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DOC # 20180000840

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Mark E. Rinehart, Esq.
The McCullough Group, LLC
405 S. Main Street, Ste. 800
Salt Lake City, Utah 84111

**DECLARATION OF COVENANTS CONDITIONS
AND RESTRICTIONS FOR
ARCADIA VACATION RESORT**

This Declaration of Covenants, Conditions and Restrictions is made and executed this 11th day of January, 2018, by Taylor Built Homes, LLC, a Utah limited liability company to establish a planned resort community known as ARCADIA VACATION RESORT.

PURPOSE AND INTENT

Declarant owns and/or otherwise has the exclusive rights to develop certain real property in Washington County, Utah, which is more particularly described on Exhibit "A", which is attached hereto and incorporated herein by this reference. As set forth in Section 1.27, this real property is hereinafter referred to as the "Property." Declarant desires and intends to protect the value and desirability of the Property as a harmonious and attractive residential and resort community. Therefore, Declarant will convey the Property subject to the following covenants, conditions, restrictions, and easements, which, along with the Governing Documents, provides for a governance structure and a system of standards and procedures for the development, expansion, maintenance, and preservation of the Property as a master planned residential and resort community.

THEREFORE, to effectuate its intent, Declarant will convey the Property subject to the following covenants, conditions, restrictions, and easements, which, along with the Governing Documents, provides for a governance structure and a system of standards and procedures for the development, expansion, maintenance, and preservation of the Property as a planned community.

DECLARATION

Declarant hereby declares that all of the Property, and such other property that may hereafter be subjected to this Declaration, shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, assessments, charges and liens, and to any applicable Subdivision Plat, and other Governing Documents as set forth herein. This Declaration and the applicable Subdivision Plat shall be construed as covenants of equitable servitude; shall run with the Property and be binding on all parties having any right title or interest in the Property or any part thereof, their heirs, successors and assigns; and shall inure to the benefit of each Owner thereof.

ARTICLE I
DEFINITIONS AND CONCEPTS

The following definitions and concepts shall control in this Declaration. Any term not defined in this Declaration shall have its plain and ordinary meaning.

1.1. **"ACC"** means and refers to the Architectural Control Committee.

1.2. **"Additional Property"** means and refers to any real property which is adjacent or contiguous to, or otherwise within the vicinity of the Property, whether so described herein or on the Subdivision Plat. When Additional Property is annexed to this Declaration, it shall become part of the Property.

1.3. **"Arcadia Vacation Resort"** means and generally refers to the Property and all improvements thereon and, where the context requires, includes the Resort Facilities.

1.4. **"Arcadia Vacation Resort, LLC"** means and refers to the Arcadia Vacation Resort, LLC, a Utah limited liability company, and its successors and assigns. Arcadia Vacation Resort, LLC operates the Resort Facilities.

1.5. **"Articles"** means and refers to the Articles of Incorporation of the Arcadia Vacation Resort Homeowners Association, which are filed with the Utah Division of Corporations and Commercial Code, and includes any amendments or supplements thereto. The purpose of the Articles is to establish the Association as a non-profit corporation under Utah law.

1.6. **"Association"** means the Arcadia Vacation Resort Homeowners Association, a Utah non-profit corporation, its successors and assigns.

1.7. **"Building Pad"** means and refers to that portion of the Property on which a Dwelling may be constructed, as shown on any Subdivision Plat, and is the extent of a Member's ownership within the Property.

1.8. **"Bylaws"** means and refers to the Bylaws of the Arcadia Vacation Resort Homeowners Association. The purpose of the Bylaws is to govern the Association's internal affairs, such as (for purposes of example but not limitation) voting, elections, and meetings.

1.9. **"City"** means and refers to the City of Santa Clara, a Utah municipal corporation.

1.10. **"Common Area"** means and refers to all real property, including the improvements thereto and facilities thereon, which the Association owns, leases, or otherwise holds possessory rights in, at any given time, for the common use and enjoyment of the

Owners.

1.11. **"Common Expenses"** means the actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of the Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents. Common Expenses shall not include any expenses incurred by the Declarant during the Declarant Control Period for initial development or other original construction costs unless a majority of the Class B Members approve.

1.12. **"Community-Wide Standard"** shall mean the standard of conduct, maintenance, architectural style, or other activity generally prevailing throughout the Property, or minimum standards established pursuant to the Governing Documents or Development Documents. Declarant shall initially establish such standard and it may contain both objective and subjective elements. The Community-Wide Standard may evolve as development progresses or as the needs of the Property may change.

1.13. **"Cost Sharing Covenants"** means and refers to any declaration of easements and/or covenants between the Association, the Declarant, and/or any third-parties to share in the cost, maintenance, and use of the Common Area and Resort Facilities and/or to provide reciprocal easements to and for such things as roadways, parking areas, common areas, recreational facilities, etc.

1.14. **"Declarant Control Period"** means the period of time during which the Declarant has Class A membership status as provided for herein.

1.15. **"Declarant"** means Taylor Built Homes, LLC, a Utah limited liability company, and its successors and assigns.

1.16. **"Declaration"** means this instrument and any amendments, restatements, supplements, or annexations thereto, which are recorded in the office of the Washington County Recorder.

1.17. **"Design Code"** means the design standards and guidelines (including the landscape plan) adopted by the Declarant, as may be amended from time to time, applicable to the Property, as further set forth in **Article 6**.

1.18. **"Directors", "Board of Directors", or "Board"** means the governing body of the Association.

1.19. **"Dwelling"** means a multi-unit or single-family dwelling designed for separate ownership and occupancy within the Property.

1.20. **"Entire Membership"** means all Members, regardless of class of membership. When a vote of the Entire Membership is referenced it means all votes for both Class A and Class B Members. However, the term Entire Membership shall exclude the Class A member

when it relates to or calls for the levying of an assessment or monetary charge against Entire Membership.

1.21. **"Governing Documents"** means, collectively, this Declaration, the Articles, the Bylaws, the Design Guidelines, and any amendments or supplements thereto, and includes any rules and regulations established pursuant to the Declaration, Articles, Bylaws, or Design Code.

1.22. **"Limited Common Area"** shall mean and refer to portions of the Common Areas reserved for the use of certain Units to the exclusion of other Units, including attached patios and driveways designated to serve a single Unit. For multi-unit Dwellings, Limited Common Areas include exterior windows designated to serve a single Unit. Each Owner shall be responsible for the repair, maintenance and replacement of exterior windows designated to serve the Owner's individual Unit. Replacement of exterior windows must be approved by the ACC or the Management Committee and must match the style and color of the existing windows. The use and occupancy of Limited Common Areas shall be reserved to its associated unit; and each Unit Owner is hereby granted an irrevocable license to use and occupy said Limited Common Areas. No attachment or structure may be built or placed upon the Limited Common Area without the prior written consent of the ACC.

1.23. **"Member"** means every person or entity with membership in the Association. Membership in the Association is appurtenant to and may not be separated from Unit ownership. The term "Member" is synonymous with the term "Owner."

1.24. **"Mortgage"** means a mortgage, a deed of trust, a deed to secure a debt, or any other form of security instrument affecting title to any Unit.

1.25. **"Mortgagee"** shall mean and refer to any institutional holder, insurer, or guarantor of a first Mortgage.

1.26. **"Owner"** means the entity, person, or group of persons owning fee simple title to any Unit within the Property. Regardless of the number of parties participating in ownership of each Unit or Dwelling, the group of those parties shall be treated as one "Owner." The term "Owner" includes contract purchasers but does not include persons or entities who hold an interest merely as security for the performance of an obligation (such as a Mortgagee) unless and until title is acquired by foreclosure or similar proceedings. The term Owner shall exclude the Class A member when it relates to or calls for the levying of an assessment or monetary charge against the Owners.

1.27. **"Property"** means that certain real property described on **Exhibit A** hereto, and such annexations and additions thereto as may hereafter be subjected to this Declaration.

1.28. **"Reserve Analysis"** shall mean and refer to an analysis to determine the need

for and the appropriate amount of a reserve fund to accumulate money to cover the cost of repairing, replacing, and restoring the Common Areas that have a useful life of three years or more and a remaining life of less than thirty (30) years, if the cost cannot reasonably be funded from the Association's general budget or other funds of the Association.

1.29. **"Reserve Fund"** shall mean and refer to the fund established and maintained by the Association to cover the cost of repairing, replacing and restoring those Common Areas that have a useful life of three (3) years or more and a remaining life of less than thirty (30) years, but excluding any cost that can reasonably be funded from the annual budget or other funds of the Association, which fund shall be funded by monthly payments in an amount equal to not less than ten percent (10%) of the total amount of the Assessments.

1.30. **"Reserve Fund Line Item"** shall mean and refer to the line item in the Association's budget that identifies the amount to be placed into the Reserve Fund.

1.31. **"Resort Facilities"** means and refers to any facilities or land adjacent to or within the Property, as designated within this Declaration or on the Subdivision Plat, that is owned by Declarant and/or a third party and not designated as Common Area. Resort Facilities generally include but are not limited to the Arcadia Vacation Resort clubhouse and the Arcadia Vacation Resort water amenities.

1.32. **"Subdivision Plat"** means any subdivision plat, survey, or plan that describes any portion of the Property or phase thereof and has been approved by the City and recorded in the office of the Washington County Recorder, and includes any replacements thereof, or supplements, alterations, amendments, or additions thereto.

1.33. **"Trustee"** shall mean and refer to the person appointed as trustee by the Association with power of sale and other powers of trustee under § 57-8-45 of the Act and Utah Code Annotated §§ 57-1-19 through 57-1-34 for the purpose of enforcing the lien for unpaid Assessments provided for in this Declaration and the Act

1.34. **"Unit"** means and refers to a Building Pad and any Dwelling that rests upon such Building Pad, which may be surrounded by Common Area or Limited Common Area. If the Dwelling is a multi-unit built on a single Building Pad, each separate family unit will be considered a Unit. Owners are on notice to review the plat and other recorded documents affecting their Unit to determine the extent of ownership rights and responsibilities, use restrictions and maintenance obligations related to the Unit.

1.35. **"Unit Number"** means the number, letter or combination of numbers and letters that identifies only one Unit in the Property

ARTICLE 2

LAND USE DESIGNATIONS AND CLASSIFICATIONS

2.1. **Owner's Acknowledgment; Notice to Purchasers.** All Owners are given notice that the use and development of their Unit, and use of the Common Area and Limited Common Area is limited by the covenants, conditions, restrictions, easements, and other provisions of this Declaration, the other Governing Documents, as each such document may be amended, expanded, or modified from time to time. Each Owner, by acceptance of a deed (or similar ownership interest) to a Unit, acknowledges and agrees that the use and enjoyment and marketability of its Unit can be affected by said documents. All Unit purchasers are on notice that the Declarant or the Association may have adopted changes to the Governing Documents which might differ from those any purchaser might receive from or have disclosed by the Owner from whom the purchaser is purchasing a Unit. Copies of current Governing Documents may be obtained from the Association.

