. To the extent that the City ordinances or any local government ordinance, building code or regulation requires a more restrictive standard than the standards set forth in the Design Standards or the Declaration, the local government standards shall prevail. To

the extent that any local government standard is less restrictive than the Design Standards or the Declaration, the Declaration and Design Standards (in that order) shall prevail.

11.2. Architectural and Design Review. Responsibility for administration of the Design Standards and review of all applications for construction and modifications under this Article shall be handled by the Architectural Control Committee. The Architectural Control Committee may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the actual, reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. The Declarant and the Manager may employ architects, engineers, or other persons as deemed necessary to perform the review.

11.3. Architectural Control Committee. The Architectural Control Committee shall exercise architectural review under this Article. So long as Declarant, any Declarant, or any Builder owns any Lot or Unit in the Project, the Declarant retains the right to appoint all members of the Architectural Control Committee, who shall serve at the discretion of the Declarant. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Members of the Architectural Control Committee appointed by the Declarant need not be Members of the Association. The Architectural Control Committee shall have exclusive jurisdiction over all original construction, improvements, landscaping or placement of anything on any Lots or Units within the Project.

11.4. Standards and Procedures. The Declarant shall prepare Design Standards which shall apply to all construction activities within the Project. The Architectural Control Committee shall adopt such Design Standards at its initial organizational meeting and thereafter shall have authority to recommend amendments thereto, subject to the Manager's approval. The Architectural Control Committee may amend the Design Standards for changes deemed reasonable which do not impose an undue burden or expense. There shall be no limitation on the scope of amendments to the Design Standards; the Design Standards may be amended to remove requirements previously imposed or otherwise to make the Design Standards less restrictive.

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

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

All structures and improvements constructed upon a Lot or Unit shall be constructed in strict compliance with the Design Standards in effect at the time the plans for such improvements

are submitted to and approved by the Architectural Control Committee, unless a variance has been granted in writing pursuant to Section 11.7. So long as the Architectural Control Committee has acted in good faith, its findings and conclusions with respect to appropriateness of, applicability of, or compliance with the Design Standards and this Declaration shall be final.

11.5. Submission of Plans and Specifications.

11.5.1. Prior to commencing any activity within the scope of Section 11.1, an Owner shall submit application for approval of the proposed work to the Architectural Control Committee with a copy to the Declarant during the Declarant Control Period. Such application shall be in the form required by the Architectural Control Committee and shall include plans and specifications ("Plans") showing site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening thereof and other features of proposed construction, as applicable. The Design Standards shall set forth the procedures and any additional information for submission of the Plans. Before the Owner may begin the proposed activity, the application must be approved by the Architectural Control Committee in accordance with the procedures described below.

11.5.2. In reviewing each submission, the Architectural Control Committee may consider whatever factors it deems relevant to compliance with the Design Standards. The Architectural Control Committee may require relocation of native plants within the construction site or the installation of an irrigation system for the landscaping including the natural plant life on the Lot as a condition of approval of any submission.

The Architectural Control Committee shall, within the period specified in the Design Standards, advise the party submitting the same, in writing, at an address specified by such party at the time of submission, of: (i) the approval of Plans, or (ii) the segments or features of the Plans which are deemed by the Architectural Control Committee to be inconsistent or not in conformity with this Declaration and/or the Design Standards, the reasons for such findings, and suggestions for the curing of such objections. In the event the Architectural Control Committee fails to advise the submitting party by written notice within the period specified in the Design Standards of either the approval or disapproval and suggestions for curing the objections of the Architectural Control Committee of the Plans, approval shall be deemed to have been given. Any such notice is governed by Section 22.2 below.

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

11.6 No Waiver of Future Approvals. Each Owner acknowledges that the members of the Architectural Control Committee will change from time to time and that interpretation, application and enforcement of the Design Standards may vary accordingly. Approval of proposals, plans and

specification, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval

11.7. Variance. The Architectural Control Committee may authorize variances in writing from its standards, guidelines and procedures, but only: (a) in accordance with duly adopted rules and regulations, (b) when unique circumstances dictate, such as unusual topography, natural obstructions, hardship or aesthetic or environmental considerations, and (c) when construction in accordance with the variance would be consistent with the purposes of the Declaration and compatible with existing and anticipated use of adjoining properties. Inability to obtain, or the terms of, any governmental approval, or the terms of any financing shall not be considered a hardship warranting a variance. Notwithstanding the above, the Architectural Control Committee may not authorize variances without the written consent of the Declarant, during the Declarant Control Period.

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

11.9. Enforcement of Standards. Any construction, alteration or other work done in violation of this Article or the Design Standards shall be deemed to be nonconforming. Upon written request from the Declarant, the Architectural Control Committee, or the Manager, Owners shall, as their own cost and expense and within such reasonable time frame as set forth in such written notice, cure such nonconformance to the satisfaction of the requester or restore the property, Lot and/or Unit to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Declarant, or its designees, the Association or its designees, shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with the interest at the rate of the maximum rate then allowed by law, may be assessed against the benefitted Unit and collected as a Specific Assessment unless otherwise prohibited in this Declaration.

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

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

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

ARTICLE XII: EMINENT DOMAIN

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

12.1.1. If the taking involves a portion of the Common Areas and Facilities on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Areas and Facilities to the extent available, unless within sixty (60) days after such taking at least sixty-seven percent (67%) of the Total Votes of the Association and the Declarant during the Declarant Control Period shall otherwise agree. Any such construction shall be in accordance with plans approved by the Manager. The provisions of Section 10.1.3 regarding funds for the repair of damage or destruction shall apply; and

12.1.2. If the taking does not involve any improvements on the Common Areas and Facilities, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Manager and used for such purposes as the Manager shall determine.

ARTICLE XIII: MORTGAGEE PROTECTION

13.1. Inspection of Records. The Manager shall maintain and have current copies of the Declaration, Articles, Bylaws, Design Standards and other rules concerning the Project as well as its own books, records, and financial statements available for inspection by Owners or by holders, insurers, and guarantors of First Mortgages that are secured by Units in the Project. Generally, these documents shall be available during normal business hours.

13.2. 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, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

13.2.1. Any condemnation loss or any casualty loss which affects a material portion of the Project or which affects any Unit on which there is a First Mortgage held, insured, or guaranteed by such Eligible Holder;

13.2.2. Any delinquency in the payment of assessments or charges owed by 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 the Declaration or Bylaws relating to such Unit or the Owner or occupant which is not cured within sixty (60) days;

13.2.3. Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

13.2.4. Any proposed action which would require the consent of a specified percentage of Eligible Holders.

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

13.4. Priority of First Mortgage. The lien or claim against a Unit for unpaid assessments or charges levied pursuant to this Declaration shall be subordinate to the First Mortgage affecting such Unit if the First Mortgage was recorded before the delinquent assessment was due, and the First Mortgagee thereunder which comes into possession of or which obtains title to the Unit shall take the same free of such lien or claim for unpaid assessment or charges, but only to the extent of assessments or charges which accrue prior to foreclosure of the First Mortgage, exercise of a power of sale available thereunder, or taking of a deed or assignment in lieu of foreclosure. No assessment, charge, lien, or claim which is described in the preceding sentence as being subordinate to a First Mortgage or as not to burden a First Mortgagee which comes into possession or which obtains title shall be collected or enforced from or against a First Mortgagee, a successor in title to a First Mortgagee, or the Unit affected or previously affected by the First Mortgage concerned.

13.5. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request to respond to or consent to any action shall be deemed to have approved such action if the Manager does not receive a written response from the Mortgagee within sixty (60) days of the date of the request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

13.6. No Priority. No provision of this Declaration, the Bylaws or the Articles gives or may give an Owner or any other party priority over any rights of First Mortgagees pursuant to their respective Mortgages in the case of a distribution to Owners of insurance proceeds or condemnation awards for loss to or taking of all or any part of the Units or the Common Areas and Facilities.

13.7 HUD/VA Approval. During the Declarant Control Period, the following actions shall require the prior approval of the U.S. Department of Veterans Affairs (“VA”) and/or the Department of Housing and Urban Development (“HUD”), and the approval of not less than two-thirds (2/3) of the Total Votes of the Association, if either VA or HUD is insuring or guaranteeing the Mortgage on any Unit, as applicable: (a) annexation of additional property to the development, except for annexation by Declarant under Section 21.1 pursuant to mergers, consolidations, or dissolution of the Association; (b) mortgaging of Common Areas and Facilities; (c) dedication of Common Areas and Facilities to any public entity; and (d) material amendment of this Declaration or the Bylaws. Notwithstanding anything to the contrary in this Section, the Declarant or Manager may grant easements over the Common Areas and Facilities for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Areas and Facilities, without the approval of the membership.

ARTICLE XIV: AMENDMENT AND TERMINATION

14.1. By Membership. Except as provided elsewhere in this Declaration, this Declaration may be amended by affirmative vote or written consent, obtained by written ballot or otherwise, or any combination thereof, of at least sixty-seven percent (67%) of the Total Votes of the Association. Notwithstanding the foregoing, 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. If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. Any amendment authorized pursuant to this Section shall be accomplished through the recordation in the Public Records of an instrument executed by the Association. In such instrument an officer or a member of the Board of the Association shall certify that the vote required by this Section for amendment has occurred.

14.2. By Declarant. Declarant has the right to unilaterally amend, modify, extend or revoke this Declaration for any purpose during the Declarant Control Period, with or without notice to the other Owners. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary: (1) to bring any provision into compliance with any applicable governmental statute, rule, regulation or judicial determination; (2) to enable any reputable title insurance company to issue title insurance coverage on any Lot or Unit; (3) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on any Lot or Unit; (4) to enable any reputable private insurance company to insure mortgage loans on any Lot or Unit; or (5) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment occurring after the Declarant Control Period shall not adversely affect the title to any Lot or Unit unless the Owner of such Lot or Unit shall consent in writing. Declarant’s right to amend shall be construed liberally and shall include, without limitation, the right to amend and/or restate this Declaration in part or in its entirety.

14.3. Effectiveness of Amendment; Challenges. Any amendment shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within one year of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration. No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant during the Declarant Control Period.

14.4. Termination of Project. Except as otherwise provided in this Declaration, the Project may be terminated only by agreement of Owners entitled to vote at least sixty-seven percent (67%) of the Total Votes of the Association at a meeting of Owners duly called for such purpose at which a quorum is present, and with any and all approvals necessary from the City for termination of this Project. Notwithstanding the foregoing, during the Declarant Control Period, the Project may only be terminated if the Declarant approves termination of the Project.

ARTICLE XV: ASSESSMENT OF UNITS

15.1. Common Assessments. The making and collection of Common Assessments from Owners of Units for their share of Common Expenses shall be pursuant to the Bylaws and subject to the following provisions:

15.1.1. Covenant to Pay Assessments. Declarant, for each Unit owned by Declarant which is not an Exempt Unit, and each Owner, other than Declarant, by becoming an Owner of a Unit is deemed to covenant and agree to pay Assessments in accordance with this Declaration. Each Unit in the Project (except for Exempt Units) shall be liable for an equal share of the Common Expenses of the Association. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital reserve expenses. Such combined expenses shall constitute the Common Expenses, and the funds received from Common Assessments under this Article XV shall be the Common Expense Account. Common Assessments shall include both Regular Common Assessments and Special Common Assessments. Regular Common Assessments must be made at least annually, based on a budget adopted by the Manager and presented, at least annually to the Association in accordance with the provisions of this Declaration and the Bylaws. Regular Common Assessments shall be levied against each separate Unit annually.