2.2. **Units; Activities Within Units.** Each Unit is owned in fee simple by the Owner, subject to the covenants, conditions, restrictions, and easements in this Declaration, the provisions of the other Governing Documents, the Subdivision Plat, and other applicable covenants, conditions, restrictions, and/or easements that may be recorded against the Unit, and any laws and ordinances applicable to the Property.

2.3. **Common Area.**

(a) **Ownership; Conveyance.** In creating the Association, the Declarant will convey fee simple title to the Common Area to the Association, free and clear of all encumbrances and liens, but subject to this Declaration, and easements and rights-of-way of record. The Association shall accept the deed of conveyance of the Common Area upon Declarant's presentment of the same. Notwithstanding the above, during the Declarant Control Period, Declarant may, in its discretion, convey, transfer, sell, assign, or otherwise dedicate all or part of any Common Area to the City or such other governmental entity or any third party as it deems necessary and appropriate.

(b) **Board Authority.** The Board shall have the authority to maintain and insure the Common Area as set forth herein. This right includes, but is not limited to the right, for and on behalf of the Association, to:

(i) insure, maintain, and care for the Common Area;

(ii) establish rules and regulations to govern use of the Common Area, including, by way of example but not limitation, hours of use and standards of conduct.

(iii) enter into agreements or leases which provide for use of the Common Areas by a similar association in consideration for use of the common areas and/or facilities of the other association or for cash consideration, or by third parties for cash consideration;

(iv) grant easements for public utilities or other public purposes consistent with the intended use of the Common Areas;

(v) take such steps as are reasonably necessary or desirable to protect the Common Areas against foreclosure; and

(vi) take such other actions with respect to the Common Areas which are authorized by or otherwise consistent with the Governing Documents.

2.4. Declarant's Right of Use. As part of the overall program of development of the Property and to encourage the marketing thereof, the Declarant shall have the right of use of the Common Area, including any community buildings and facilities constituting Common Area, without charge during the Declarant Control Period to aid in its marketing activities

2.5. Limited Common Area.

(a) Designation. The Declarant, during the Declarant Control Period, shall have the right to restrict portions of the Common Area, whether owned by Declarant or by the Association, in the nature of an easement for the primary or exclusive use of one or more particular Owner or Owners. This designation may be made by: (i) indicating or designating on the Subdivision Plat the Limited Common Area appertaining to one or more Units, or (ii) designating, depicting, and/or describing such Limited Common Area in any supplemental declaration to this Declaration, or in any exhibit to those declarations. The Declarant reserves the right to re-designate Limited Common Area as it deems necessary.

(b) Rights of Use and Rules and Regulations Concerning the Limited Common Areas. Each Owner is hereby granted an irrevocable and exclusive license to use and occupy the Limited Common Areas reserved exclusively for the use of his Unit, subject to the rights of the Declarant and the Board as set forth in the Governing Documents. The right of exclusive use and occupancy does not include the right to repair, remodel, erect structures upon or attach any apparatus to without the express written consent of the Board.

(c) Costs for Maintenance. All costs associated with maintenance, repair, replacement, and insurance of a Limited Common Area shall be, where the Limited Common Area benefits, or is reserved for the exclusive use of a particular Owner or Owners, a Specific Assessment to such Owner(s).

2.6. Delegation of Use. An Owner or one having a right of use of Common Areas and Resort Facilities, may delegate any right of enjoyment to the Common Areas and Resort Facilities to family members or guests staying at that Owner's Dwelling, subject to any rules and regulations established by the Board, including but not limited to the Board's right to require, as it determines necessary, an Owner to forfeit the Owner's right of use for so

long as the Owner has delegated such right to the Owner's tenant.

2.7. Promulgation of Rules.

(a) Rulemaking Authority. The Board may, from time to time, subject to the provisions of the Governing Documents, adopt, amend and repeal rules and regulations governing, among other things, use of any Common Area, parking restrictions and limitations, limitations upon vehicular travel within the Property, and restrictions on other activities or improvements on the Property which, in the opinion of the Board, create a hazard, nuisance, unsightly appearance, excessive noise, or offensive smell.

(b) Notice of Rules. A copy of the rules and regulations, as they may from time to time be adopted, amended or repealed, shall be mailed, emailed or otherwise delivered to each Owner or posted on the Association's website, and may, but need not be, recorded. Upon such mailing or other delivery, said rules and regulations shall have the same force and effect as if they were set forth in and were a part of this Declaration. In addition to or in lieu of providing notice by mail, the Board may provide notice by electronic means such as electronic mail (e-mail) to Unit Owners and may require that Unit Owners, in addition to keeping the Board informed as to their current mailing address, maintain a current e-mail address with the Board for such purpose.

2.8. Management Agreement; Property Manager. The Board may engage for the Association the services of one or more property managers to perform such duties and services as the Board shall authorize. The Board may delegate to and otherwise authorize the property manager to perform those services to which the Board itself may perform under the Governing Documents or the Utah Community Association Act, and those services to which the Utah Community Association Act otherwise authorizes a manager to perform. Any contract or agreement for services entered into by the Board with a property manager for and on behalf of the Association shall not exceed a term of three (3) years. Fees, costs, and other charges of the property manager shall be Common Expenses. The property manager, when approved by the Declarant or the Board, may also provide services to individual Unit Owners, such as leasing or renting individual Units as may be determined between the property manager and the Unit Owner; *provided however*, that services performed for individual Unit Owners which are not performed for the Association shall not be Common Expenses but shall be charged to such Unit Owners separately as the Unit Owners and the property manager may determine.

2.9. Provisions for Other Services. The Association may provide services and/or facilities for the Owners and their Units, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities,

or may include the costs thereof in the Association's budget as a Common Expense and assess it as part of the annual assessment if provided to all Units. By way of example, such services and facilities might include landscape maintenance, pest control service, cable television service, internet service, telephone service, security, caretaker, transportation, utilities, and similar services and facilities. Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board shall be permitted to modify or cancel existing contracts for services in its discretion, unless the provision of such services is otherwise required by the Governing Documents. Non-use of services provided to Owners or Units as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

2.10. Facilities and Services Open to the Public. Certain facilities and areas within the Property may be open for use and enjoyment of the public. Such facilities and areas may include, by way of example: pavilions, trails and paths, parks, and other spots conducive to gathering and interaction, roads, sidewalks, and medians. Declarant may, but is not required to, designate such facilities and areas as open to the public at the time Declarant makes such facilities and areas a part of the Common Area or the Board may so designate them at any time thereafter. The availability of such areas to the general public shall not relieve any Owner of responsibility for assessments levied to fund the Association expenses incurred in connection with such areas.

2.11. Resort Facilities.

(a) Resort Facilities may be privately owned by persons or entities other than the Association and may be made available for use by Owners and others for recreational purposes, pursuant to an agreement with the Association or otherwise.

(b) Access to and use of any Resort Facility is strictly subject to the rules and procedures of the owner of such Resort Facility, and except as may otherwise be set forth in a written agreement between the Association and the owner of the Resort Facility, no person gains any right to enter or to use any Resort Facility solely by virtue of membership in the Association or ownership or occupancy of a Unit.

(c) All persons, including all Owners, are hereby advised that no representations or warranties have been or are made by Declarant, the Association, or by any person acting on behalf of any of the foregoing, with regard to the continuing ownership, operation or availability of any Resort Facility. No purported representation or warranty in such regard, written or oral, shall be effective unless specifically set forth in a written instrument executed by the record owner of the Resort Facility.

(d) Rights to use the Resort Facilities will be granted only to such persons, and on such terms and conditions, as may be determined by their respective owners.

Such owners shall have the right, from time to time in their sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of their respective Private Amenities and to terminate use rights altogether. No consent of the Association or any Owner shall be required to effectuate any change in ownership, operation or terms of access to any Resort Facility.

ARTICLE 3
MEMBERSHIP AND VOTING RIGHTS

3.1. **Membership.** Every Owner is a Member of the Association. Membership in the Association automatically transfers upon transfer of title to any Building Pad or Unit by the record Owner to another person or entity.

3.2. **Voting Rights; Classes** The Association has two classes of voting membership, Class A and Class B.

(a) **Class A.** The Class A Member is the Declarant. The Class A member is entitled to five votes for each Unit owned, however, Declarant's Class A membership status is not dependent or contingent upon Declarant's ownership of any Unit within the Property. Rather, Declarant's Class A membership will cease only upon the earlier of (i) the final Unit being sold; or (ii) Declarant's express surrender of Class A membership status, which surrender must be in a written instrument signed by Declarant and recorded in the office of the Washington County Recorder. If the instrument of surrender does not specify the date of surrender of Class A membership, the surrender date shall be the date of recording of the instrument. To ensure that the Declarant, as the developer of the Property, has adequate time and flexibility to ensure the overall success of the development, Declarant has the sole and absolute discretion to determine the date of its surrender. If the Declarant surrenders its Class A membership status while owning Units within the Property, Declarant's membership status in such Units shall be converted to Class B.

(b) **Class B.** Class B Members are all Members with the exception of the Declarant, until Declarant's membership converts to Class B membership as provided for herein. Class B Members are entitled to one vote for each Unit owned. When more than one person holds an interest in any Unit, the group of such persons shall be a Member. The vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Unit. A vote cast at any Association meeting by any of such co-Owners, whether in person or by proxy, is conclusively presumed to be the vote attributable to the Unit concerned unless written objection is made prior to that meeting, or verbal objection is made at that meeting, by another co-Owner of the same Unit. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

3.3. Declarant's Voting Rights in Expansion Area. In the case of expansion (as provided under this Declaration), the class of voting membership appurtenant to Units owned by Declarant in the expansion area shall be Class A.

3.4. Change of Corporate Status. The Association has been set up and established as a non-profit corporation under Utah law. The continuing existence and viability of the Association, however, is not vested in its corporate status. During any period in which the Association is not incorporated or otherwise has a change of corporate status (e.g., involuntary dissolution under the Utah Nonprofit Corporation Act for failure to file for corporate renewal), the Governing Documents shall nevertheless continue to be effective as the Governing Documents of the Association, and the Association, the Board, and all officers and committees operating under the authority of the Governing Documents shall have all rights, power, and authority granted therein, and no Owner may escape or avoid any assessment, charge, lien, rule or other matter contained in the Governing Documents by virtue of such change of corporate status. In the case of non-incorporation, the Board is authorized, to the extent it deems necessary, and without approval of the Members, to reincorporate under a same or similar name and such corporation shall be deemed the successor to the Association. In the event the Board does not reincorporate, the Association shall continue to operate and function under the Governing Documents as an unincorporated association.

ARTICLE 4 ASSOCIATION FINANCES

4.1. Assessments; Authority. The Association is hereby authorized to levy assessments against the Owners as provided for in the Governing Documents. The following are the types of assessments that may be levied by the Association, which are more particularly described below: (1) annual assessments and charges; (2) special assessments; (3) specific assessments; (4) emergency assessments; (5) Reserve Assessments; (6) any other amount or assessment levied or charged by the Board pursuant to this Declaration; and (7) interest, costs of collection and reasonable attorney fees, as hereinafter provided. The assessments for a multi-unit may differ from the assessments for a single-family dwelling. A levy of assessments against the Owners shall exclude the Class A member.

4.2. Creation of Lien and Personal Obligation of Assessments. Excepting Declarant, each Owner of any Building Pad or Unit, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association all assessments and charges authorized in the Governing Documents. All such amounts shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each such assessment or amount is charged. Such assessments and other amounts shall also be the personal obligation of the person who was the Owner of such Unit at the time when the assessment became due. No Owner may exempt himself from liability for assessments or other charges by non-use of Common Area, abandonment of his Unit, or any other means. The obligation to pay assessments is a separate and independent

covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association, the Board, or Declarant to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making or repairs or improvements, or from any other action they might take.

4.3. Purpose of Assessments. The assessments levied by the Association shall be used to advance the purposes for which the Association was formed, as set forth and articulated in the Governing Documents. The assessments may provide for, but are not limited to, the payment of taxes on Association property; the payment of insurance maintained by the Association; the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the Common Area; the payment of administrative expenses of the Association; the establishment of capital and operational reserve accounts; the payment of any professional services deemed necessary and desirable by the Board; the payment of expenses pursuant to any Cost Sharing Covenants; and other amounts required or authorized by this Declaration or that the Board shall determine to be necessary to meet the primary purposes of the Association. The assessments may provide, at the discretion of the Board, for the payment of other charges including (without limitation) maintenance, management, and utility charges.

4.4. Initial Annual Assessments. The Declarant shall initially establish the amount of the annual assessments. Thereafter, the establishment of annual assessments shall be according to the procedures and requirements of Section 4.5.

4.5. Annual Assessments Budgeting.

(a) Adoption of Budget. At least sixty (60) days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for that year, for the purpose of calculating and establishing the annual assessments for the subsequent fiscal year. Annual assessments for Common Expenses shall be based upon the estimated net cash flow requirements of the Association to cover items including, without limitation: the cost of routine maintenance and operation of the Common Area; expenses of management; premiums for insurance coverage maintained by the Association; landscaping expenses; common lighting within the Common Area; routine renovations within the Common Area; wages; common water and utility charges; security services; legal and accounting fees; expenses and liabilities from a previous assessment period; the supplementing of the Reserve Fund for general, routine maintenance, repairs, and replacement of the Common Area on a periodic basis; the payment of expenses pursuant to any Cost Sharing Covenants; the payment of any telecommunications services; and any other expense authorized or contemplated by this Declaration to be charged to Owners as a Common Expense.

(b) Notice of Budget and Assessment. The Board shall send a copy of the final budget, together with notice of the amount of the annual assessment to be levied

pursuant to such budget, to each Owner at least thirty (30) days prior to the effective date of such budget. The budget shall automatically become effective unless disapproved at a meeting by Members representing at least sixty-seven percent (67%) of the Entire Membership. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings pursuant to the Bylaws. Any such petition must be presented to the Board within fourteen (14) days after delivery of the final budget and notice of the amount of the annual assessment.

(c) Failure or Delay in Adopting Budget. If any proposed budget is disapproved or the Board fails, for any reason to determine the budget for any year, then the budget most recently in effect, and the annual assessments based thereon, shall continue in effect until a new budget and corresponding annual assessment is determined.

(d) Automatic Budget Approval. Notwithstanding the foregoing, if the budget proposed by the Board will increase the annual assessment by no more than 5% of the previous annual assessment, then such budget and corresponding annual assessment shall be automatically approved and effective upon thirty days' notice and the Members shall not have the opportunity to disapprove of the budget and annual assessment.

(e) Adjustment of Budget and Assessment. The Board may revise the budget and adjust the annual assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth in Section 4.5(b), provided, however, that such an adjustment is exempt from the requirements of Section 4.5(b) if the adjustment would either decrease the annual assessment or increase the annual assessment by no greater than 3.25%.

4.6. Special Assessments. In addition to the annual assessments, the Board may levy, in any assessment year, a special assessment, applicable to that year only to cover unbudgeted expenses or expenses in excess of those budgeted, including but not limited to defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of Common Area and any structures, fixtures and personal property related thereto. Any such special assessment may be levied against the Entire Membership (excluding Declarant) if such special assessment is for Common Expenses. Except as otherwise provided in this Declaration, any special assessment shall require the affirmative vote or written consent of a majority of the Entire Membership, if a Common Expense. Special assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal years in which the special assessment is approved.

4.7. Specific Assessments. The Association shall have the power to levy Specific

Assessments against a particular Unit as follows:

(a) To cover the costs, including overhead and administrative costs, of providing services to Units upon request of an Owner pursuant to any menu of special services which may be offered by the Association. Specific assessments for special services may be levied in advance of the provision of the requested service.

(b) To cover costs incurred in bringing any Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with the Bylaws, before levying any specific assessment under this subsection.

4.8. Emergency Assessments. Notwithstanding anything contained in this Declaration, the Board, without Member approval, may levy emergency assessments in response to an emergency situation. Prior to the imposition or collection of any assessment due to an emergency situation, the Board shall pass a resolution containing the written findings as to the necessity of such expenditure and why the expenditure was not or could not have been reasonably foreseen or accurately predicted in the budgeting process, and the resolution shall be distributed to the Members with the notice of the emergency assessment. If such expenditure was created by an unbudgeted utility maintenance or similar expense or increase, the assessment created thereby shall be discontinued by the Board by a similar resolution; if such expense is subsequently reduced, or to the extent the next succeeding annual budget incorporates said increase into the annual assessment. An emergency situation is one in which the Board finds: (a) an expenditure, in its discretion, required by an order of a court, to defend the Association in litigation, or to settle litigation; (b) an expenditure necessary to repair or maintain the Property or any part of it for which the Association is responsible where a threat to personal safety on the Property is discovered; (c) an expenditure necessary to repair, maintain, or cover actual Association expenses for the Property or any part of it that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget (for example: increases in utility rates, landscape or maintenance contract services, attorney fees incurred in the defense of litigation, etc.); or (d) such other situations in which the Board finds that immediate action is necessary and in the best interests of the Association.

4.9. Declarant's Option to Fund Budget Deficits. During the Declarant Control Period, Declarant may but is not obligated to fund any budget deficit of the Association, including, without limitation, funding any initial capital or operational Reserve Fund. The Declarant may also authorize a third party to fund any budget deficit of the Association. In the event Declarant or a third-party funds any budget deficit, it shall not establish any obligation by Declarant or a third party to continue to fund any future deficits. The Declarant and any third-party is entitled to reimbursement of any budget deficit funded by Declarant or the third party.

4.10. Payment; Due Dates.

(a) The assessments provided for herein shall commence to accrue against a Unit upon conveyance of the Unit to a bona fide purchaser, adjusting the amount of such assessment according to the number of months remaining in the fiscal year.

(b) Assessment due dates shall be established by the Board. The Board may provide for the payment of assessments in equal installments throughout the assessment year on a monthly or quarterly basis.

(c) The Board may require advance payment of assessments at closing of the transfer of title to a Unit.

(d) Payment of assessments shall be applied first to any accrued interest, then to any accrued costs, charges, and fees, and then to the principal amount of the assessment. No Owner shall have the right to direct the Association or its agents or employees to apply payments in any other manner or method and any such attempt to do so will not be recognized.

4.11. Effect of Non-Payment of Assessment; Remedies of the Association. Any assessment or installment thereof not paid within thirty (30) days after the due date therefor shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such lesser rate as the Directors shall determine appropriate) until paid. In addition, the Directors may assess a late fee of \$150.00 for each delinquent installment.

(a) Remedies. To enforce this Article, the Board may, in the name of the Association, and to the extent not prohibited by law:

(i) bring an action at law against the Owner personally obligated to pay any such delinquent assessment without waiving the Association's lien for the assessment;

(ii) foreclose the lien against the Unit in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law;

(iii) restrict, limit, or totally terminate any or all services performed by the Association on behalf of the delinquent Owner;

(iv) terminate, in accordance with the Utah Community Association Act, Utah Code Ann. § 57-8a-204, the Owner's right to receive utility services paid as a Common Expense and/or terminate the Owner's right of access and use of any recreational facilities, including any Resort Facilities;

(v) if the Owner is leasing or renting his Unit, the Board may, in accordance with the Utah Community Association Act, Utah Code Ann. § 57-8a-205, demand that the Owner's tenant pay to the Association all future

lease payments due from the Owner, beginning with the next monthly or other periodic payment, until the amount due to the Association is paid;

(vi) suspend the voting rights of the Owner for any period during which any assessment or portion thereof against the Owner's Unit remains unpaid; and/or

(vii) accelerate all assessment installments that will become due within the subsequent twelve (12) months so that all such assessments for that period become due and payable at once. This acceleration provision may only be invoked against an Owner who has been delinquent in paying any assessment or installment two (2) or more times within a twelve (12) month period.

(b) Attorney Fees and Costs. There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and reasonable attorney fees incurred by the Association, together with, where applicable, an account for the reasonable rental for the Unit from time to time of commencement of the foreclosure. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental without regard to the value of the other security.

(c) Power of Sale. A power of sale is hereby conferred upon the Association that it may exercise. Under this power of sale, the Association may sell Units as an enforcement remedy under Section 4.12 in the manner provided by Utah law pertaining to deeds of trust as if said Association were beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as Trustee for purposes of power of sale foreclosure.

4.12. Exempt Property. The following property subject to this Declaration is exempt from the assessments created herein: (a) all property dedicated to and accepted by the City or any other public authority; (b) all Common Area and Limited Common Area; (c) all Units or other real property owned by Declarant; (d) the Resort Facilities; and (e) any other property declared exempt from assessments as set forth in this Declaration or within any Subdivision Plat.

4.13. Capitalization of Association. Upon acquisition of record title to a Unit by the first Owner thereof other than Declarant, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to three (3) months' worth of the annual assessment per Unit for that year or in such other amount as the Board may specify which may be a flat rate from year to year approximating three (3) months' worth of the annual assessment per Unit levied during the first year in which the Association adopts a budget. This amount shall be in addition to, not in lieu of, the annual assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for

use in covering operating expenses and other expenses incurred by the Association pursuant to the Governing Documents.