15.1.2. Increase in Regular Common Assessments. A Regular Common Assessment per Unit shall not be made, which is more than 20% greater than the previous year's Regular Common Assessment, without first obtaining the vote of Owners, constituting a quorum, casting a majority of the Total Votes of the Association at a meeting of the Association. Such percentage increase shall be calculated without regard to any increase attributable to an increase in real estate taxes against the Units. The Manager shall provide notice, in compliance with Section 22.2 to all Owners, of any increase in the Regular Common Assessments not less than fifteen (15) nor more than sixty (60) days prior to the date the increased Regular Common Assessment is due.

15.1.3. Special Common Assessments. In addition to the Regular Common Assessments, the Declarant or Manager may levy in any calendar year, Special Common Assessments applicable to that year only. However, in any fiscal year, except as otherwise provided in this Declaration, such assessment shall not, without the vote or written assent of Owners, casting a majority of the Total Votes of the Association at a meeting or by written ballot, levy Special Common Assessments which in the aggregate exceed ten percent (10%) of the budgeted gross expenses of the Project for that fiscal year. These provisions with respect to the imposition or allocation of Special Common Assessments shall not apply when the special assessment is to pay an increase in real property taxes. The Manager shall provide notice by first class mail to all Owners of any Special Common Assessments not less than fifteen (15) nor more than sixty (60) days prior to the date such Assessment is due. Special Common Assessments shall be paid as determined by the Declarant or Manager.

15.2. Specific Assessments. The Declarant or Manager may also levy Specific Assessments against particular Owners or particular Units: (1) to reimburse the costs incurred in bringing an Owner and/or an Owner's Unit into compliance with the provisions of this Declaration, the Bylaws, the Design Standards, rules and regulations of the Association or any other governing instrument of the Project; (2) to cover costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; as long as prior written notice and an opportunity for a hearing, in accordance with the Bylaws, is given before levying a Specific Assessment for this purpose; or (3) to pay the costs, including overhead and administrative costs, of providing services to the Owner or the Owner's Unit in accordance with this Declaration, or pursuant to any menu of special services which may be offered by the Association or the Manager. Specific Assessments for special services may be levied in advance of the provision of the requested service.

15.3. Government Assessments. In addition to assessments authorized herein, the Declarant or Manager shall levy such assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to private streets (including assessments to fund reserves based upon street reserve and replacement studies) or other Common Areas and Facilities, Limited Common Areas, or Area of Common Responsibility from the activities of the City in maintaining, repairing or replacing utility lines and facilities thereon, it being acknowledged that the ownership of utility lines, underground or otherwise is in the City up to and including the meters for individual units, and that they are installed and shall be maintained to City specifications.

15.4. Payment, Interest and Late Fees. All Assessments shall be due as determined pursuant to this Declaration, the Bylaws and the Manager. Assessments, late fees, interest, collection costs, and any installments thereof not paid on or before ten (10) days after the date when due shall be delinquent and shall bear interest at the rate of eighteen percent (18%) per annum, or at such lower rate of interest as may be set by the Manager, from the date when due until paid. In addition, Owners who do not pay their Assessments, let fees, interest, and collection costs when due shall be subject to a late fee of up to One Hundred dollars (\$100.00) monthly until their Assessments are current, adjustable from year to year at the discretion of the Manager. All payments of Assessments shall be first applied to accrued interest and late fees, and then to the Assessment payment first due. All Assessments to pay a judgment against the Association may be made only against the Units in the Project at the time the judgment was entered, in proportion to

their liabilities for Common Expenses. If any Common Expense is caused by the misconduct of any Owner, the Manager may assess that expense exclusively against such Owner's Unit(s).

15.5. Lien for Assessments. There shall be a lien upon the applicable Unit for all unpaid Assessments, together with late fees, interest and costs (including attorneys' fees) charged pursuant to the Declaration, the Bylaws and the Act. The lien for unpaid Assessments and related charges shall be effective upon recordation in the Public Records of a written notice of lien by the Manager. The written notice of lien shall set forth the amount of the Assessment, the date(s) due, the amount remaining unpaid, the name of the Owner of the Unit and a description of the Unit. No notice of lien shall be recorded until there is a delinquency in payment of the Assessment. Such lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure in deeds of trust or mortgages or in any other manner permitted by law including specifically, but without limitation, the method recognized under the laws of the state of Utah for the enforcement of a mechanics lien which has been established in accordance with the provisions of Chapter 1, Title 38, Utah Code Ann., as amended from time to time. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay any Assessments against the Unit which shall become due during the period of foreclosure, and all such Assessments shall be secured by the lien being foreclosed. The Manager shall have the right and power in behalf of the Association to bid at any foreclosure sale and to hold, lease, mortgage or convey the subject Unit in the name of the Association. In furtherance of such foreclosure rights, the Manager may bring an action at law against the Owner personally obligated to pay the same or may foreclose the lien in accordance with the provisions of the Act. The Board has the power to appoint a trustee for the purposes of exercising the power of sale in connection with non-judicial foreclosures as provided in Title 57, Chapter 1 Utah Code Ann. and made applicable hereto by Title 57, Chapter 8a Utah Code Ann. Provided, however, the Declarant and Manager reserve the right to substitute and appoint a successor trustee as provided for in Title 57, Chapter 1 Utah Code Ann. The Declarant hereby conveys and warrants pursuant to Utah Code Ann. Sections 57-1-20 and 57-8a-302 to the trustee appointed by the Board, with power of sale, the Lots and Units and all improvements to the Lots and Units for the purpose of securing payment of Assessments under the terms of the declaration. Each Owner also hereby conveys all of its right, title and interest in its Unit to such trustee, in trust, with a power of sale, to secure each Owner's obligations under the Declaration, including but not limited to the obligation to pay all Assessments. The lien for assessments shall be superior (prior) to all other liens and encumbrances except liens and encumbrances recorded before recordation of this Declaration, a First Mortgage on a Unit as provided for in Section 13.4 hereof and assessments, liens and charges in favor of the state or any political subdivision thereof, for taxes and other governmental assessments or charges past due and unpaid on the Unit. The lien procedures described herein do not prohibit actions to recover sums for which the Act creates a lien or prohibit a deed in lieu of foreclosure. The Manager, upon written request, shall furnish to an Owner a statement setting forth the amount of unpaid Assessments against the Unit.

15.6. Personal Obligation for Assessments. The amount of any Assessment against any Unit shall be the personal obligation of the Owner of such Unit, even if such Unit is rented. Suit to recover a money judgment for such personal obligation may be maintainable by the Manager without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas and Facilities or by abandonment of his Unit or by waiving any services or amenities provided for in

this Declaration. In the event of any suit to recover a money judgment of unpaid assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Manager in connection therewith, including collection costs and reasonable attorneys' fees.

15.7. Obligations of Successors. The personal obligation of an Owner to pay unpaid Assessments against his Unit as described in Section 15.6 shall not pass to successors in title unless assumed by them; provided, however, that a lien to secure unpaid assessments shall not be impaired, nullified or otherwise affected by the sale or transfer of the Unit unless foreclosure by a First Mortgagee is involved in which case the foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Owner from paying further Assessments.

15.8. Exempt Units. All Exempt Units shall be exempt from the Assessments (including Regular Common Assessments and Special Common Assessments). Declarant shall remain a Class B Member in the Association at all times until Declarant surrenders such Class B membership status in writing in accordance with the provisions of Section 18.2, notwithstanding its temporary exemption status from the required Assessment payments. On the date on which a Unit loses its status of being an Exempt Unit (as set forth in Section 1.22), then it shall automatically become an Assessable Unit and be subject to its share of Assessments from that date forward.

15.9. Other Exempt Property. The following property shall be exempt from payment of Common Assessments:

15.9.1. All Common Areas and Facilities and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 9.1;

15.9.2. Any property dedicated to and accepted by any governmental authority or public utility; and

15.9.3. Any property used for religious purposes.

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

15.10. Reserves and Reserve Study. Funds designated as reserves may not be used for any purpose other than the repair, restoration, replacement, improvement, or maintenance of major components of the Common Areas and Facilities or Area of Common and for which the reserve fund was established or for litigation involving such matters. Nevertheless, the Declarant or Manager may authorize the temporary transfer of money from the reserve account to the operating account from time to time to meet short-term cash flow requirements and pay other expenses. Any such funds so transferred shall constitute a debt and shall be restored and returned to the reserve account within three (3) years of the date of the initial transfer.

Any such Special Common Assessment shall not be subject to the limitations set forth in Section 15.1.3 hereof. At least once every three (3) years the Declarant or Manager shall cause a

study to be conducted of the reserve account and its adequacy to satisfy anticipated future expenditure requirements. The Declarant or Manager shall, thereafter, annually review the reserve account study and shall consider and implement necessary adjustments to reserve account requirements and funding as a result of that review. Any reserve account study shall include, at a minimum:

15.10.1. Identification of the major components which the Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a useful life of less than 30 years;

15.10.2. Identification of the probable remaining useful life of the components identified in Section 15.10.1 above, as of the date of the study;

15.10.3. An estimate of the cost of repair, replacement, restoration or maintenance of each major component identified in Section 15.10.1 above, during and at the end of its useful life; and

15.10.4. An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

15.11. Date of Commencement of Assessments. The obligation to pay Assessments shall commence as to each Unit on the first day of the month following: (a) the month in which the Unit loses its status as being an Exempt Unit and becomes an Assessable Unit, or (b) the month in which the Board and Manager first determines a budget and annual Regular Common Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

15.12. Declarant's Obligation for Assessments. Until the Manager establishes a budget and levies Assessments, the Declarant shall pay the Common Expenses. However, Declarant may make assessments for any extraordinary expenses at any time. After Assessments commence as provided in Sections 15.8 and 15.11, the Declarant's obligations may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

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

15.14. Assignment of Rents. If an Owner shall at any time lease his Unit and shall default in the payment of Assessments, the Manager may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due, and the payment of such shall be sufficient payment and discharge of such tenant and the Owner for such assessments to the extent of the amount so paid.

ARTICLE XVI: SPECIAL DECLARANT RIGHTS

16.1. Special Declarant Rights. The Declarant reserves the following Special Declarant Rights, in addition to those provided under the Act, during the Declarant Control Period, which may be exercised, where applicable, anywhere within the Project:

16.1.1. To complete any improvements indicated on Plats or development plans filed with the Declaration;

16.1.2. To exercise the annexation and other rights reserved in Article XXI;

16.1.3. To maintain sales offices, management offices, signs advertising on the property in the Project, as set forth in Section 16.3;

16.1.4. To use easements through the Common Areas and Facilities for the purpose of making improvements within the property in the Project; and

16.1.5. To appoint and remove any director, trustee or officer of the Association as provided in Section 8.2 and the Bylaws.