4.14. Resort Membership Fee. Each Owner, at the closing of its purchase of a Building lot or Unit, shall be required to pay to Arcadia Vacation Resort, LLC, a quarterly resort fee, prorated for the remaining period of the existing calendar quarter, which Arcadia Vacation Resort, LLC will deposit in its account for use in providing resort related services to Unit Owners. The amount of the resort fee will be determined by the Declarant or Arcadia Vacation Resort, LLC and will be published on a schedule available to potential purchasers at the time of contracting for purchase of a Unit. The schedule may be amended based upon the growth and development of the Arcadia Vacation Resort. The resort fee shall be an annual fee payable in equal quarterly payments, with payment due on the first day of each quarter, and is not refundable.

4.15. Subordination of Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage held by an institutional lender if the Mortgage was recorded prior to the date the assessment became due. Sale or transfer of any Unit shall not affect the assessment lien. However, the sale or transfer of any Unit pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer, however, shall relieve a Unit or Owner from liability for assessments coming due after the Owner takes title or from the lien of such later assessments.

4.16. Books, Records, and Audit.

(a) The Association shall maintain current copies of the Declaration, Articles, Bylaws, rules and other similar documents, as well as its own books, records and financial statements which shall all be available for inspection by Owners and insurers as well as by holders, insurers and guarantors of first mortgages during normal business hours upon reasonable notice. Charges shall be made for copying, researching or extracting from such documents. An Owner or holder, insurer or guarantor of a first Mortgage may obtain an audit of Association records at its own expense so long as the results of the audit are provided to the Association.

(b) The Association shall prepare a roster of Owners in the Property and the assessments applicable thereto at the same time that it shall fix the amount of the annual assessment, which roster shall be kept by the Treasurer of the Association, who shall record payments of assessments and shall allow inspection of the roster by any Member at reasonable times.

(c) The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Unit has been paid. Such certificates, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part

thereof which is therein shown to have been paid.

4.17. Reserve Fund Analysis.

(a) The Committee shall cause a Reserve Analysis to be completed no less frequently than every six (6) years to determine the need for a Reserve Fund to accumulate money to cover the cost of repairing, replacing or restoring the Common Areas that have a useful life of three (3) years or more and a remaining useful life of less than 30 years. The Committee shall review and, if necessary, update a previously completed Reserve Analysis no less frequently than every three (3) years. The Committee may conduct a Reserve Analysis itself or may engage a reliable person or organization, as determined by the Committee, to conduct the Reserve Analysis. A Reserve Fund Analysis shall include: (i) A list of the components identified in the Reserve Analysis that will reasonably require reserve funds; (ii) A statement of the probable remaining useful life, as of the date of the Reserve Analysis, of each component identified in the Reserve Analysis; (iii) An estimate of the cost to repair, replace or restore each component identified in the reserve analysis; (iv) An estimate of the total annual contribution to the Reserve Fund necessary to meet the cost to repair, replace or restore each component identified in the Reserve Analysis during the component's useful life and at the end of the component's useful life; and (v) A reserve funding plan that recommends how the Association may fund the annual contribution.

(b) The Committee shall not use money in the Reserve Fund (i) for daily maintenance expenses unless approved by the affirmative vote or written consent of Owners having ownership of not less than fifty-one percent (51%) of the undivided interest in the Common Areas, or (ii) for any purpose other than the purpose for which the Reserve Fund was established.

(c) The Association shall (i) annually provide each of the Owners a summary of the most recent Reserve Analysis or update, and provide a copy of the complete Reserve Analysis and any update to any Owner who requests a copy.

**ARTICLE 5
INSURANCE**

5.1. Casualty Insurance on Insurable Common Area. The Association shall maintain a multi-peril type policy insuring against risk of direct physical loss commonly insured against, including fire, wind, lightning, and other extended perils, covering all of the Common Areas in the Property, (ii) all physical structures, improvements, fixtures, alterations, equipment and betterments permanently part of or affixed to the Common Areas, and (iii) all fixtures, building service equipment, and common personal property and supplies belonging to the Association. Such policy shall provide coverage against loss or damage by fire, wind, lightning, and other hazards covered by a multi-peril policy, and provide coverage for debris

removal, cost of demolition, vandalism, malicious mischief, windstorm, and such other risks as customarily are covered with respect to planned unit developments similar to the Property in location and use. The insurance coverage with respect to the Common Area shall be written in the name of Arcadia Vacation Resort Homeowners Association, and the proceeds thereof shall be payable to, the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses which shall be included in the regular annual assessments made by the Association. 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.

5.2. Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area improvements, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a special assessment against all Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other common assessments made against such Owner.

5.3. Disbursement of Proceeds. If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Area shall be retained by and for the benefit of the Association and placed in a capital improvements account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner or Owners and their Mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any Mortgagee of a Unit and may be enforced by such Mortgagee.

5.4. Liability Insurance. The Association shall maintain a commercial general liability insurance policy covering the Common Areas and Facilities of the Property, including, without limitation, commercial space owned and leased by the Association, if any, and the public ways of the Property. Coverage limits shall be in amounts generally required by private institutional mortgage investors for planned unit developments similar to the Property in location and use. However, such coverage shall be for at least \$1,000,000 for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Coverage under this policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Areas and Facilities, medical payments insurance covering liability claims arising out of or in connection with the use of the Common Areas and Facilities, and legal liability arising out of lawsuits related to employment contracts of the Association. Such policy shall also include "Severability of Interest" or "Separation of Insureds" or equivalent

coverage to be included in the body of the policy or in a specific endorsement. Such policy must provide that it may not be cancelled or substantially modified, by any party, without at least 10 days' prior written notice to the Association and to each holder of a Mortgage on any Unit in the Property that is listed as a scheduled holder of a Mortgage in the insurance policy. Such policy must also include protection against such other risks as are customarily covered with respect to planned unit development projects similar to the Property in location and use, including, but not limited to, host liquor liability, employers' liability insurance, contractual and all-written contract insurance, and comprehensive automobile liability insurance. Each Owner shall be an insured person under a liability insurance policy that the Association obtains that insures against liability arising from the Owner's interest in the Common Areas and Facilities or from membership in the Association.

5.5. Errors and Omissions and Fidelity Insurance. The Association shall obtain insurance affording coverage for the acts, errors and omissions of its directors and officers, including members of the Architectural Control Committee and other committees as may be appointed from time to time by the Board of Directors of the Association in such amount as may be reasonable. The Association shall also obtain and maintain fidelity insurance for all officers, directors, and employees of the Association and all other persons handling or responsible for funds of or administered by the Association. Where the Association has a management agent that is responsible for handling or administering funds of the Association, the management agent shall be required to maintain fidelity insurance coverage for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. In procuring fidelity insurance, the Association shall seek a policy which shall (1) name the Association as obligee or beneficiary, (2) be written in an amount not less than the sum of (i) three months' operating expenses and (ii) the maximum reserves of the Association which may be on deposit at any time, and (3) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee." The Association shall pay as a Common Expense the premiums on all errors and omissions and fidelity insurance required herein, except those maintained by the management agent. The fidelity insurance shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least 10 days' prior written notice to the Association or Insurance Trustee. Such insurance shall also provide that any GSE that is a holder of any Mortgage on one or more Units within the Project shall receive such notice of cancellation or modification.

5.6. Review of Policies. The Board shall review all insurance policies from time to time in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacements of the property which may be damaged or destroyed. The Board may, to the extent it deems necessary to more fully protect and insure the Association and its property, or to otherwise comply with evolving laws and insurance standards, modify the coverage standards set forth in this Article 5 without the necessity of amending this Declaration.

5.7. **Insurance Trustees; Power of Attorney.** Notwithstanding any of the foregoing provisions and requirements relating to property or liability insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee (each of whom shall be referred to herein as the "Insurance Trustee"), who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish this purpose. Each Owner appoints the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose

5.8. **Individual Units.**

(a) **Single-Family Dwellings.** Each Owner of a single-family Dwelling Unit shall be responsible to purchase and maintain in force a multi-peril type policy of property insurance insuring against risk of direct physical loss commonly insured against, including fire and extended coverage perils, shall be maintained by the Owner covering the Unit, all improvements, fixtures, alterations, equipment and betterments permanently part of or affixed to the Unit, whether installed in the original construction or in any remodel or later alteration, including, without limitation, floor coverings, wall coverings, paint, cabinets, light fixtures, electrical fixtures, heating or plumbing fixtures, windows and doors, and all fixtures. Such policy shall provide coverage against loss or damage by fire and other hazards covered by the standard extended coverage "special perils" policy and provide coverage for debris removal, cost of demolition, vandalism, malicious mischief, windstorm, water damage, and such other risks as customarily are covered with respect to a community association in construction, location, and use. As a minimum, such policy shall provide coverage on a replacement cost basis in an amount not less than that necessary to comply with any co-insurance percentage specified in the policy, but not less than one hundred percent (100%) of the full insurable replacement cost of the Unit. Such policy shall provide coverage sufficient to restore any damaged Unit to its condition prior to a loss claim. The Association shall have no obligation to obtain insurance for individual Building Pads involving single-family Dwellings.

(b) **Multi-unit Dwellings.** The Association shall maintain, to the extent reasonably available using typical insurance carriers and markets, property insurance on the multi-unit Dwellings, insuring against risk of direct physical loss commonly insured against, including fire and extended coverage perils. The insurance premiums for multi-unit Dwellings shall be reimbursed by the multi-unit Dwelling Owners. If the Association becomes aware that property insurance is not reasonably available, the

Association shall, within seven (7) calendar days after becoming aware, give all multi-unit Unit Owners notice that the insurance is not reasonably available, and each multi-unit Unit Owner shall be responsible to insure their individual Unit.

(c) Owner's Responsibility. Each Owner is responsible to provide for himself or itself insurance on their property interests within the Property, including, without limitation, improvements thereon, furnishings and personal property therein, public liability insurance, and insurance with drain/sewer backup coverage. Neither the Association (including any Association Board member) nor Declarant shall be liable to any person or Mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of insurance is inadequate. For single-family Dwelling Owners, this Section requires an HO-3, HO-4 or HO-5 policy, depending on whether the Unit is Owner-occupied or tenant-occupied. For multi-unit Owners, this Section requires an HO-6 policy that also covers their share of the deductible amount of the Association policy. Furthermore, each Owner's insurance policy shall include an endorsement for nightly rentals, unless the owner of such policy has specifically opted out of the nightly rental pool.

ARTICLE 6

ARCHITECTURAL CONTROLS AND BUILDING STANDARDS

6.1. Architectural Control Committee ("ACC"). The ACC shall have the authority to administer to the provisions of this Article 6. The ACC shall consist of a minimum of three (3) persons. During the Declarant Control Period, the Declarant shall be entitled to appoint all members of the ACC. Thereafter, the ACC shall consist of the Board or of at least three (3) persons appointed by the Board. Persons appointed to the ACC by the Declarant shall serve at the pleasure of the Declarant. Persons appointed to the ACC by the Board may serve under such terms and conditions as the Board may designate.

6.2. Architectural Approval. No structure or thing shall be constructed, placed, erected, or installed upon any Unit or structure and no improvements or other work (including staking, clearing, excavation, grading and other site work, paving, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place within the Property until the plans and specifications showing, without limitation, the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing by the ACC in accordance with this Article and the Design Code adopted by the ACC pursuant to the authority of this Article. ACC approval shall be required regardless of whether the structure, building, fence, wall, or thing to be constructed, placed, erected, or installed is new, or an addition, extension or expansion, change or alteration, or re-construction, replacement, re-erection, or re-installation of any of the foregoing.

6.3. New Construction; Modifications. Except as otherwise expressly provided for in this Article or in the Design Code, the provisions of this Article and the Design Code

are applicable to all new construction as well as any modifications, remodeling, or rebuilding of any existing, destroyed, or damaged structures within the Property.

6.4. Design Code. The ACC may establish a Design Code which shall govern and contain, among other things, (i) permissible architectural designs; (ii) approved building materials and exterior color schemes; (iii) the rules, regulations, standards, guidelines, and procedures for the submission, review, and approval of any architectural, building, landscape, and other plans submitted to the ACC for review; (iv) the rules and regulations for construction and building activities within the Property; (v) the rules, regulations, standards, and guidelines with respect to any external apparatus, sign, or thing within the Property; and (vi) any other matters concerning the overall aesthetics of the Property. Because it is impossible to cover every contingency and because there are some aspects of architectural design that do not lend themselves to being easily articulated, the ACC shall have broad authority and discretion in establishing regulations, standards, and guidelines and in reviewing and approving plans submitted to it for review, which authority includes, but is not limited to: designating area within the Property as permissible building and landscape area; establishing timetables for submission of applications and commencement and completion of construction and landscaping; and establishing architectural and landscape guidelines as to any particular area within the Property. The ACC shall have the right to amend the Design Code as it deems necessary and appropriate from time to time. Amendments to the Design Code by the ACC shall have prior approval of a majority of the Board.

6.5. Sight Obstructions; View Impairment. The ACC may establish guidelines in its Design Code for the construction of improvements and landscaping so as to maximize views. Notwithstanding the foregoing, neither the ACC, the Declarant, or the Association represents or guarantees that any views from Units will be preserved without impairment. In addition, the owner of any Resort Facilities may, in its sole and absolute discretion, change, alter, add to, or modify the location, configuration, size, and elevation of components, and/or features. Any such additions or changes may diminish or obstruct any view from Units and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

6.6. Exemptions from ACC Approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications; provided however, that any deviation or change from the originally approved color scheme or plans and specifications shall require ACC approval. Any Owner may remodel, paint or redecorate the interior of the Owner's structure without approval; provided however, that modifications to porches, patios, and similar portions of a structure visible from outside the structure shall require ACC approval.

6.7. Fees; Damage Deposit. The ACC may establish and charge reasonable fees for

review of applications and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals. The ACC may also establish and require a damage deposit to be submitted with an application for approval. The ACC may draw on the deposit to cover any fines and penalties levied by the ACC; costs and expenses of enforcement of this **Article 6** and the Design Code against the Owner; or to cover the cost of damage to any curbs, sidewalks, gutters, driveways, asphalt, or other improvements caused by construction on an Owner's Unit.

6.8. **Compensation; Reimbursement for ACC Expenses.** Unless authorized by resolution of the Board, the members of the ACC shall not receive any compensation for services rendered. Members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of any ACC function or duty. In the event the ACC determines to retain professional consultants to assist it in its duties it may pay these professionals such compensation as the ACC determines, provided such compensation is approved by a majority of the Board. The Board may include in the Association's annual operating budget funds for compensation of ACC members or persons retained by the ACC; and any such funds shall be Common Expenses. Fees paid to the ACC as part of the application process shall be used to offset any of the foregoing expenses.

6.9. **Rights of Approval.** The ACC shall have the right to refuse or approve any plans and specifications and shall have the right, in so doing, to take into consideration the suitability of the proposed building, the materials of which it is to be built, the site upon which it is proposed to be erected, the harmony thereof with the surroundings, and the effect of said building, or other structure so planned, on the outlook from adjacent or neighboring property. Decisions of the ACC may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters by the ACC are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. The ACC shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations shall not be subject to review so long as made in good faith and in accordance with this Article and the Design Code.

6.10. **Approved Builders.** Any builder of a dwelling structure within the Property must be a licensed general contractor that has been approved by the ACC. The ACC may maintain a list of pre-approved builder or may approve a builder upon application by the builder. Approval of builders shall be in the sole discretion of the ACC, based on reputation, quality of work, customer satisfaction, and/or such other items the ACC determines appropriate.

6.11. **Implied Rights; ACC Authority.** The ACC may exercise any right or privilege given to it expressly by this Declaration or in the Design Code, or reasonably implied from or reasonably necessary to effectuate any such right or privilege.

6.12. **Prohibited Structures.** Notwithstanding anything in the Design Code, the following structures shall be prohibited within any part or portion of the Property: dome structures; log homes; pre-manufactured homes; re-located homes; and Earth or Berm homes of any type. No structure of a temporary nature, including but not limited to a trailer, bus, basement only residence, motor home, outhouse, tent, shack, garage, shed, or other outbuilding shall be used at any time as a residence either temporarily or permanently nor shall any such structures be erected or placed on the Property at any time. No old or second-hand structures shall be moved onto any of the Building Pads. The ACC may, by rule, make this provision more restrictive or comprehensive.

6.13. **Enforcement Authority.** The ACC is vested with authority to enforce this **Article 6** (including any rule or regulation established pursuant to the authority of Article 6) and the Design Code, including but not limited to, the authority to establish and levy fines, penalties, and interest, initiate legal proceedings, and abate or enjoin any violation of this **Article 6** (including any rule or regulation established pursuant to the authority of Article 6) or the Design Code, and take any other action to enforce the provision of its Design Code as is authorized by this Declaration. The Board may, on behalf of and at the request of the ACC, take any enforcement action the ACC is authorized to take. No Owner shall have the right or authority to enforce the Design Code.

6.14. **Application to Declarant.** The Declarant shall not be required to comply with the provisions of this Article or any rules, regulations, standards, or procedures established pursuant to the authority of this Article (including the Design Code) with respect to any of its activities on the Property. The Declarant may, in its discretion, grant to any builder an expedited ACC review process or even waive such review.

6.15. **Non-Liability; Waiver; Indemnification.** The Design Code is intended as a mechanism for maintaining and enhancing the overall aesthetics of the Property; it does not create any duty to any person or entity. When the ACC undertakes its review it is not doing so for the purpose of ensuring the structural or mechanical integrity or soundness of approved construction or modifications; ensuring compliance with building codes and other governmental requirements; or ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to any Owner, wherever situated within the Property, or to any neighboring property owners. Accordingly, it shall bear no responsibility for ensuring any of the foregoing. The Declarant, the ACC, the Association, the Board, any committee, or member of any of the foregoing and each of their respective officers, directors, partners, members, predecessors, successors, assigns, parents, affiliates, subsidiaries, employees, and the agents and employees of any of them shall not be held liable for, and each Owner, for him/her/itself and his/her/its successors, heirs, and assigns, hereby agrees to hold the foregoing harmless for: any soil conditions, drainage or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition or quality of work of

any contractor or its subcontractors, employees or agents, whether or not Declarant has approved or featured such contractor as a builder within Property; and any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction or modifications to any structure.

6.16. Water Conservancy. Each Owner will be responsible to comply with any and all provisions for water conservancy as set forth by the Washington County Water Conservancy District.

ARTICLE 7
MAINTENANCE

7.1. Owner's Responsibility. Each Owner of a single-family Unit shall maintain the Owner's Unit and all structures, and other improvements comprising the Unit, and any appurtenant Limited Common Areas, in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to an additional or supplemental declaration or the adoption of any rule or regulation. The joint Owners of a multi-unit Unit shall jointly maintain the joint Owner's multi-unit Unit and all structures, and other improvements comprising the multi-unit Unit, and any appurtenant Limited Common Areas, in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to an additional or supplemental declaration or the adoption of any rule or regulation. The Association may, in the default of the Owner(s) to perform maintenance which is the Owner's responsibility, and after ten (10) days written notice (which notice shall not be required in the event of emergency or threat to life, health, property or safety), provide exterior maintenance upon each Unit and the Limited Common Area adjacent and appurtenant thereto. The cost of such maintenance shall be assessed against the Unit as a specific assessment. Maintenance responsibilities established under any Cost Sharing Covenants shall not relieve any Owner of its maintenance responsibility under this Declaration.

7.2. Association's Responsibility. The Association shall maintain all Common Areas and the Limited Common Area which is not adjacent to any Unit, and the area of any Unit outside the walls of the structures thereon which is of the same character as surrounding Common Area. The cost to maintain all Common Areas and the Limited Common Area which is not adjacent to any Unit shall be a Common Expense to all Units.

7.3. Access at Reasonable Hours. For the sole purpose of performing the maintenance required by this Article, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Limited Common Area at reasonable hours.

7.4. Alteration of Certain Maintenance Duties by Rule. The duty of maintenance

for the area outside the walls of any Unit, and the Limited Common Areas adjacent and appurtenant to such Units may be altered by rule of the Association.

ARTICLE 8
SPECIAL DEVELOPMENT RIGHTS

8.1. **Intent and Purpose of Special Development Rights.** In addition to any other rights granted or reserved to the Declarant in this Declaration and the other Governing Documents, and notwithstanding any covenants, conditions, restrictions, or other provisions of limitation within this Declaration, the Declarant, as the developer of the Property, is granted special development rights. These combinations of rights maximize the flexibility of the Declarant to adjust the size and mix of the Property to the demands of the marketplace, both before and after creation of the Arcadia Vacation Resort.

8.2. **Expansion of the Property.** The Declarant shall have the right to expand the Property by unilaterally subjecting any Additional Property, in whole, in part, or in phases, to this Declaration during the Declarant Control Period.

(a) **Expansion Procedure.** The Declarant shall indicate its intent to have such Additional Property bound by this Declaration on the Subdivision Plat of such Additional Property and shall record a declaration of annexation or supplemental declaration including and subjecting such Additional Property to this Declaration. Thereafter, such Additional Property shall be considered as part of the Property in all respects, and building pads or units therein shall constitute Building Pads or Units under this Declaration.