16.2. Transfer of Special Declarant Rights.

16.2.1. Assignment. The Declarant may assign any Special Declarant Rights, or other special rights and obligations of the Declarant set forth in this Declaration or the Bylaws to any affiliate of the Declarant or a Builder, or Declarant may allow any Declarant Affiliate or the affiliate of a Builder to exercise such rights on behalf of the Declarant. The method of exercising such rights shall be subject to the agreement of the parties thereto, which shall not require recordation in the Public Records.

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

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

16.4. Construction of Improvements. The Declarant and its employees, agents and designees shall also have a right and easement during the Declarant Control Period over and upon all of the Common Areas and Facilities for the purpose of making, constructing and installing such improvements to the Common Areas and Facilities as it deems appropriate in its sole discretion.

16.5. Other Covenants Prohibited. During the Declarant Control Period, no Person shall record any declaration of covenants, condition and restrictions, or declaration of condominium or similar instrument affecting any portion of the Project without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records.

16.6. Master Planned Community. Each Owner, by accepting title to a Unit and becoming an Owner, and each other Person, by acquiring any interest in the Project, acknowledges awareness that The Villas at Sun River St. George is a master planned community, the development of which is likely to extend over many years, and agrees not to protest or otherwise object to: (a) zoning or changes in zoning or to uses of, or changes in density of, the Project during the Declarant Period, or (b) changes in any conceptual or master plan for the Project; provided, such revision is or would be lawful (including, but not limited to, lawful by special use permit, variance or the like) and is not inconsistent with what is permitted by the Declaration.

16.7. Discovery Villas. The Declarant may, in its discretion, construct residential improvements for temporary occupancy in or adjacent to the Project and designate such improvements as "Discovery Villas." Discovery Villas located outside of the Project shall not be Lots or Units, and their owners shall not be Members of the Association; provided, however, such Discovery Villas shall have access to the Common Areas and Facilities in consideration of the payment of such fees or a cross-use agreement as provided by a contract.

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

16.8. Equal Treatment. In addition to those rights to equal treatment provided in the Act and during the Declarant Control Period, no party, without the prior written consent of the Declarant, shall adopt any policy, rule or procedure that:

16.8.1. Limits the access of the Declarant, its successors, assigns and/or affiliates or their personnel and/or guests, including visitors, to the Common Areas and Facilities or to any property owned by any of them;

16.8.2. Limits or prevents the Declarant, its successors, assigns and/or affiliates or their personnel from advertising, marketing or using the Common Areas and Facilities or any property owned by any of them in promotional materials;

16.8.3. Limits or prevents purchasers of new residential housing constructed by the Declarant, their successors, assigns and/or affiliates in the Project from becoming Members of the Association or enjoying full use of its Common Areas and Facilities, subject to the membership provisions of this Declaration and the Bylaws;

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

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

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

16.9. Rights to Use Common Area for Special Events. During the Declarant Control Period, the Declarant shall have the right to use all Common Areas and Facilities, including any recreational facilities, to sponsor special events for charitable, philanthropic, political, or marketing purposes as determined by the Declarant in its sole discretion. After the Declarant Control Period, Declarant shall continue to have the right to use all Common Areas and Facilities for up to eight (8) days each year to sponsor events. Any such event shall be subject to the following conditions:

16.9.1. The availability of the facilities at the time a request is submitted;

16.9.2. The Declarant shall pay all costs and expenses incurred and shall indemnify the Association against any loss or damage resulting from the special event; and

16.9.3. The Declarant shall return the facilities and personal property used in conjunction with the special event in the same condition as existed prior to the special events.

16.10. Amendment. This Article shall not be amended without the prior written consent of the Declarant, during the Declarant Control Period. The rights contained in this Article shall

terminate concurrently with termination of the Declarant Control Period. Thereafter, the Declarant and Builders may continue to use the Common Areas and Facilities for purposes stated in this Article pursuant to a rental or lease agreement between the Declarant and/or such Builder and the Association which provides for rental payments based on the fair market rental value of any such portion of the Common Areas and Facilities.

ARTICLE XVII: REINVESTMENT FEE COVENANT

17.1. Reinvestment Fee. Following the original conveyance of title to a Unit by Declarant to the initial Owner of the Unit (which original conveyance is exempt for the Reinvestment Fee herein described), a fee in the amount of One Quarter of One Percent (0.25%) of the gross sales price of a Unit (the "Reinvestment Fee") shall be paid by the purchaser of the Unit to the Manager on behalf of and in the name of the Association. The Manager shall have authority, by written resolution, to modify the amount of the Reinvestment Fee, according to the financial needs of the Association and if the Board recommends the modification. To the fullest extent practicable, the Reinvestment Fee shall be collected at the closing of the purchase/sale transaction by the title company, escrow company, or other persons involved with the transaction, and paid directly to the Manager. The Association and Manager must administer the Reinvestment Fee Covenant and any funds collected under this Article in strict compliance with Section 57-1-46 of the Utah Code. If any provision in this Article is deemed contrary to Section 57-1-46 of the Utah Code, the Code controls.

17.2. Lien for Reinvestment Fee. The Manager on behalf of the Association shall have a lien against the Unit of the purchaser/new Owner to secure payment and collection of the Reinvestment Fee. The lien securing payment of the Reinvestment Fee shall be enforceable in the same manner and in all respects as the lien securing payment of assessments as provided in the provisions of Article 15 above.

17.3. Uses of Reinvestment Fees. The Association shall use the funds obtained from payment of all Reinvestment Fees to maintain, repair, improve, and/or replace the Common Areas and Facilities of the Project for the benefit of all of the Lots and Units in the Project and for general Association expenses.

17.4. Interpretation and Enforcement. The provisions of this Article XVII shall be interpreted and enforced in a manner that complies with the provisions pertaining to "reinvestment fee covenants" in Sections 57-1-46 et seq. of the Utah Code Ann., as the same may be amended. The provisions of this Article XVII are intended to run with the land of the Lots and Units, and to be binding upon all successors and assigns, and inure to the benefit of the Association.

ARTICLE XVIII: VOTING

The Association shall have two (2) classes of membership which shall be entitled to the following voting rights:

18.1. Class A. Each Owner of a Unit, which is an Assessable Unit, shall be a Class A Member of the Association and each Owner is allotted one (1) vote per Unit owned. Each Class A membership shall be held jointly by all Owners of such Unit.

18.2. Class B. Declarant shall be the only Class B Member of the Association and shall be entitled to ten (10) votes for each Unit and ten (10) votes for each Lot (as shown on the Plat) without a Unit, owned by Declarant, provided however, that Declarant's Class B membership status is not dependent or contingent upon Declarant's ownership of any Unit(s) and Lot(s) within the Property. Rather, Declarant's Class B membership will cease only upon Declarant's express surrender of Class B membership status, which surrender must be in a written instrument signed by Declarant and recorded in the Public Records, which instrument shall specify the date of surrender of Class B membership. If the instrument specifies no date, the surrender date shall be the date of recording of the instrument. Declarant has the sole and absolute discretion to determine the date of its surrender of Class B membership. Declarant shall be entitled to cast ten (10) votes for each Unit and Lot owned by Declarant even if the Units or Lots are temporarily classified as Exempt Units under Sections 1.22 and 15.8 of this Declaration. Declarant shall also be entitled to cast ten (10) votes for each Unit or Lot proposed or planned for the Project pursuant to a preliminary Plat or site plan for a Phase of the Project approved by Declarant.

All matters that allow or require a vote of the Members shall be decided by a majority of the Total Votes of the Association (including, without limitation, the votes pertaining to the Class B Member). During the Declarant Control Period, all matters requiring a vote of the Members or otherwise submitted to a vote of the Members shall be approved and implemented if and only if the Declarant also approves such matters. When Declarant is no longer a Class B Member of the Association, then (i) the Class B membership shall cease being a class of membership; (ii) there shall no longer be any Class B votes of the Association; and (iii) all matters submitted to a vote of the Association shall be decided solely by the votes of the Class A Members.

ARTICLE XIX: EASEMENTS

19.1. Easements for Encroachment. If any part of the Common Areas and Facilities encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas and Facilities, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. Such easements shall extend for whatever period the encroachment exists. Such encroachments shall not be considered to be encumbrances either on the Common Areas and Facilities or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any improvement constructed or to be constructed within the Project, by error in the Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

19.2. Easements for Utilities, Etc.

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

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

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

19.2.2. There is hereby reserved to the Declarant during the Declarant Control Period, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property in the Project.

19.2.3. If any utility line of any kind is constructed such that it crosses through, over, or under one or more Units in order to provide service to another Unit, or if, after construction, it becomes necessary to install a utility line through, over or under one or more Units in order to provide service to another Unit, a perpetual easement for such utility line(s) is hereby granted for the installation, maintenance, repair (or replacement) and operation of all such utility line(s).

19.3. Easements to Serve Other Property. During the Declarant Control Period, the Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and Mortgagees, an easement over the Common Areas and Facilities for the purpose of enjoyment, use, access, and development of the Project and the Property, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Areas and Facilities for construction of roads and for connecting and installing utilities on such Property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Areas and Facilities as a result of vehicular traffic connected with development of permanent access to such property or any portion thereof benefitting from such easement and is not made subject to this

Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such Property.

19.4. Owner Access and Support Easements. Each Owner shall have the unrestricted right to ingress and egress over, upon and across the Common Areas and Facilities as necessary for access to the Unit he is occupying and to any Limited Common Areas appurtenant to his Unit, and shall have the right to the horizontal, vertical and lateral support of his Unit and such rights shall be perpetual and shall be appurtenant to and pass with title to each Unit.

19.5. Easements for Maintenance and Enforcement. The Declarant hereby grants to the authorized Manager a perpetual easement and right to enter all portions of the Project, including each Unit to: (a) perform its maintenance responsibilities under this Declaration, and (b) make inspections to ensure compliance with this Declaration, the Bylaws, the Design Standards and any rules and regulations adopted by the Manager. Except in emergencies, entry into a Unit shall be only during reasonable hours and after notice to and permission from the Owner. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owner's property.

19.6. Easements for Cross-Drainage. The Declarant hereby reserves for itself and grants to the Association that every Lot and the Common Areas and Facilities shall be burdened with easements for natural drainage of storm water runoff from other portions of the Project; provided no Person shall alter the natural drainage on any Lot to increase materially the drainage of storm water onto adjacent portions of the Project without the consent of the Owner(s) of the affected property, the Manager, and the Declarant during the Declarant Control Period.

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

19.8. Rights to Storm Water Runoff, Effluent and Water Reclamation. Declarant hereby reserves for itself and its designees all rights to ground water, surface water, storm water runoff, and effluent located or produced within the Project, and each Owner agrees, by acceptance of a deed to a Unit, the Declarant shall retain all such rights. Such right shall include the reservation of an easement over the Project for access, and for installation and maintenance of facilities and equipment to capture and transport such water, runoff, and effluent. This Section 19.8 may not be amended without the consent of the Declarant or its successor, and the rights created in this Section 19.8 shall survive termination of this Declaration.

19.9. Party Wall Easement. Each Owner of a Twin-home Unit who makes use of a common or party wall between his or her Twin-home Unit and an adjoining Twin-home Unit shall

have an easement through such party wall for purposes of repairing or restoring sewerage, water, and other utilities, subject to such Owner's obligations under Section 9.3 of the Declaration.