(b) **Use of Expansion Property.** Any Additional Property annexed hereto by the Declarant shall be used in accordance with the provisions of this Declaration. The Declarant shall have the sole discretion as to development of the Common Area in any Additional Property and may include any facilities or amenities thereon that Declarant deems necessary and such Common Areas shall be deeded to and owned by the Association in the same manner as Common Area in the initial Property.

8.3. **Withdrawal of Property.** Declarant shall have the right to convey, transfer, withdraw, remove, or modify any portion of the Property in Declarant's sole and absolute discretion.

8.4. **No Obligation to Expand or Develop.** Declarant has no obligation to annex any additional land to the Property or to develop or preserve any portion of additional land in any particular way or according to any particular time schedule.

8.5. **Municipal Zoning and Subdivision Approvals.** The Declarant, during the Declarant Control Period, shall have the unilateral right to further subdivide the Property

and to apply for any zoning or subdivision approvals or permits from the City or any other applicable governmental authority with respect to the Property or any adjacent property owned by Declarant, whether or not such adjacent property is annexed into the Subdivision. This right includes but is not limited to applying for and obtaining zoning permits, subdivision approvals, plat approvals, or approvals to amend any Subdivision Plat. Further, to the extent the approval and consent of any Unit Owner is required under State or local law to apply for or obtain any such approval, each Unit Owner hereby waives his or her right to object to any such approval sought by Declarant and shall sign the application or other documents required for such action except for any such approval that would (a) affect title to the Owner's Unit or (b) alter the boundaries of an Owner's Building Pad.

8.6. Declarant Business, Marketing, and Sales. Notwithstanding any provisions to the contrary contained in this Declaration or any other Governing Documents, it shall be expressly permissible for Declarant, or its written designee, to maintain such facilities and conduct such activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction of buildings and sale of Units during the Declarant Control Period, and upon such portion of the Property including Common Area, if any, as Declarant deems necessary, including but not limited to, a business office, storage areas, construction yard, signs, model units and sales offices. As part of the overall program of development of Arcadia Vacation Resort and to encourage the marketing thereof, the Declarant shall have the right of use of any Building Pads or Units, or any Common Area and Resort Facilities thereon, including community buildings and amenities, without charge during the sales and construction period to aid in its marketing activities.

8.7. Declarant's Reasonable Rights to Develop. No rule or action by the Association, shall unreasonably impede Declarant's right to develop the Property. This Declaration shall be liberally construed to advance Declarant's rights and interest in developing the Property.

8.8. Additional Development Rights. The Declarant shall have the unilateral right to: (a) dedicate any access roads and streets serving the Property for and to public use, to grant road easements with respect thereto and to allow such street or road to be used by owners of adjacent land; (b) enter into any Cost Sharing Covenants with any third parties; and (c) create or designate additional Common Area or Limited Common Area within the Property.

8.9. Exclusive Rights to Use Name of Development. No person or entity shall use the name "Arcadia Vacation Resort" or any derivative of such name or the corresponding logo in any printed or promotional material without Declarant's prior written consent. No person or entity shall use the names or logos of Arcadia Vacation Resort or Arcadia Resort Club in a manner that would cause another person to believe such person or entity is acting in an official capacity or as agent of Arcadia Vacation Resort, Arcadia Resort Club or the Association, unless such person or entity is specifically authorized to do so. However, Owners may use the name "Arcadia Vacation Resort" in printed or promotional material where such term is used solely

to specify that particular property is located within the Property. The Association shall be entitled to use the words "Arcadia Vacation Resort" in its name.

8.10. Assignment of Declarant's Rights. Any and all rights and powers of the Declarant contained in this Declaration and other Governing Documents may be delegated, transferred or assigned, in whole or in part, by the Declarant. To be effective, any such delegation, transfer, or assignment must be in writing, signed by Declarant, indicate the extent and nature of such assignment, and be recorded in the Office of the Washington County Recorder.

ARTICLE 9 RESORT FACILITIES

9.1. Use and Ownership of Resort Facilities. The Resort Facilities are not owned by the Association, are not Common Area or Limited Common Area, and are not subject to any assessment by the Association pursuant to this Declaration. The Resort Facilities has the sole and exclusive right to determine any and all access with respect to the Resort Facilities.

9.2. Restrictions on Units Adjacent to Resort Facilities. In addition to all other restrictions set forth in the Governing Documents, all Units adjacent to Resort Facilities are subject to the following restrictions for use and maintenance:

(a) Any portion of such a Unit that is visible from neighboring property shall be kept neat, clean, and free of refuse.

(b) To the extent not prohibited by law, nothing shall be affixed to the outside of any such Unit which has not received the prior written approval of the ACC.

(c) In no event shall windows be covered with paper, aluminum foil, bed sheets, or any other materials or temporary coverings not specifically intended for such purpose. No interior or exterior reflective material shall be used as a window covering unless such material has been approved by the ACC.

9.3. Disturbances and Nuisances. Each Owner acknowledges and agrees that his Unit may be located adjacent to or near Resort Facilities and that activities will be held at the Resort Facilities. Each Owner acknowledges that the location of his Unit may result in nuisances as a result of Resort Facility operations and related activities.

9.4. Release and Indemnification. Each Owner covenants for himself and his successors, assigns, lessee's and guests that he shall and hereby does assume all risks associated with such location, and shall indemnify and hold harmless the Association, including the Board, the Declarant, the owner of such Resort Facilities, and any officers, members, managers, employees, or agents of the Association, the Declarant, and the owner of

such Resort Facilities from any liability, claims, or expenses, including attorney fees, arising therefrom.

9.5 Non-Exclusive Nature of Article. The covenants, conditions, restrictions, and easements contained in this Article are not intended to be and are not exclusive of any covenants, conditions, restrictions, and easements which may be contained in any applicable Subdivision Plat of record or any agreement of record, or any right possessed by the owner of such Resort Facilities to further restrict or regulate the Resort Facilities.

ARTICLE 10 TELECOMMUNICATIONS SERVICES

10.1. General Services. The Association may contract with one or more third-parties ("*Service Providers*") to provide telecommunications services, including internet, multi-channel video services, local phone service, and other like services to Owners for a monthly fee, which fee shall be established by the Association and levied against Owners as part of the annual assessments. Such fee may be billed and collected directly by the Service Providers from the Owner. No Owner may opt out of paying for or otherwise refuse to pay for such services by not using the same, nor may an Owner be relieved of his obligation to pay for such services by using or contracting for services provided by other parties other than the Service Providers.

10.2. Agreement with Service Providers. The Owner may be required to enter into a separate agreement with the Service Providers, which agreement shall be in addition to the terms and conditions set forth herein as it relates to such services. The agreement with Service Providers may contain provisions that provide for, without limitation, late charges, service charges, reactivation/reconnection fees, disconnection fees, billing procedures and remedies for non-payment, limitations of warranties and liabilities, disclaimers, and mandatory arbitration. Each Owner may be required to execute a services agreement simultaneously with their purchase of a Unit, acknowledging his or her obligation to pay for the approved services and his or her obligation to comply with the terms and conditions of the services agreement. The Association will provide each Owner a copy of the services agreement upon request.

10.3. Tap Fee. Each Unit to which telecommunication services will be provided shall be assessed a "Tap Fee" as its proportionate share of the costs of constructing the infrastructure related to the telecommunication services. This Tap Fee shall be collected from the first contract purchaser of each Unit at the time of closing.

ARTICLE 11 USE AND CONDUCT

The following use and other restrictions shall apply to the Property. These restrictions are in addition to those established by federal, state, or local law and ordinance

and those which may be set forth elsewhere in the Governing Documents, the Subdivision Plat, and any Cost Sharing Covenants.

11.1. General Use Restrictions. The use restrictions and requirements set forth in this Article 11 apply to the Property. These restrictions and requirements are in addition to those provided in other Governing Documents, any plat notes, and applicable governmental laws and ordinances.

11.2. Quiet Enjoyment. No noxious or offensive activity shall be carried on upon any part of the Property nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Owners, or which shall in any way interfere with the quiet enjoyment of each of the Owners or which shall in any way increase the rate of insurance, this includes but is not limited to any activity which creates excessive or obtrusive light, noise, odor, or presents or creates an unsightly appearance.

11.3. Hazardous Activities and Substances. No Owner shall engage in or permit any of said Owner's guests, visitors, tenants, or invitees to engage in any activity that will cause an increase in insurance premiums for insurance coverage on the Property nor shall any Owner or any Owner's guests, visitors, tenants, or invitees engage in any activity that will cause or permit any hazardous substance or material to be stored, used or disposed of on or within the Property.

11.4. External Apparatus and Displays. No Owner shall cause or permit anything (including, without limitation, awnings, canopies or shutters) to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the ACC. In addition, no sign, lawn ornament, or display may be maintained, erected, placed, or posted outside of any structure without the prior written consent of the ACC, which consent the ACC may withhold, in its sole discretion.

11.5. Rental Agreements. Only Unit Owners, who are contractual members in the Arcadia Vacation Resort Club are permitted to rent their Units for a maximum of 29 consecutive days per visit. All Unit rentals must be coordinated through the Association, with rental agreements approved by the Board. The property manager may assess an administrative fee on Owners renting their Units in an amount reasonably based on the administrative and additional costs to the property manager resulting from the occupancy of the Unit by a renter and administering to the Owner's rental agreement. Rentals are for residential use only. A nightly rental license may be required for Owners who rent their Units. Occupancy for hosting events, commercial use, or of a disruptive nature is prohibited. Each rental agreement shall be in writing and shall provide that the terms of the rental agreement shall be subject in all respects to the Governing Documents and that any failure by a tenant to comply with the terms of such documents shall be a default under the rental agreement.

11.6. Timesharing. No Building Pad or Unit shall be used for operation of a

timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Lot or dwelling structure rotates among participants in the program on a fixed or floating time schedule, unless such program is established by the Declarant in writing.

11.7. Delegation of Use. Any Unit Owner may delegate his or her right of enjoyment of the Common Area and Resort Facilities to the members of his family, his tenants, guests, licensees and invitees, but only in accordance with the applicable rules and regulations of the Association, the rules and regulations of Arcadia Vacation Resort, LLC, and other Governing Documents. The Board may, by rule, require Unit Owners to forfeit their right of use in the Common Areas and Resort Facilities for so long as the Unit Owner has delegated his right of use in the Common Areas and Resort Facilities to his or her tenant. Damage caused to the Common Area and Resort Facilities, including personal property owned by the Association, by Arcadia Vacation Resort, LLC, by an Owner, or by a person who has been delegated the right to use and enjoy such Common Area and Resort Facilities by an Owner, shall create a debt to the Association. Debts owed to the Association as a result of damage to the Common Area and Resort Facilities shall be a specific assessment charged to the Owner and against the Owner's Unit.

11.8. Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least ten days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The Owner transferring title shall continue to be jointly and severally responsible with the purchaser or transferee accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Board receives such notice, notwithstanding the transfer of title.

11.9. Clotheslines. No portion of any Common Areas or Limited Common Areas shall be used as a drying or hanging area for laundry of any kind.

11.10. Garbage Removal. All rubbish, trash and garbage shall be regularly removed from the Units and shall not be allowed to accumulate thereon. Garbage shall be placed in proper containers. Garbage containers shall be kept in an area so that such containers are not visible from the front yard area or street, or, in the case of Units adjacent to any Resort Facilities, from the Resort Facilities.

11.11. Pets and Animals.

(a) **Restrictions.** Only pets owned by Unit Owners may be present on the Property. No pets of any guest or rental participant are allowed within the Property or a Unit, except as required under the Americans with Disabilities Act and state law. Notwithstanding, the Board has the right to regulate and restrict, by rule, the keeping and harboring of pets and animals within the Property, including the keeping and harboring of pets and animals within the Units. This right includes the right to restrict the type, breed, or species of animal, the number of animals which may be kept, the

areas in which the animals may be kept or taken, and to completely eliminate the keeping and harboring of pets. Until such time as the Board adopts a policy expressly authorizing the keeping of pets and animals, the same shall be prohibited within the Property. Commercial breeding of pets and animals is prohibited within the Property and may not be allowed or authorized by Association rule or resolution.

(b) Owner Responsibility. In the event the Board authorizes the keeping of pets and animals, Unit Owners must take due care to ensure that their pets and animals do not make excessive noises, cause any offensive smell, or create any physical threat to the safety of any other Unit Owner or person within the Property, or the safety of any guests, lessees, or invitees, particularly among children. Unit Owners are responsible for any property damage, injury, or disturbance that their pet may cause or inflict anywhere within the Property. To the extent the Association is subjected or otherwise exposed to any liability, claims, damages, costs, losses, or expense as a result of the actions of an animal, the Association has the right to make a claim against the Unit Owner. Unit Owners shall indemnify the Association from any claims, damages, or causes of action that arise from or otherwise relate to the conduct of their pets. This indemnification shall include any attorney fees, costs, and expenses incurred by the Association.

11.12. Parking.

(a) No motor vehicle which is inoperable shall be allowed within the Property. All boats, RVs, trailers or vehicles too large for the driveway shall be parked in the parking areas specifically designated by the Association and all other vehicles shall be parked in designated parking stalls, within garages, or on driveways. Any motor vehicle in violation of these restrictions shall be subject to removal by the Association, at the vehicle owner's expense. Upon demand, the owner of the vehicle shall pay any expense incurred by the Association in connection with the removal of that owner's vehicle. If the vehicle is owned by a Unit Owner, any amounts payable to the Association shall be secured by the Unit and the Association may enforce collection of said amounts in the same manner provided for in this Declaration for the collection of assessments.

(b) If parking spaces are designated on the Subdivision Plat with numbers corresponding to Unit numbers, each such space is for the exclusive use of the Unit Owner with the corresponding number. If parking areas are not designated on the Plat with Unit numbers, the Board may assign vehicle parking space for each Unit, if applicable. Parking spaces within the Property shall be used for parking of motor vehicles actually used by the Owner or the Owner's immediate family or guests for personal use and not for commercial use, and for guest parking.

(c) No boats, trailers, buses, motor homes, campers, recreational vehicles, or other such vehicles shall be parked or stored upon any Building Pad or portion

of the Property except within an enclosed garage or an area designated by the Board. No such vehicles shall be parked overnight on any street located within the Property.

11.13. Pest Control. No Owner or occupant shall permit anything or condition to exist within or upon the Building Pads or Units which would induce, breed, or harbor infectious plant diseases or noxious insects. In addition to such pest control services as may be provided by the Association, each Owner shall perform such pest control activities within and upon the Unit as may be necessary to prevent insects, rodents, and other pests from being present in his Unit.

11.14. Recreational Use of Water Features. Any lakes, ponds, or water features within the Property shall not be used for swimming, wading or recreational use of any kind unless such water features have been established for a recreational purpose, in which case such recreational use shall be only in accordance with the rules and regulations established by the owner thereof.

11.15. Temporary or Other Structures. No structure of a temporary nature, and no trailer, bus, basement, outhouse, tent, shack, garage, storage, utility, or other outbuilding shall be used at any time as a home either temporarily or permanently, nor shall any such structures be erected or placed on the Property at any time, except as may be necessary during the course of construction of on any Building Pad. No old or second-hand structures shall be moved onto any Building Pad. It is the Declarant's intention that all buildings and structures constructed, erected, or otherwise placed within the Property be new construction, of good quality, workmanship, and materials.

11.16. Damage Caused by Owners, Guests, and Invitees. Damage caused to the Common Area, including personal property owned by the Association, by a Member, or by a person who has been delegated the right to use and enjoy such Common Area by a Member, shall create a debt to the Association. Debts owed to the Association as a result of damage to the Common Area shall be an assessment charged to the Member.

11.17. Violation Constitutes a Nuisance. Any act or omission whereby any restriction, condition or covenant as set forth in this Declaration if violated in whole or in part is declared to be and shall constitute a nuisance, and may be abated by Declarant or affected Owners and such remedy shall be deemed to be cumulative and not exclusive.

ARTICLE 12 EASEMENTS

12.1. Encroachments. Each Building Pad and the Property included in the Common Area and Limited Common Area, if any, shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event the structure containing private units or

dwellings is partially or totally destroyed, and then rebuilt, the Owners of the same so affected agree that minor encroachments of parts of the adjacent Building Pads or Common Area and Limited Common Area, if any, due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

12.2. Utilities. There is hereby created an easement upon, across, over and under the Property for utility purposes. These utility easements shall generally be designated on the Subdivision Plat. By virtue of this easement, it shall be expressly permissible for all public utilities—and any private telecommunications company operating under contract with Declarant or the Association—serving the Property to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the Property, provided that all such services shall be placed underground, except that said utilities may affix and maintain electrical and/or telephone wires, pipes, circuits and conduits on, above, across and under roofs and exterior walls. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement on said Property without conflicting with the terms hereof. Declarant reserves the right to convey to itself and to other adjoining landowners, easements for roadway and utility use in the Common Area and Limited Common Area, if any, and the right to connect to and use roadways and utilities owned or controlled by the Association or serving the Property. The Declarant reserves the right to execute agreement(s) which may confer on itself or adjacent landowners or Owners associations the right to use Common Area and Limited Common Area, if any.

12.3. Police, Fire and Ambulance Service. An easement is hereby granted to all police, fire protection, ambulance services and all similar persons to enter upon the streets and Common Area and Limited Common Area, if any, in the performance of their duties.

12.4. Maintenance by Association. An easement is hereby granted to the Association over the Property as necessary to enable the Association to fulfill its maintenance responsibilities under. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

12.5. Easement for Use of Common Area. The Declarant, during the Declarant Control Period, and each Owner is hereby granted a non-exclusive right and easement of use and enjoyment in common with others of the Common Area, except as specifically limited by the Governing Documents. Each Owner is also hereby granted a non-exclusive easement for ingress and egress over the Common Area to the extent necessary to provide vehicular and

pedestrian access to such Owner's Unit.

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

12.7. Easement for Declarant; Reservation of Easements by Declarant. The Declarant hereby reserves to itself during the Declarant Control Period the right to reserve easements over, beneath, and through the Property, including over the Common Area and Limited Common Area and related facilities, for the purpose of making improvements to and developing the Property or on any additional land submitted under the Declaration, including but not limited to construction, marketing, installation and upkeep of landscaping features, entrance features, project signage, street lights, paths, trails or sidewalks or other facilities or things benefiting the Property. The Declarant reserves to itself during the Declarant Control Period the right to make any dedications and to reserve, grant, vacate, or terminate any easements, rights-of-ways and licenses as may be reasonably required by any governmental authority or to carry out the intent and design of the Declarant's plan for development of the Property, without compensation therefor.

12.8. Easements; Private Amenities. There may be easements designated on the Subdivision Plat which shall be used for pedestrian walkways, maintenance and vehicle access, and unhindered access between said paths. Nothing shall be placed or maintained in any such easement which shall interfere with utilization thereof. In addition, the Declarant may create and grant such additional easements in the Property to and for the benefit of the Resort Facilities as it deems necessary. Declarant may also enter into and burden the Property with a declaration of easements and covenant to share costs relating (Cost Sharing Covenants) to the Resort Facilities or other private amenities as it deems necessary in its sole discretion.

12.9. Easements of Record. The easements provided for in this Article shall in no way affect any other recorded easement.

12.10. Limitations on Easements. Unless expressly authorized or contemplated within a particular easement created by this Declaration, in no event shall any easement granted or reserved herein be construed to or have the effect of permitting entry into the interior portion of any dwelling constructed upon a Building Pad.

12.11. No Dedication. This Declaration does not dedicate the easements herein declared for the benefit of any person not herein expressly made a beneficiary hereof.

Declarant expressly disclaims the creation of any right in or for the benefit of the general public, except as provided herein.

ARTICLE 13
CONDEMNATION; PARTITION

13.1. **Condemnation.** Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board and the Declarant during the Declarant Control Period) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

(a) If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant, during the Declarant Control Period, and Members representing at least seventy-five percent (75%) of the totally vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board. If such improvements are to be repaired or restored, the above provisions in Section 5.3 hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply.

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

13.2. **No Partition.** Except as otherwise permitted in this Declaration, the Common Area shall remain undivided and no person or entity shall bring any action for the partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This section shall not be construed to prohibit the Board from acquiring and disposing of title to real property which may or may not be subject to this Declaration.

ARTICLE 14
AMENDMENT

14.1. **By Class B Members.** Except as otherwise specifically provided herein, this Declaration may be amended, modified, extended, or revoked, in whole or in part, by the affirmative vote or written consent, obtained by written ballot or otherwise, or any combination thereof, of Owners representing at least sixty-seven percent (67%) of the total votes in the Association. 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.

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 Class B Members. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on any Unit; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans to make, purchase, insure, or guarantee mortgage loans on any Unit; (d) to satisfy the requirements of any local, state, or federal governmental agency; or (e) to correct any scrivener's error. Provided, however, any such amendment occurring after the Declarant Control Period shall not adversely affect the title to any Unit unless the Owner 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. **By Board.** The Board has the right, after the Declarant Control Period, to unilaterally amend this Declaration if such amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination.