19.10. Roof Easement. Any Owner of a Twin-home Unit shall have an easement over, on and through the roof of the building in which the Owner's Twin-home Unit is located for purposes of repairing or restoring the roof or utilities, provided such Owner restores said roof to its previous structural and cosmetic condition at his own expense and pays to the adjoining Owner(s) for any damages caused thereby.

19.11. Grant and Reservation of Easements. All conveyances of Units within the Project shall be construed to grant and reserve such easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

ARTICLE XX: COMMUNITY STANDARDS AND DISPUTE RESOLUTION PROCESS

20.0. The Villas at Sun River Community Standard. All persons, entities and organizations planning, developing and interested in residing at, benefiting from or providing services or goods to the Villas at Sun River (the "Parties" or "Bound Party") voluntarily and expressly agree that all commingling, business and community dealings related to the Villas at Sun River shall be amiable, and professional to further the enjoyment, administration, and common and best interests of the Villas at Sun River Community. To insure the spirit of the foregoing, the Manager shall require and obtain from all persons and organizations planning, developing and interested in residing at, benefiting from or providing services to the Villas at Sun River, a fully executed copy of Article XX of this Declaration. Copies of these documents shall be kept in the ordinary course of the business of the Manager and Board with copies provided to each upon execution. The Manager shall confirm to the Board and the Declarant (during the Declarant Control Period) that this Article XX is fully complied with on a quarterly basis.

20.1. Agreement to Avoid Litigation. The Parties, Declarant, the Association, its officers, directors, and committee members, all Persons subject to this Declaration, any Builder, and any Person not otherwise subject to this Declaration who agrees to submit to this Article covenant that they will use their best efforts to encourage and promote the: (1) amicable operation of the Villas at Sun River; (2) the presentation of ideas and comments for consideration that would improve the Community; (3) the prevention of any disputes involving the Project or Community and (4) the prompt and efficient resolution of disputes, if any, without the distraction, frustration and costs of litigation.

Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described in Sections 20.2 ("Claims") shall, only and must be pursued and resolved using the procedures set forth in Section 20.3 in lieu of filing suit in any court. Failure to follow this Article constitutes a waiver of such claim, grievance, or dispute.

20.2. Claims. Unless specifically exempted below, all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Articles, this Declaration, the Bylaws, the Design Standards, or the rights, obligations and duties of any Bound Party under such documents or instruments or relating to the design, operation or construction of

improvements on the Project shall, only, and must be pursued subject to the provisions of Section 20.3. The failure to abide by this Article including the filing of any claim contrary to this Article is a material breach of this Declaration subjecting the breaching party to the damages, costs and attorney fees of any other party so damaged including the Manager or its agent for the time and costs incurred in connection with such breach. The following claims are exempt from this Article XX:

20.2.1. Any suit by the Manager against any Bound Party to enforce the provisions of Article XV (Assessment of Units);

20.2.2. Any suit by the Manager to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the ability to enforce the provisions of Article XI (Architectural Standards) and Article VII (Use Restriction);

20.3. Mandatory Procedures.

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

20.3.1.1. The nature of the Claim, including the Persons involved and Respondent's role in the Claim;

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

20.3.1.3. Claimant's proposed remedy; and

20.3.1.4. That Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

20.3.2. Negotiation and Mediation.

20.3.2.1. The Parties shall, only and must make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. All Parties specifically agree that all information and communications related to or forming the basis of any Claim is confidential and will not be communicated to any non-Party. All Parties will make any disparaging or offensive communications to anyone regarding any other party including their agents, employees and related entities and regarding any claim or dispute subject to this Article.

20.3.2.2. If the Parties do not resolve the Claim within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) (“Termination of Negotiations”), Claimant shall have thirty (30) additional days to submit the Claim to mediation under and through a formal independent professional agency providing dispute resolution services in Utah.

20.3.2.3. IF CLAIMANT DOES NOT SUBMIT THE CLAIM TO MEDIATION AS REQUIRED IN SUBSECTION 20.3.2.2. OR DOES NOT APPEAR FOR THE MEDIATION, CLAIMANT SHALL BE DEEMED TO HAVE WAIVED THE CLAIM, AND RESPONDENT SHALL HAVE BEEN RELEASED AND DISCHARGED FROM ANY AND ALL LIABILITY TO CLAIMANT ON ACCOUNT OF SUCH CLAIM; PROVIDED NOTHING HEREIN SHALL RELEASE OR DISCHARGE RESPONDENT FROM ANY LIABILITY TO ANY PERSON OTHER THAN THE CLAIMANT.

20.3.2.4. Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within sixty (60) days after submission of the matter to the mediation process (unless all parties to the claim agree to an extension of time), the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

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

20.3.3. Arbitration.

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

20.3.3.2. This Subsection 20.3.3.2 is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of Utah. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Utah.

20.4 Allocation of Costs of Resolving Claims.

20.4.1. Subject to 20.4.2., each Party shall bear its own costs, including any attorneys' fees incurred, and each Party shall share equally all charges rendered by the Mediators, the Arbitrators and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

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

20.5. Enforcement of Resolution. After resolution of any Claim, if any Party fails to abide by the terms of any agreement or binding Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 20.3. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' fees and court costs.

ARTICLE XXI: ANNEXATION AND WITHDRAWAL OF PROPERTY

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

Annexation of property may not result in the overburdening of any existing recreational facilities or substantial increases in Regular Common Assessments, unless the possibility of such increases in Regular Common Assessments was disclosed to each Owner prior to the purchase of his or her Unit.

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

Annexation shall be accomplished by filing in the Public Records a Supplemental Declaration describing the property being annexed. Such Supplemental Declaration shall not require the consent of the Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein. All Assessable Units subject to this

Declaration, whether initially described in Exhibit "A" or annexed pursuant to a Supplemental Declaration, shall have equal voting rights and an equal, pro rata share of liability for Regular Common Assessments.

21.2. Annexation With Approval of Membership. The Association may annex any real property to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of sixty-seven percent (67%) of the Total Votes of the Association, and the consent of the Declarant during the Declarant Control Period.

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

21.3. Withdrawal of Property. The Declarant reserves the unilateral right during the Declarant Control Period to amend this Declaration to withdraw any portion of the Project from the coverage of this Declaration whether originally described in Exhibit "A" or added by Supplemental Declaration; provided, no property described on a particular Plat shall be withdrawn after a Unit shown on the Plat has been conveyed by Declarant to any Person other than a Declarant Affiliate or a Builder. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant. If the property is Common Areas and Facilities, the Association shall consent to such withdrawal upon the request of the Declarant.

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

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

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

ARTICLE XXII: GENERAL PROVISIONS

22.1. Term. Unless otherwise provided by Utah law, in which case such law shall control, this Declaration shall run and have perpetual duration.

22.2. Notice. Any notice permitted or required to be delivered as provided herein may be delivered either personally, by first class mail, by express mail or overnight courier service providing proof of delivery, by telecopy or facsimile transmission, or by electronic means, including email, or by posting in an obvious and prominent place on the Association's website. An Owner wishing not to receive notice by electronic means must notify the Association in writing and must request that the Association provide notice to the Owner by mail only. Any notice, demand or communication delivered by mail shall be addressed to the Owner at the address given by such Owner to the Manager and Board for the purpose of service of notice or to the Unit of such Owner if no such address has been given to the Manager and Board. Any notice, demand or other communication under this Declaration shall be deemed given and received when actually received if personally delivered or sent by overnight courier; if faxed, when the fax is received, except that if the fax is received at a time other than the normal business hours of the office at which it is received, on the next regular business day; if by mail, the earlier of the day actually received or the third business day after the notice is deposited in the United States Mail, properly addressed and postage prepaid; and if by email, when the email is sent. An Owner may change his or her address or telephone number for notices and communications from the Association from time to time by notice in writing to the Manager and Board.

22.3. No Waiver. The failure of the Declarant, Manager, Association, the Board, or their agents or designees to insist, in one or more instances, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration or the Bylaws, to exercise any right or option herein contained or to serve any notice or institute any action, shall not be construed as a waiver or a relinquishment for the future of such term, covenant, condition or restriction; but such term, covenant, condition or restriction shall remain in full force and effect.

22.4. Compliance and Enforcement. The Manager shall have the authority to issue an immediate and temporary suspension of an Owner, guest, or any person under the Owner's control access to all areas other than the Owner's Unit in the case of physical or verbal threats or criminal activity.

22.4.1. All Owners, guests or lessees of an Owner, and persons under Owner's control, shall strictly comply with the provisions of the Declaration, the Bylaws, the Design Standards and the rules and regulations and decisions issued pursuant thereto. The Manager and any aggrieved Owner shall have a right of action against Owners, which may be pursued and prosecuted in accordance with the terms of this Declaration and the Bylaws, who fail to comply with provisions of the Declaration or the decisions of the Association. Owners shall have a similar right or action against the Association. Failure to so comply shall be grounds for: (i) an action to recover sums due for damages or injunctive relief or both, maintainable by the Manager, or its agent or designee on behalf of the Owners, or in an appropriate case, by an aggrieved Owner; and/or (ii) the Manager to impose monetary penalties, temporary suspensions of an Owner's right to the use of the Common Areas and Facilities, or other appropriate discipline so long as any such Owner has been given notice and has had an opportunity to present a written or oral defense to the charges in a hearing. After the hearing, but before any disciplinary action is taken, the Owner shall be notified of the decision of the Manager.

22.4.2. Adoption of Rules and Fines. The Manager may adopt and enforce reasonable rules and regulations that are not inconsistent with the provisions of this Declaration. The Manager may also adopt and enforce reasonable fine schedules, and may impose and collect fines from Owners who violate the provisions of this Declaration. All costs and expenses incurred by the Manager in enforcing the rules and regulations, and enforcing or collecting fines, shall be paid by the offending Owner and shall be secured by a lien against the Unit owned by the offending Owner. Said lien shall be enforced in the same manner as the lien securing payment of assessments, as provided in this Declaration.

22.4.3. Forfeiture. The Association or Manager shall not be empowered to cause the absolute forfeiture of an Owner's right, title or interest in the Project on account of the Owner's failure to comply with the provisions of the Declaration or the rules and regulations for the Project except pursuant to:

22.4.3.1. The judgment of a court; or

22.4.3.2. A foreclosure for the failure of an Owner to pay Assessments or fines duly levied by the Manager.

22.5. Agent for Service of Process. The name and address of the person to receive service of process shall be the registered agent and address of the Manager as shown on the official corporate records maintained in the office of the Division of Corporations and Commercial Code of the State of Utah.

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

22.7. Governing Law. This Declaration shall be construed and controlled by and under the laws of the State of Utah.

22.8. Supplemental Declaration. Nothing in this Declaration shall preclude any Supplemental Declaration or other recorded covenants and restrictions applicable to any portion of the Project from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration.

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

22.10. Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Manager 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 Manager may reasonably require. The transferor shall continue to be jointly and

severally responsible with the transferee for all obligations of the Owner of the Unit, including Assessment obligations until the date upon which such notice is received by the Manager, notwithstanding the transfer of title.

22.11. Resale of Units. Any Owner desiring to sell his or her Unit, following the original conveyance of title to a Unit by Declarant to the initial Owner of the Unit, shall use the realtor designated by the Manager, for the listing and marketing of such Unit.

22.12. Attorneys' Fees. In the event of an action instituted to enforce any of the provisions contained in the Articles, this Declaration, the Bylaws, the Design Standards or any rules and regulations applicable to the Project and the Association, and except as provided in Article XX, the party prevailing in such action shall be entitled to recover from the other party thereto as part of the judgment, reasonable attorneys' fees and costs, including administrative and lien fees, of such suit. In the event the Association is a prevailing party in such action, the amount of such attorneys' fees and costs shall be a Specific Assessment with respect to the Unit(s) involved in the action.


22.13. Headings, Gender and Number. The headings in this Declaration are for reference only and shall not be used to limit or expand the provisions of this document. In this Declaration, the singular shall include the plural and the masculine shall include the feminine and vice versa if the context so requires.

22.14. Effective Date. This Declaration shall take effect when recorded in the Public Records.

IN WITNESS WHEREOF, the Declarant has executed this instrument this 6th day of MARCH, 2017.

DECLARANT:

Sun River Villas Development, LLC
A Utah limited liability company


By: Darcy A. Stewart
Its: Manager

STATE OF UTAH) ss.
COUNTY OF WASHINGTON)

On this 9th day of March, 2017, before me personally appeared Darcy A. Stewart, whose identity is personally known to or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he/she is the Manager of Sun River Villas Development, LLC, a Utah limited liability company, and that the foregoing document was signed by him on behalf of such company by authority of its Operating Agreement or resolution of the company, and he acknowledged before me that he executed the document on behalf of the company and for its stated purpose.

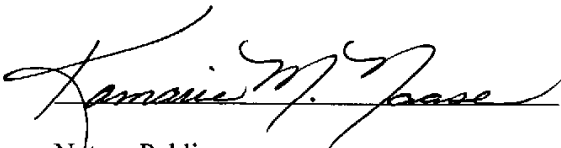

Notary Public



EXHIBIT "A": PROPERTY LEGAL DESCRIPTION

Exhibit "A"

Villas Boundary

Beginning at the most easterly corner of Sun River St. George Phase 30, said point being the southerly corner of Sun River St. George Phase 25, said point also being North 01°13'39" East 351.59 feet along the extension of the section line and East 3,318.41 feet from the Southwest Corner of Section 23, Township 43 South, Range 16 West, Salt Lake Base & Meridian, and running;

Thence northerly the following (5) courses along said easterly line of Phase 25 and to and along the easterly line of Sun River St. George Phase 26;

thence northerly 607.54 feet along an arc of a 661.00 foot radius curve to the left (center bears North 52°37'04" West, long chord bears North 11°03'05" East 586.38 feet with a central angle of 52°39'43");

thence North 15°16'46" West 340.32 feet;

thence northerly 1,067.49 feet along an arc of a 1,967.00 foot radius curve to the right (center bears North 74°43'14" East, long chord bears North 00°16'03" East 1,054.43 feet with a central angle of 31°05'39");

thence North 15°48'52" East 136.04 feet;

thence northeasterly 60.63 feet along an arc of a 40.00 foot radius curve to the right (center bears South 74°11'08" East, long chord bears North 59°14'19" East 54.99 feet with a central angle of 86°50'55") to the easterly line of Sun River Parkway as defined by the UDOT Atkinville Interchange Right-of-Way (Project: HPP-LC53(33));

thence Southeasterly and Southwesterly the following (7) courses along the southerly line of said Sun River Parkway and to and along the on ramp for Interstate 15 as defined by the UDOT Atkinville Interchange Right-of-Way (Project: HPP-LC53(33))

thence South 21°35'02" West 40.10 feet;

thence southeasterly 103.00 feet along an arc of a 670.00 foot radius curve to the right (center bears South 21°35'02" West, long chord bears South 64°00'43" East 102.90 feet with a central angle of 08°48'29");

thence South 59°36'29" East 383.16 feet;

thence South 59°36'29" East 411.83 feet;

thence South 57°08'20" East 615.49 feet;

thence South 22°41'53" East 57.93 feet;

thence South 15°51'16" West 594.31 feet to the westerly line of Interstate 15;

thence South 28°34'00" West 1,193.91 feet along said westerly line of Interstate 15;

thence North 61°27'16" West 777.94 feet to the Southeasterly line of said Sun River St. George Phase 30;

thence North 29°09'24" East 3.74 feet along the Southeasterly line of said Sun River St. George Phase 30 to the Point of Beginning.

Containing 2,262,991 square feet or 51.95 acres.

56-6-3-26-110

56-6-3-23-233

56-6-3-23-232

56-6-3-23-234

56-6-3-23-235

EXHIBIT "B": PHASE I LEGAL DESCRIPTION

Exhibit "B"

The Villas at Sun River - Phase 1

Beginning at a point on the easterly line of Arrowhead Canyon Drive, said point being North 01°13'39" East 1,414.90 feet along the section line and East 3,281.87 feet from the Southwest Corner of Section 23, Township 43 South, Range 16 West, Salt Lake Base & Meridian, and running;

thence North 79°37'36" East 119.50 feet;
thence North 48°15'58" East 35.18 feet;
thence North 80°12'13" East 71.00 feet;
thence North 73°14'57" East 13.09 feet;
thence North 80°15'22" East 92.00 feet;
thence North 80°04'54" East 30.00 feet;
thence northerly 43.15 feet along an arc of a 1,611.50 foot radius curve to the right (center bears North 80°04'54" East, long chord bears North 09°09'04" West 43.15 feet with a central angle of 01°32'03");
thence northeasterly 32.14 feet along an arc of a 20.00 foot radius curve to the right (center bears North 81°36'57" East, long chord bears North 37°39'04" East 28.79 feet with a central angle of 92°04'13");
thence easterly 276.91 feet along an arc of a 405.00 foot radius curve to the right (center bears South 06°18'50" East, long chord bears South 76°43'35" East 271.55 feet with a central angle of 39°10'31");
thence South 57°08'20" East 153.58 feet;
thence southerly 31.42 feet along an arc of a 20.00 foot radius curve to the right (center bears South 32°51'40" West, long chord bears South 12°08'20" East 28.28 feet with a central angle of 90°00'00");
thence South 32°51'40" West 9.15 feet;
thence southwesterly 31.26 feet along an arc of a 415.00 foot radius curve to the left (center bears South 57°08'20" East, long chord bears South 30°42'12" West 31.25 feet with a central angle of 04°18'56");
thence South 28°32'44" West 335.94 feet;
thence westerly 31.42 feet along an arc of a 20.00 foot radius curve to the right (center bears North 61°27'16" West, long chord bears South 73°32'44" West 28.28 feet with a central angle of 90°00'00");
thence North 61°27'16" West 37.41 feet;
thence northwesterly 30.98 feet along an arc of a 185.00 foot radius curve to the right (center bears North 28°32'44" East, long chord bears North 56°39'25" West 30.94 feet with a central angle of 09°35'42");
thence South 38°08'26" West 30.00 feet;
thence South 38°14'50" West 116.96 feet;
thence North 70°44'31" West 15.91 feet;
thence South 01°19'16" East 22.61 feet;
thence South 74°43'25" West 136.94 feet;
thence northerly 43.25 feet along an arc of a 781.30 foot radius curve to the left (center bears South 77°53'44" West, long chord bears North 13°41'26" West 43.25 feet with a central angle of 03°10'19");
thence North 15°16'35" West 16.67 feet;

thence South 74°43'12" West 119.50 feet to said easterly line of Arrowhead Canyon Drive;

thence northerly the following (2) courses along said easterly line of Arrowhead Canyon Drive;

thence North 15°16'35" West 332.51 feet;

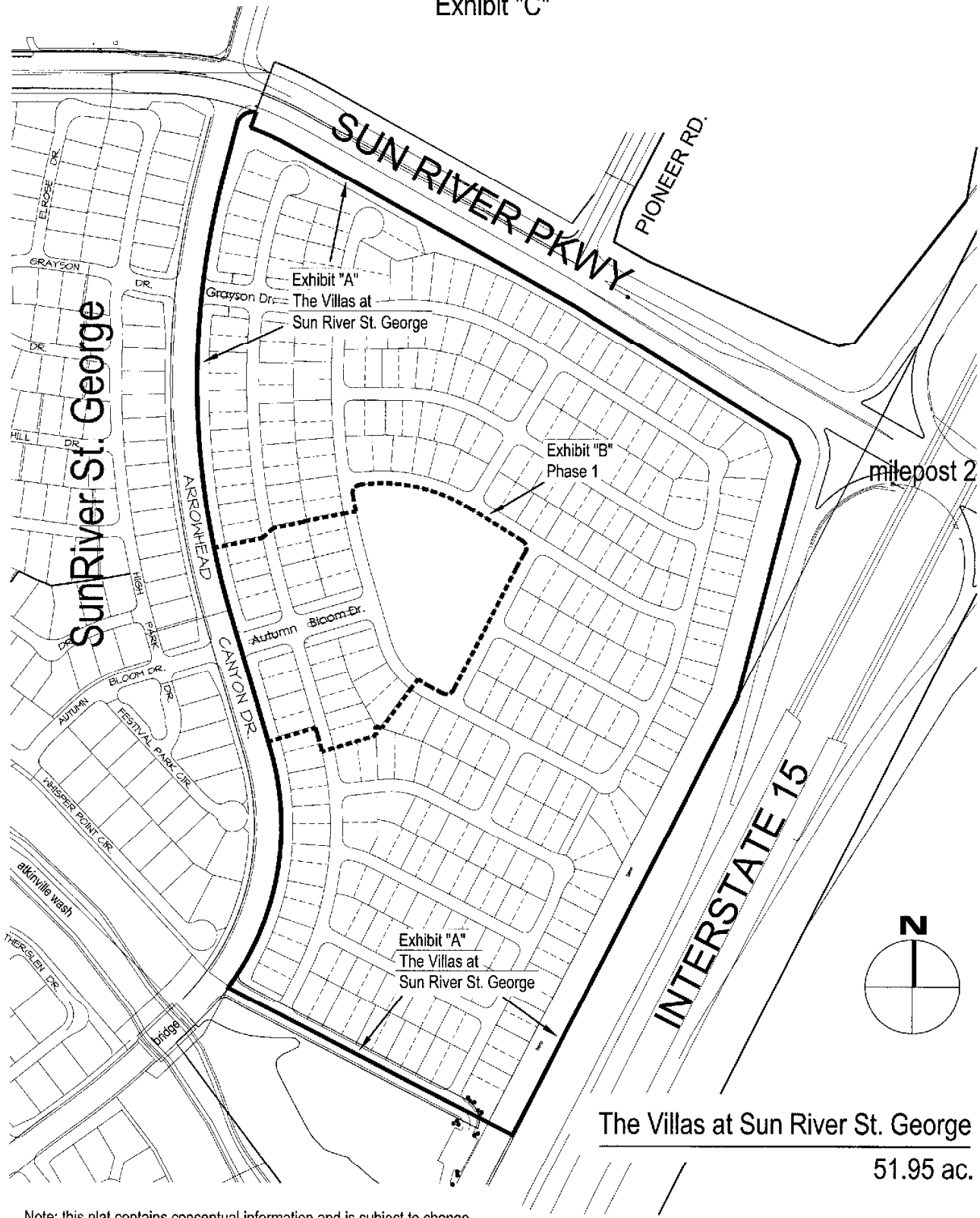
thence northerly 154.58 feet along an arc of a 1,967.00 foot radius curve to the right (center bears North 74°58'41" East, long chord bears North 12°46'14" West 154.54 feet with a central angle of 04°30'10") to the Point of Beginning.