14.4. **Validity.** No amendment made by the Class B Members during the Declarant Control Period shall be effective unless the Declarant provides its prior express written consent to such amendment, which consent is within Declarant's sole and absolute discretion. Any procedural challenge to an amendment must be made within six months 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.

14.5. **Effective Date.** Unless a later effective date is specified in the amendment, any amendment shall be immediately effective upon recording in the office of the Washington County Recorder a copy of such amendment accompanied by a verified certificate of the Secretary of the Association stating that the required number of votes or consents was obtained and that a record of such votes or originals of the consents will be placed on file in the Association's office. In the case of unilateral amendment by Declarant as provided for herein, such amendment shall be immediately effective upon recording in the office of the Washington County Recorder a copy of such amendment signed and verified by the Declarant.

ARTICLE 15
ENFORCEMENT

15.1. **Violations Deemed a Nuisance.** Every violation of this Declaration or any rule

or regulation established pursuant to the authority of this Declaration is deemed a nuisance and is subject to all the remedies provided for the abatement or correction of the violation provided for in this Declaration or by law or equity.

15.2. Legal Action Authorized. The Association, through the Board, the Declarant or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all provisions of this Declaration or any rule or regulation established pursuant to the authority of this Declaration, including all charges and liens now or hereafter imposed pursuant to the authority of this Declaration, against any person, persons, or entities violating or attempting to violate any provision of this Declaration or any rule or regulation established pursuant to the authority of this Declaration, to restrain or abate or otherwise recover damages for the violation, and against the land to enforce any charge or lien created by this Declaration. In addition to taking legal action, the Declarant and the Board shall have the right to grant variances and stay enforcement proceedings against any Owner on a case-by-case basis when they determine such action is in the best interests of the Association.

15.3. Fines and Penalties. The Board may levy a fine or penalty not to exceed, for each violation, fifty percent (50%) of the amount of the maximum annual assessment against any Owner who fails to refrain from violating this Declaration or any rule or regulation established pursuant to the authority of this Declaration. The Board may establish time frames and requirements for written notice, hearings, and cure periods for Owners in violation prior to levying such fine or penalty. Any fine or penalty levied by the Directors shall be treated as a specific assessment recoverable by the Association under and in accordance with **Article 4**.

15.4. Attorney Fees and Costs. Any fine or penalty levied against an Owner for any violation shall include any attorney fees and costs incurred by the Association with respect to such violation. The prevailing party in any action to enforce this Declaration or any rule or regulation established pursuant to the authority of this Declaration shall be entitled to an award of reasonable attorney fees and costs incurred in such action.

15.5. Nonexclusive Remedies. All the remedies set forth in this Declaration are cumulative and not exclusive to any others provided in the Governing Documents or by law.

ARTICLE 16 LENDER PROTECTIONS

16.1. Notices. A Mortgagee that provides a written request to the Association, stating the Mortgagee's name and address and the Unit address to which its Mortgage relates, will be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss that affects a material portion of the Property or which affects any Unit securing its Mortgage;

(b) Any 60-day delinquency in the payment of assessments or charges owed by the Owner of any Unit on which it holds a Mortgage;

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

(d) Any other matter in this Declaration which authorizes or requires notice to a Mortgagee.

16.2. Failure to Provide Notice. Notwithstanding anything to the contrary in this Declaration, in the event a Mortgagee fails to provide the notice as stated in **Section 17.1**, the Mortgagee shall be deemed to have waived its right to provide any consent or to receive any notice required to be sent to Mortgagees by the provisions of this Declaration.

16.3. Notice of Objections; Implied Approval. Unless a Mortgagee provides the Secretary of the Association with written notice of its objection, if any, on any matter that requires Mortgagee approval within thirty (30) days following the receipt of notice delivered by certified or registered mail, return receipt requested, of such proposed amendment or action, the Mortgagee shall be deemed conclusively to have approved the proposed amendment or action.

ARTICLE 17 GENERAL PROVISIONS

17.1. Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. All rights and powers of the Association may be exercised by the Board without a vote of the membership except where applicable law or the Governing Documents specifically require a vote of the membership.

17.2. Safety and Security. Each Owner and occupant, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property within the Property. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to enhance the level of safety or security which each person provides for himself or herself and his or her property. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Property, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to the Property, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and shall be responsible for informing its tenants and occupants that the Association, its Board and committees, and Declarant are not

insurers or guarantors of security or safety and that each person within the Property assumes all risks of personal injury and loss or damage to property resulting from acts of others.

17.3. More Restrictive Terms; Conflicts in Further Restrictions. Nothing in this Declaration shall preclude any supplemental declaration or other recorded covenants applicable to any portion of the Property from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration and, in such case, the more restrictive shall control.

17.4. Limitation on Action Against Declarant. The Association shall have no authority to file suit against the Declarant without the prior consent of 80% of the Entire Membership, obtained at a meeting for that purpose, and the unanimous written consent of the Board.

17.5. Construction and Severability. All of said conditions, covenants, and restrictions contained in this Declaration shall be construed together, but if any one of said conditions, covenants, or restrictions, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other condition, covenant, or restriction, or any part thereof, shall be thereby affected or impaired; and the Declarant, Association and Owners, their successors, heirs and assigns shall be bound by each article, section, subsection, paragraph, sentence, clause and phrase of this Declaration, irrespective of the invalidity or unenforceability of any other article, section, subsection, paragraph, sentence, clause or phrase.

17.6. Duration. The covenants, conditions, restrictions, terms, and easements of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Unit subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

17.7. Interpretive Conflicts. In the event of any conflict between the provisions of any of the Governing Documents, the documents shall control in the following order of authority: (1) the Declaration; (2) the Articles; (3) the Bylaws; (4) the Design Code; and (5) any rule, regulation, or resolution passed pursuant to the authority of the foregoing documents.

17.8. Notices. Any notice required to be sent under the provisions of this Declaration shall be deemed to have been properly sent when deposited in the U.S. Mail, postpaid, to the last known address of the person who is entitled to receive it. Members are required to keep the Association informed as to their current mailing address. Notwithstanding the above, the Declarant or the Board may adopt a policy for notification via electronic communication to Members in lieu of notice by mail.

17.9. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

17.10. Waivers. No provision contained in this Declaration shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

17.11. Topical Headings. The topical headings contained in any article, section, or subsection of this Declaration are for convenience only and do not define, limit, or construe the contents of this Declaration or any provision hereof.

IN WITNESS WHEREOF, the undersigned, as the Declarant herein, has hereunto set his hand this 4 day of JANUARY, 2018.

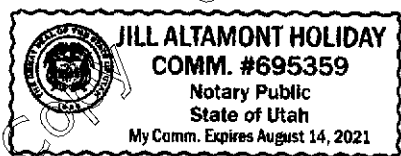
DECLARANT:

TAYLOR BUILT HOMES, LLC
a Utah Limited liability company

Robert Smith
By: ROBERT SMITH
Its: MANAGER

STATE OF UTAH)
) ss.
COUNTY OF WASHINGTON)

On this 4 day of JANUARY, 2018, before me personally appeared ROBERT SMITH whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is the Manager of Taylor Built Homes, LLC, a Utah limited liability company (the "Company") and that the foregoing document was signed by him on behalf of that Company by proper authority and he acknowledged before me that the Company executed the document and the document was the act of the Company for its stated purpose.



Jill Altamont Holiday
NOTARY PUBLIC
Address: 61 N. MAIN ST ST. GEORGE UT
My Commission Expires: 8-14-21

Old Republic National Title Insurance Company
ALTA Commitment 6/06 revised 8-1-16

EXHIBIT "A"

The land referred to in this Commitment is described as follows:

LOTS 1 THROUGH 7 AND 23 THROUGH 41 OF ARCADIA VACATION RESORT PHASE 1 - FINAL PLAT (PROPOSED).

MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT A POINT NORTH 89°26'54" EAST, 1067.09 FEET ALONG THE SECTION LINE AND NORTH, 24.75 FEET FROM THE SOUTH QUARTER CORNER OF SECTION 5, TOWNSHIP 42 SOUTH, RANGE 16 WEST, SALT LAKE BASE AND MERIDIAN, SAID POINT BEING ON THE NORTH RIGHT-OF-WAY LINE OF "NORTH TOWN ROAD", A PUBLIC ROADWAY, DEDICATED ON THE "RACHEL DRIVE & NORTH TOWN ROAD DEDICATION PLAT" FILED AS DOCUMENT #20100014031 IN THE OFFICE OF THE WASHINGTON COUNTY RECORDER, RUNNING THENCE NORTH 0°25'01" WEST, 158.93 FEET; THENCE NORTH 89°30'18" EAST, 12.30 FEET; THENCE NORTH 0°34'56" EAST, 107.53 FEET; THENCE NORTH 89°22'45" WEST, 100.74 FEET; THENCE NORTH 1°01'07" EAST, 293.39 FEET; THENCE SOUTH 89°34'20" EAST, 88.22 FEET; THENCE NORTH 73°14'47" EAST, 57.22 FEET; THENCE NORTH 8°27'21" WEST, 99.66 FEET; THENCE NORTH 72°49'20" EAST, 148.56 FEET; THENCE NORTH 63°42'14" EAST, 96.44 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF "RACHEL DRIVE", SAID POINT BEING ON A 390.00 FOOT RADIUS NON-TANGENT CURVE TO THE LEFT, RADIUS POINT BEARS NORTH 64°32'35" EAST; THENCE ALONG THE WESTERLY RIGHT-OF-WAY LINE OF "RACHEL DRIVE" AND ALONG "NORTH TOWN ROAD" AS SHOWN ON SAID "RACHEL DRIVE & NORTH TOWN ROAD DEDICATION PLAT" THE FOLLOWING SEVEN (7) COURSES: SOUTHEASTERLY 48.58 FEET ALONG THE ARC OF SAID 390.00 FOOT RADIUS CURVE THROUGH A CENTRAL ANGLE OF 7°08'12"; THENCE SOUTH 32°35'37" EAST, 547.85 FEET TO THE POINT OF CURVE OF A 25.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHWESTERLY 39.28 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 90°00'24"; THENCE SOUTH 57°24'47" WEST, 292.89 FEET TO THE POINT OF CURVE OF A 310.00 FOOT RADIUS CURVE TO THE RIGHT; THENCE SOUTHWESTERLY 113.63 FEET ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 21°00'09"; THENCE SOUTH 1°07'15" WEST, 20.99 FEET; THENCE SOUTH 89°26'54" WEST, 232.65 FEET TO THE POINT OF BEGINNING.

**PART OF TAX SERIAL NO.: SC-SB-79-A-1-A
PART OF TAX SERIAL NO.: SC-6-2-5-2203**

Tax Serial No. DISCLOSED