Containing 316,271 square feet or 7.26 acres.

56-6-3-23-232

EXHIBIT "C": PROPERTY MAP

Exhibit "C"



The Villas at Sun River St. George
51.95 ac.

Note: this plat contains conceptual information and is subject to change.
NOTE: THIS PLAT IS FOR ILLUSTRATIVE PURPOSES ONLY. REFER TO THE LEGAL DESCRIPTION FOR ACTUAL BOUNDARY.

EXHIBIT "D": ASSOCIATION BYLAWS

ByLaws

THE VILLAS AT SUN RIVER ST. GEORGE

(A 55 & Older P. D. Community located in St. George, Utah)

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

THE BOARD, DECLARANT AND MANAGEMENT COMPANY SHALL ESTABLISH POLICIES AND PROCEDURES, FROM TIME TO TIME AND PURSUANT TO THEIR RESPECTIVE AUTHORITY AND OBLIGATIONS AS SET FORTH IN THIS DECLARATION AND THE COMMUNITY ASSOCIATION ACT, AS NECESSARY TO MAINTAIN THE PROJECT AS AN AGE RESTRICTED COMMUNITY INTENDED FOR HOUSING PERSONS 55 YEARS OF AGE OR OLDER UNDER STATE AND FEDERAL LAW.

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BYLAWS
OF
THE VILLAS AT SUN RIVER ST. GEORGE

Article I: Name, Principal Office, and Definitions

1.1. **Name.** The name of the corporation is The Villas at Sun River St. George Community Association, Inc. (the "Association"). The Association, Board and Manager of the Project shall have the same authority and obligations as those set forth in the Declaration.

1.2. **Principal Office.** The principal office of the Association shall be located in Washington County, Utah. The Association may have such other offices, within or outside the State of Utah, as the Board may determine or as the affairs of the Association may require.

1.3. **Definitions.** The words used in these ByLaws shall be given their normal, commonly understood definitions. The substantive provisions and capitalized terms herein shall have the same meaning as set forth in that Declaration of Covenants, Conditions, and Restrictions for the Association recorded in the public records of Washington County, Utah, as it may be amended (the "Declaration"), unless the context indicates otherwise.

Article II: Association: Membership, Meetings, Quorum, Voting, Proxies

2.1. **Membership.** The Association shall have two classes of membership as more fully set forth in the Declaration, the terms of which pertaining to membership are incorporated by this reference.

2.2. **Place of Meetings.** Meetings of the Association shall be held within the Properties or at such other suitable place as the Board may designate.

2.3. **Annual Meetings.** The first meeting of the Association, whether a regular or special meeting, shall be held not later than one year from the first sale of a Lot within the Properties to a Person other than a Builder. Subsequent regular annual meetings shall be set by the Board so as to occur at least 30 days but not more than 120 days after the close of the Association's fiscal year on a date and at a time set by the Board.

2.4. **Special Meetings.** The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of a majority of the Board or upon a petition signed by at least 5% of the total vote of the Association.

2.5. **Notice of Meetings.** Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Owner entitled to vote at such meeting, not less than 10 nor more than 60 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.

The meeting notice shall state the purpose or purposes for which the meeting is called, the items on the agenda, including the general nature of any proposed amendments to the Declaration or these ByLaws, any budget changes, and any proposal to remove an officer or member of the Board. No business shall be transacted at a 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 Owner at his address as it appears on the records of the Association, with postage prepaid.

2.6. **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 either before or after such meeting. Attendance at a meeting by a Member shall be deemed 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 also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7. **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 present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. 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 present 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, provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

2.8. **Voting.** The voting rights of the Members shall be as set forth in the Declaration and in these ByLaws, and such voting rights provisions are specifically incorporated by this reference. Members may vote at a meeting by voice vote or ballot or may vote by mail, all as determined by the Board; provided, however, meetings shall be held when required by the Declaration or ByLaws. All Membership votes cast for the election of Board Members shall be by secret written ballot. Unless otherwise provided for in the Declaration, all Membership votes shall be subject to the quorum requirements of Section 2.11 of these ByLaws.

2.9. **Proxies.** Members may vote in person or by proxy. All proxies shall be in writing specifying the Lot for which it is given, signed by the Member or his duly authorized attorney-in-fact, dated, and filed with the Secretary of the Association prior to the meeting for which it is to be effective. Proxies may be delivered to the Secretary by personal delivery, U.S. mail or telecopy to any Board

member or the professional management company, if any. Unless 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 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. Every proxy shall be revocable upon actual notice to the Person presiding over a meeting of the Association. A proxy shall automatically cease upon conveyance of any Lot for which it was given, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a Member who is a natural person, or of written revocation, or one year from the date of the proxy, unless a shorter period is specified in the proxy.

2.10. **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 50% of the total eligible number.

2.11. **Quorum.** Except as otherwise provided in these ByLaws or in the Declaration, the presence of 25% of the Members of the Association shall constitute a quorum at all meetings of the Association.

2.12. **Conduct of Meetings.** The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.13. **Action Without a Meeting.** Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice and without a vote if written consent specifically authorizing the proposed action is signed by Members holding at least the minimum number of votes necessary to authorize such action at a meeting if all Members entitled to vote thereon were present. All such consents shall be signed within 60 days after receipt of the earliest dated consent, dated and delivered to the Association at its principal place of business. Such consents shall be filed with the minutes of the Association.

2.14. **Telephonic Participation in Meetings.** One or more Members may participate in and vote during any regular or special meeting of the Members by telephone conference call, television, or similar communication equipment by means of which all Persons participating in the meeting can hear each other at the same time, and those Members so participating shall be present at such meeting. Any such meeting at which a quorum participates shall constitute a meeting of the Association.

Article III: Board Members/Trustees; Number, Powers, Meetings

Composition and Selection

3.1. **Governing Body: Composition.** As stated in Article VIII of the Declaration, and except as otherwise specifically provided in the Articles, the Bylaws or the Declaration, all delegable rights and powers of the Association may and shall be delegated to the Manager, with the Board acting in an advisory capacity, without a vote of the membership. The Board shall be appointed as provided in the Declaration and in these Bylaws. Notwithstanding the foregoing, the Declarant shall have the exclusive right to appoint, remove and replace all members of the Board. The Manager shall be an ex-officio member of the Board. The affairs of the Association shall be governed by a Board of Trustees,

each of whom shall have one equal vote. Except with respect to Trustees appointed by the Declarant during the Declarant Control Period, the Trustees shall be Members or residents; provided, however, no more than one representative from a Lot may serve on the Board at the same time. All Trustees shall complete, prior to being elected to the Board, such training and committee or other service requirements as established by the Board. Trustees appointed by the Declarant need not be Members of the Association or residents. In the case of a Member which is not a natural person, any officer, director, partner or trust officer of such member shall be presumed to be eligible to serve as a Trustee unless otherwise specified by written notice to the Association signed by such Member. No such Member may have more than one such representative on the Board at a time, except in the case of Trustees appointed by the Declarant. The Manager shall be an ex-officio member of the Board of Trustees. The Declarant shall be a permanent member of or Trustee on the Board unless and until the Declarant voluntarily relinquishes its membership on the Board.

3.2. **Number of Trustees.** The Board shall consist of not less than three nor more than seven Trustees, as provided in Section 3.3 and 3.5 below. The initial Board shall consist of three Trustees as identified in the Articles of Incorporation.

3.3. **Trustees During Declarant Control Period.** Subject to the provisions of Section 3.5, the Declarant shall appoint and remove Trustees in its sole and absolute discretion until the Trustees are elected by the Owners. Other than the Declarant's permanent membership on the Board, Trustees appointed by the Declarant shall serve at the pleasure of the Declarant until the first to occur of the following:

- (a) 60 days after 75% of the Property, including all additional property annexed to the Declaration, have been conveyed to Persons other than Builders;
- (b) 2 years after Declarant has ceased to offer Lots for sale in the ordinary course of business;
- (c) 2 years after Declarant last exercised its unilateral right to subject additional property to the Declaration as provided in Section XXI of the Declaration;
- (d) 15 years after the date the Declaration is recorded; or
- (e) when, in its discretion, the Declarant so determines.

Notwithstanding the foregoing, if Declarant voluntarily relinquishes its right to appoint and remove officers and Trustees of the Association prior to the termination of the Declarant Control Period, Declarant reserves the right to approve or disapprove specified actions of the Association as provided in Section 3.19.

Within 30 days after termination of the Declarant Control Period, Declarant shall deliver to the Association all property and other items of the Association.

3.4. **Nomination of Trustees.** Except with respect to the Declarant's permanent membership on the Board and Trustees appointed by the Declarant during the Declarant Control Period, nominations for election to the Board shall be made by a nominating committee. The nominating committee shall consist of three or more Persons and a chairperson, who shall be a member of the

Board. The remaining members of the nominating committee shall be Members, residents of Units, or any officer, director, partner or trust officer of a Member which in not a natural person.

The nominating committee shall be appointed by the Board no later than six months before the annual meeting of the Association and shall serve until the Board elected at the Association meeting holds its first meeting. The nominating committee shall nominate its slate of candidates for the Board no later than 30 days before the meeting at which the election shall be held.

The nominating committee shall make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled from each slate as provided in Section 3.5. The nominating committee shall nominate on slate for the Trustees to be elected at large by all Members and a separate slate for the Trustees to be elected by the Members representing the Lots within each Voting Group, if established. Nominations for each slate 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.

3.5. Election and Term of Office. Notwithstanding any other provision of these ByLaws:

(a) Within 60 days after the time that Owners own 25% of the total Lots in or added to the Property, or whenever the Declarant earlier determines, the President shall call for an election by which the Members shall be entitled to election of one of the three Trustees, who shall be an at-large Trustee. The remaining two Trustees shall be appointees of the Declarant. The Trustee elected by the Members shall not be subject to removal by the Declarant and shall be elected for a term of two years or until the happening of the event described in subsection (b), whichever is shorter. If such Trustee's term expires prior to the happening of the event described in subsection (b), a successor shall be elected for a like term.

(b) Within 60 days after the time that Owners own 50% of the total Lots in or added to the Property, or whenever the Declarant earlier determines, the Board shall be increased to five Trustees. The President shall call for an election by which the members shall be entitled to elect two of the five Trustees, who shall serve as at-large Trustees. The remaining three Trustees shall be appointees of the Declarant. The Trustees elected by the Member shall not be subject to removal by the Declarant and shall be elected for a term of two years or until the happening of the event described in subsection (c) below.

(c) Not later than the termination of the Declarant Control Period, the Board shall be increased to six Trustees with five elected by the Members of the Association, and one appointee of the Declarant; thereafter, such trusteeship shall be filled at-large by the vote of all Members. Of the six Trustees, five elected by the Members, and one appointed by the, each Voting Group (and there shall be no more than five Voting Groups) shall elect a person from its district to be a Trustee. To accomplish staggering of the trusteeships, at the initial election of the five Trustees (or of the six or more Trustees if the Declarant no longer is a member of the Board), the Declarant shall declare which Voting Groups shall be entitled to elect a Trustee for an initial term of two years and which Voting Groups shall be entitled to elect a Trustee for an initial term of one year. Thereafter, all Trustees shall be elected for a term of two years except that Trustee appointed by the Declarant which shall serve as long as appointed by the Declarant. Trusteeships remaining after election of the Trustees from the Voting Groups shall be filled at-large by the vote of all Members. At-large Trustees shall serve for a term of two years.

In the event no Voting Groups have been established, the trusteeships shall all be filled at-large by a vote of all the Members, except for the Trustee appointed by the Declarant so long as Declarant has not relinquished its right to its membership on the Board. At the initial election, the three candidates receiving the most votes shall serve a term of two years and the two (or three candidates if Declarant no longer has a membership on the Board) shall serve for a term of one year. Thereafter all at-large Trustees shall be elected for two-year terms.

3.6. Removal of Trustees and Vacancies. Any Trustee elected by the Members may be removed, with or without cause, by the vote of Members holding two-thirds of the votes entitled to be cast for the election of such Trustee at any meeting of the Association at which a quorum is present. Any Trustee whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a Trustee, a successor shall be elected by the Members entitled to elect the Trustee so removed to fill the vacancy for the remainder of the term of such Trustee.

Any Trustee elected by the Members who has three consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent in the payment of any assessment or other charge due the Association, may be removed by a majority of the Trustees present at a regular or special meeting at which a quorum is present, and the Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of a Trustee elected by the Members, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members entitled to fill such Trusteeship may elect a successor for the remainder of the term. Any Trustee which the Board appoints shall be selected from among Members within the Voting Group represented by the Trustee who vacated the position. In the event of the death, disability or resignation or a Trustee appointed by the Declarant, the Declarant may appoint a successor Trustee to fill the vacancy.

Meetings

3.7. Organizational Meetings. The first meeting of the Board following each annual meeting of the membership shall be held within 10 days thereafter at such time and place the Board shall fix.

3.8. Regular Meetings. Regular meetings of the Board may be held at such time and place as a majority of the Trustees shall determine, but at least one such meeting shall be held each quarter. Notice of the time and place of a regular meeting shall be posted in a prominent place within the Properties and communicated to Trustees not less than four days prior to the meeting; provided, however, notice of a meeting need not be given to any Trustee who has signed a waiver of notice or a written consent to holding of the meeting.

3.9. Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the President or by any two Trustees. 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 Trustee by: (a) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the Trustee or to a person at the Trustee's office or home who would reasonably be

expected to communicated such notice promptly to the Trustee; or (d) facsimile, computer, television, or such other communication device. All such notices shall be given at the Trustee's telephone number, fax number, electronic mail number, or sent to the Trustee's address as shown on the records of the Association. Notices of special meetings of the Board shall be posted in a prominent place within the Properties. Notices sent by first class mail shall be deposited within the Properties. Notices sent by first class mail shall be deposited into a United States mailbox at least seven business days before the time set for the meeting. Notices given by personal delivery, telephone, or other device shall be delivered or transmitted at least 72 hours before the time set for the meeting.

3.10. **Waiver of Notice.** The transaction of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if: (a) a quorum is present, and (b) either before or after the meeting each of the Trustees not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any Trustee who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.11. **Telephonic Participation in Meetings.** Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference call, television, or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

3.12. **Quorum of Board of Trustees.** At all meetings of the Board, a majority of the Trustees shall constitute a quorum for the transaction of business, and the votes of a majority of the Trustees present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these ByLaws of the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Trustees, 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 Trustees present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. 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.

3.13. **Compensation.** No Trustee shall receive any compensation from the Association for acting as such; provide however, any Trustee may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other Trustees. Nothing herein shall prohibit the Association from compensating a Trustee, or any entity with which a Trustee is affiliated, for services or supplies furnished to the Association in a capacity other than as a Trustee pursuant to a contract or agreement with the Association, provided that such Trustee's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding the interested Trustee.

3.14. **Conduct of Meetings.** The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.15. **Open Meetings.** Subject to the provisions of Section 3.16, all meetings of the Board shall be open to all Members, but attendees other than Trustees may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by the President. In such case, the President may limit the time any such individual may speak. Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, and may exclude persons other than Trustees, to discuss matters of a sensitive nature, such as pending or threatened litigation, service contracts, management contracts, and personnel matters.

3.16. **Action Without a Formal Meeting.** Any action to be taken at a meeting of the Trustees or any action that may be taken at a meeting of the Trustees may be taken without a formal meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Trustees, and such consent shall have the same force and effect as a unanimous vote. Written consent or consents shall be filed with the minutes of the proceedings of the Board. Within three days after all written consents to an action have been obtained, the Board shall post in a prominent place within the Properties a notice of the action to be taken or actually taken by the Board. Failure to give notice shall not render the action to be taken or actually taken invalid.

Powers and Duties

3.17. **Powers and Duties of the Board and Manager.** To make ownership and membership in the community more enjoyable and management of the Project more efficient, Declarant and Manager will retain greater authority and the Board will have lesser authority as permitted by law. Except as otherwise provided herein, the Declarant reserves and grants to the Manager all delegable powers, duties and responsibilities of the Association and Board as are now or may hereafter be provided by the Act, the Articles, this Declaration and the Bylaws.

The Manager shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Governing Documents and as provided by law. The Manager may do or cause to be done all acts and things that are not by the Governing Documents or Utah law directed to be done and exercised exclusively by the membership generally.

3.18. **Duties of the Manager.** The duties of the Manager shall include, without limitation:

(a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses and any Neighborhood Expenses;

(b) levying and collecting such assessments from the Owners;

(c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility;

(d) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association 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;

(e) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve fund may be deposited, in the Trustees' best business judgment, in depositories other than banks;

(f) making and amending use restrictions and rules in accordance with the Declaration;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these ByLaws;

(i) enforcing, by legal means, the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association shall not be obligated to take action to

enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action;

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying all taxes and/or assessments which are or could become a lien on the Common Area or a portion thereof;

(l) paying the cost of all services rendered to the Association or its members and not chargeable directly to specific Owners;

(m) keeping books with detailed accounts of the receipts and expenditures of the Association;

(n) making available to any prospective purchaser of a Lot, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Lot, current copies of the Governing Documents, and all other books, records, and financial statements of the Association;

(o) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties;

(p) indemnifying a Trustee, officer or committee member, or former Trustee, officer or committee member of the Association to the extent such indemnity is permitted or required by Utah law, the Articles or the Declaration; and

(q) assisting in the resolution of disputes between Owners and others without litigation, as set forth in the Declaration.

3.19. Right of Declarant to Disapprove Actions. During the Declarant Control Period, if Declarant voluntarily has relinquished its right to appoint and remove officers and Trustees of the Association, the Declarant shall have a right to disapprove any action, policy or program of the Association, the Board and any committee which, in the sole judgment of the Declarant, would tend to impair rights of the Declarant or Builders under the Declaration or these ByLaws, or interfere with development, construction of any portion of the Properties, or diminish the level of services being provided by the Association.

(a) The Declarant shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies as to the Board meetings with Section 3.8, 3.9, 3.10, and 3.11 and which notice shall, except in the case of the regular meetings held pursuant to the ByLaws, set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) The Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action policy, or program which would be subject to the right or disapproval set forth herein. The Declarant, its subject, its representatives or agents may make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee.

(c) No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above have been met and the time period set forth in subsection (d) below has expired.

(d) The Declarant, acting through any officer or Trustee, agent or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action.

This right to disapprove may be used to block proposed actions, but shall not extend to the requiring of any action or counteraction on behalf of any committee, the Board, or the Association unless such action or counteraction countermands an action, policy or program that was not properly noticed and implemented in accordance with these ByLaws. The Declarant shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

3.20. **Management.** The Declarant shall appoint for the Association and the Association shall employ a professional management company. If the Declarant relinquishes its right to appoint a professional management company, the Association shall employ for the Association a professional management company or companies at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize; provided, however, that such management company may not be terminated by the Board unless termination is approved by at least sixty-seven percent (67%) of the total Association vote. The Declarant, or an affiliate of the Declarant may be employed as managing company or manager. The Board may delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the management company or manager, if any, which might arise between meetings of the Board when no other management company is engaged.

Subject to the preceding paragraph, even if entered into during the Declarant Control Period, any contracts or leases between the Association and Declarant or an affiliate of the Declarant may not be terminated early.

3.21. **Accounts and Reports.** The following management standards of performance shall be followed unless the Board by resolution or Manager specifically determines otherwise:

- (a) accrual accounting, as defined by generally accepted accounting principles, shall be employed; provided however, that any subsidy funded by the Declarant may be calculated on a cash basis of accounting;
- (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) all collecting, managing, accounting for, and use of Association funds by the Manager must comply with the rules governing non-profit corporations and the rights and obligations of the Association as a Common Interest Association under the Act;

(e) no remuneration shall be accepted by the managing company 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 any thing of value received shall benefit the Association;

(f) any financial or other interest which the managing company may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board; and

(g) the following financial and related information shall be regularly prepared and distributed by the Board or Manger to all Members of the Association:

(i) The Board or Manager shall cause a reserve budget and a Common Expense budget (collectively referred to as the "Budget") for the Association (which includes the budget for each of the Neighborhoods, if any), to be prepared for each fiscal year of the Association, a digital or online copy of which shall be made available to each Member of the Association not less than 30 nor more than 60 days before the beginning of the fiscal year to which the Budget relates. A digital or online copy of the Budget shall be made available to each of the Members of the Association. The Budget shall include the following information:

(1) the estimated revenue and expenses of the Association on an accrual basis for the forthcoming fiscal year;

(2) the amount of the total cash reserves of the Association currently available for the replacement or major repair of the Area of Common Responsibility and for contingencies;

(3) an estimate of the current replacement costs, of the estimated remaining useful life of, and the methods of funding to defray future repair, replacement or additions to, those major components of the Area of Common Responsibility;

(4) a general statement setting forth the procedures used by the Board in calculation and establishment of reserves to defray the future repair, replacement or additions to major components of the Area of Common Responsibility;

(5) a statement disclosing whether the Declarant or a Builder is contributing "in kind" services or material pursuant to a contract with the Association and that their assessment obligation may be reduced or abated by the amount of the agreed value of such services or materials; and

(6) a statement disclosing whether a subsidy contract exists between the Declarant and the Association.

The Budget shall become effective unless disapproved as provided in Section 8.3 of the Declaration. The portions of the Budget relating to particular Neighborhoods shall become effective unless disapproved as provided in Section 8.4 of the Declaration.

If, after the Association has distributed the Budget to all Members, a Member requests, in writing, additional copies of such Budget, the Association shall, within 10 days of receipt of the request, provide to such Member a copy of the Budget. The Association may charge a fee for this service, which shall not exceed the reasonable cost to reproduce and deliver a copy of the Budget.

Subject to applicable law, in lieu of distributing the budget as specified in this Section, the Board or Manager may elect to distribute a summary of the Budget ("Summary") to all Members with a written notice that the Budget is available at the business office of the Association or at another suitable location within the boundaries of the Properties and that copies will be provided upon request at the expense of the Association. If any Member requests a copy of the Budget, the Association shall provide one copy to the Member without charge by first-class United States mail and deliver such copy within 5 days of such request. The written notice that is distributed to each of the Members shall be in at least 10 point bold type on the front page of the Summary.

(ii) The Board or Manager shall cause an annual report ("Financial Statement") to be prepared in accordance with generally accepted accounting principles to be distributed or made available to each Member of the Association within 120 days after close of the Association's fiscal year. A copy of the Financial Statement shall be made available online, distributed personally or by mail or other manner reasonably designed to provide delivery to each of the Members of the Association and shall consist of:

- (1) a balance sheet as of the end of the fiscal year;
- (2) an income and expense statement for the fiscal year (this statement shall include a schedule of assessments received and receivables identified by the numbers of the Lots and the names of the Owners assessed);
and
- (3) a statement of changes in financial position for the fiscal year.

The Financial Statement shall be prepared by an independent accountant for any fiscal year in which the gross income to the Association exceeds \$100,000.00. If the Financial Statement is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Association that the statements were prepared without independent audit or review of the books and records of the Association.

- (iii) The Board or Manager shall do the following at least quarterly:
- (1) cause a current reconciliation of the Association's operating accounts to be made and review the same;
 - (2) cause a current reconciliation of the Association's reserve accounts to be made and review the same;

(3) review the current year's actual reserve, revenues and expenses compared to the current year's Budget;

(4) review the most current account statements prepared by the financial institution where the Association has its operating and reserve accounts;

(5) review an income and expense statement for the Association's operating and reserve accounts;

(6) review the 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; and

(7) confirm that the collecting, managing, accounting for, and use of Association funds by the Manager complies with the rules governing non-profit corporations and the rights and obligations of the Association as a Common Interest Association under the Act.

(iv) A statement of the Association's policies and practices in enforcing its remedies against Members for default in the payment of assessments, including the recording and foreclosing of liens against Lots, to be distributed or made available online to Members of the Association within 60 days before the beginning of each fiscal year.

3.22. **Borrowing.** The Association shall have the power to borrow money for any legal purpose, provided, the Board shall obtain Member approval in the same manner provided in Section 8.11 of the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 5% of the budgeted gross expenses of the Association for that fiscal year. No Mortgage lien shall be placed on any portion of the Common Area without the affirmative vote or written consent, or any combination thereof, of Members representing at least 80% of the total vote in the Association.

3.23. **Rights of the Association.** The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or neighborhood and other owners or resident associations, within and outside the Properties; provided, any common management agreement shall require the consent of a majority of the total number of Trustees of the Association. The Association shall not have the right to terminate any such contract entered into during the Declarant Control Period.

3.24. **Enforcement.**

(a) **Notice.** Prior to imposition of any sanction as provided in the Declaration, the Manager or the Board shall serve the alleged violator with written notice including: (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a statement that the alleged violator may present a written request for a hearing to the Board within 15 days of delivery of the notice; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a request for a hearing is received by the Board within such time period. Proof of proper notice shall be placed in the Board's record book. Proof shall be

deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, Trustee, or company who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator requests a hearing.

If a timely request for a hearing is not received by the Manger or Board the sanction stated in the notice shall be imposed; provided the Manger or Board, but shall not be obligated to, suspend any proposed sanction if the violation is cured or if a cure is diligently commenced within the 15 day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) **Hearing.** If a hearing is requested within the allotted 15 day period, the hearing shall be held before the Board in executive ("closed") session. The alleged violator shall be afforded a reasonable opportunity to be heard. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) **Appeal.** If a hearing is held before the Manager, the violator shall have the right to appeal the decision to the Board. To perfect this right, a written notice of appeal must be received by the management company, President, or Secretary of the Association within 15 days after the hearing date.

3.25. **Prohibited Acts.** The Board shall not take any of the following actions except with the written consent or vote of at least a majority of the Members other than the Declarant:

(a) to incur aggregate expenditures for capital improvements to the Area of Common Responsibility in any fiscal year in excess of 5% of the budgeted Common Expenses of the Association for that fiscal year;

(b) to sell during any fiscal year property of the Association having an aggregate fair market value greater than 5% of the budgeted Common Expenses of the Association for that fiscal year;

(c) to pay compensation to Trustees or officers of the Association for services performed in the conduct of the Association's business; provided, however, the Board may cause a Trustee or officer to be reimbursed for expenses incurred in carrying on the business of the Association; or

(d) to enter into a contract with a third Person wherein the third Person will furnish goods or services for the Area of Common Responsibility or the Association for a term longer than one year, with the following exceptions:

(i) a contract with a public utility company, if the rates charged for the materials or services are regulated by the Public Service Commission; provided, however, the term of the contract shall not exceed the shortest term for which the supplier will contract at the regulated rate;

(ii) prepaid casualty and/or liability insurance policies not to exceed three years duration, provided that the policy permits short rate cancellation by the insured;

(iii) agreements for cable television services and equipment or satellite television services and equipment not to exceed six-year duration, provided that the supplier is not an entity in which Declarant has a direct or indirect interest of 10% or more; and

(iv) agreements for sale or lease of burglar alarm and fire alarm equipment, installation and services thereof, not to exceed five-year duration, provided that the supplier is not an entity in which Declarant has a direct or indirect interest of 10% or more.

(v) agreements with the Management Company.

Article IV: Officers

4.1. **Officers.** The officers of the Association shall be a President, Vice President, Secretary, and Treasurer and shall be elected from among the members of the Board; other officers may, but need not be members of the Board. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed by the Board. Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.2. **Election and Term of Office.** The Board shall elect the officers of the Association at the first meeting of the Board following each annual meeting of the Association, as set forth in Article III.

4.3. **Removal and Vacancies.** The Board may remove any officer whenever in its judgment the best interests of the Association will be served. A vacancy arising because of death, resignation, removal, or otherwise may be filled by the Board for the unexpired portion of the term.

4.4. **Powers and Duties.** The officers of the Association shall each have such powers and duties as generally pertain to their respective offices and that do not conflict with the powers and duties of the Board and Manager under the Declaration and the Act, as well as such powers and duties as may specifically be conferred or imposed by the Board of Trustees. The President shall be the chief executive officer of the Association. The Vice President shall act in the President's absence and shall have all powers, duties and responsibilities provided for the President when so acting. The Secretary shall keep the minutes of all meetings of the Association and the Board and shall have charge of such books and papers as the Board may direct. In the Secretary's absence, any officer directed by the Board shall perform all duties incident to the office of Secretary. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and these ByLaws and may delegate all or part of the preparation and notification duties to a finance committee, management company, or both.

4.5. **Resignation.** Any officer may resign at any time by giving written notice to the Board of Trustees, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

4.6. **Agreements, Contracts, Deeds, Leases, Checks, Etc.** All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by two authorized Persons of the Manager, or the Board if there is no Manager.

4.7. **Compensation.** Compensation of officers shall be subject to the same limitations as compensation of Trustees under Section 3.13.

Article V: Committees

5.1. **General.** The Board may establish such committees and charter clubs as it deems appropriate to perform such tasks and functions as the Board may designate by resolution; provided, however, any committee member, including the committee chair, may be removed by the vote of a majority of the Trustees. Any resolution establishing a charter club shall designate the requirements, if any, for membership therein. Each committee and charter club shall operate in accordance with the terms of the resolution establishing such committee or charter club.

5.2. **Deed Restriction Enforcement Committee.** In addition to any other committees which the Board may establish pursuant to Section 5.1, the Board shall appoint a Deed Restriction Enforcement Committee consisting of at least three and no more than seven Members. Acting in accordance with the provisions of the Declaration, these ByLaws, and resolutions the Board may adopt, the Deed Restriction Enforcement Committee shall be responsible to taking such enforcement action set forth in Section 4.3(b) of the Declaration, and be the hearing tribunal of the Association and shall conduct hearings held pursuant to Section 3.24. The Board may also appoint a subcommittee consisting of at least three and no more than seven members to function as the jury or trier of facts for all hearings held pursuant to Section 3.24.

5.3. **Architectural Review Committee.** In addition to any other committees which the Board may establish pursuant to Section 5.1, unless the Declarant continues to have the right to appoint all members of the ARC pursuant to Section 9.2 of the Declaration, the Board shall appoint an Architectural Review Committee or its successor, the Modification Committee, consisting of at least three and no more than seven members. Acting in accordance with the provisions of the Declaration, the committee shall approve all architectural plans for conformance with the design standards per Article XI of the Declaration.

Article VI: Miscellaneous

6.1. **Fiscal Year.** The fiscal year of the Association shall be July 1 through June 30 unless otherwise established by the Manager or Board resolution.

6.2. **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.

6.3. **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.

6.4. **Books and Records.**

(a) **Inspection by Members and Mortgagees.** The Board shall make available for inspection and provide digital copies to any holder, insurer or guarantor of a first Mortgage on a Lot, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Lot: the Declaration, ByLaws, and Articles of Incorporation, including any amendments, the rules of the Association the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Manager or Board shall provide for such inspection to take place online, or at the office of the Association or at such other place within the Properties as the Board shall designate.

(b) **Rules for Inspection.** The Manager or Board shall establish 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 Trustees.** Every Trustee shall have the absolute right at any reasonable 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 Trustee includes the right to make a copy of relevant documents at the expense of the Association.

6.5. **Notices.** Except as otherwise provided in the Declaration or these ByLaws, all notices, demands, bills, statements, or other communications under the Declaration or 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 such address has been designated, at the address of the Lot of such Member; or

(b) if to the Association, the Board, or the managing company, at the principal office of the association or the managing company or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

6.6. **Amendment.**

(a) **By Declarant.** Prior to the conveyance of the first Lot to an Owner, the Declarant may unilaterally amend these ByLaws. After the conveyance of the first Lot to Owner, the Declarant may unilaterally amend these ByLaws only if such amendment is: (i) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title

insurance coverage on the Lots; (iii) required by an institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable it to make, purchase, insure or guarantee mortgage loans on the Lots; or (iv) otherwise necessary to satisfy the requirements of any governmental agency for approval of these ByLaws. Thereafter and otherwise, these ByLaws may be amended in accordance with subsection (b).

(b) **By Members Generally.** Except as provided above, these ByLaws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding a majority of the total votes in the Association, and the consent of the Declarant, during the Declarant Control Period. In addition, the approval requirements set forth in Article XVI of the Declaration shall be met, if applicable. 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.

If an Owner consents to any amendment to the Declaration or these ByLaws, it will be conclusively presumed that such Owner has the authority to do so, and no contrary provision in any mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Notwithstanding any provision herein to the contrary, 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 for as long as the Declarant owns any property described on Exhibit "A" to the Declaration or owns any property added to the Property by annexation to the Declaration.

Certification

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of The Villas at Sun River St. George Owners Association, Inc., a Utah non-profit corporation;

That the foregoing ByLaws constitute the original ByLaws of said Association, as duly adopted at a meeting of the Board of Trustees thereof held on the _____ day of _____, 20 ____.

_____ IN WITNESS WHEREOF, I have hereunto subscribed my name- and affixed the seal, if any, of said Association this _____ day of _____, 20 ____.

Secretary [SEAL]