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MARCY M. MURRAY, Recorder
WASATCH COUNTY CORPORATION
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ELECTRONICALLY RECORDED

AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM FOR
THE VILLAGE ON 12th CONDOMINIUMS

A Utah Condominium Project
Heber, Utah

WHEN RECORDED RETURN TO:

Village on 12th Association of Condominium Owners
c/o HOA West
1192 E Draper Parkway, #604
Draper, Utah 84020
(801) 951-3123

**AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM
FOR THE VILLAGE ON 12th CONDOMINIUMS
(A Utah Condominium Project)**

This *Amended and Restated Declaration of Condominium* for THE VILLAGE ON 12th CONDOMINIUMS is made and executed this ____ day of _____, 2022, by the Directors of the Village on 12th Association of Condominium Owners (the "Association").

On or about November 17, 2017, 12th South Investments, LLC ("Declarant") recorded a Declaration of Condominium ("Original Declaration"). The Original Declaration was recorded in the real property records of Wasatch County as Entry No. 445332. This Declaration is intended to supersede and replace the Original Declaration in its entirety by combining three subsequent amendments into one restated document.

RECITALS

A. The Property is zoned R-3 "COSZ Zone" and is located in a desirable, accessible area within proximity to transportation routes and markets.

B. By subjecting the Property to this Declaration, it is the desire, intent, and purpose of Declarant to create a community in which beauty shall be substantially preserved, which will enhance the desirability of living on that real estate subject to this Declaration, and which will increase and preserve the attractiveness, quality and value of the lands and improvements therein.

C. This Declaration of Condominiums affects that certain real property located in Wasatch County, Utah described with particularity in Article 11 below, or attached exhibits (hereinafter referred to as the "Tract").

D. 12th South Investments, LLC is the owner of the Tract.

E. Declarant has constructed, is in the process of constructing, or will construct upon the Tract a residential condominium project which shall include certain Units, Limited Common Area, Common Area, and other improvements. All of such construction has been, or is to be, performed in accordance with the plans contained in the Condominium Plat to be recorded concurrently herewith.

F. Declarant intends to sell to various purchasers the fee title to the individual Units included in the Tract, together with an appurtenant undivided ownership interest in the Common Area and a corresponding membership interest in the Association of Unit Owners, subject to the Condominium Plat, the covenants, conditions and restrictions set forth herein.

G. Declarant desires, by filing this Declaration of Condominium and Condominium Plat, to submit the Tract and all improvements now or hereafter constructed thereon to the provisions of the Utah Condominium Ownership Act (the "Act").

H. The Project is to be known as "The Village on 12th Condominiums."

AGREEMENT

DECLARANT HEREBY DECLARES that the Property is and shall henceforth be owned, held, conveyed, encumbered, leased, improved, used, occupied, and enjoyed subject to the following uniform

covenants, conditions, restrictions and equitable servitudes (hereafter, "CCRs"). The said CCRs are in furtherance of, and the same shall constitute a general plan for the ownership, improvement, sale, use and occupancy of the Property; they are also in furtherance of and designed to accomplish the desires, intentions, and purposes set forth above in the Recitals. The City of Heber is intended to be a third-party beneficiary of this agreement.

I. DEFINITIONS

When used in this Declaration (including in that portion hereof entitled "Recitals"), each of the following terms shall have the meaning indicated.

1. **Additional Charges** shall mean and refer cumulatively to all collection and administrative costs, including but not limited to all attorney's fees, late charges, accruing interest, service fees, filing and recordation fees, and other expenditures incurred or charged by the Association.

2. **Articles of Incorporation** shall mean and refer to the Articles of Incorporation of The Village on 12th Condominiums Homeowners Association, Inc. to be filed with the Utah Department of Commercial Code.

3. **Assessment** shall mean and refer to any amount imposed upon, assessed, or charged a Unit Owner or Resident at the Project.

4. **Association** shall mean and refer to any of the Unit Owners at The Village on 12th Condominiums taken as or acting as a group in accordance with the Declaration.

5. **Building** shall mean and refer to any of the structures constructed in the Project.

6. **Business Use and Trade** shall mean and refer to any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: a) such activity is engaged in full or part-time; b) such activity is intended to or does generate a profit; or c) a license is required therefore.

7. **Bylaws** shall mean and refer to the Bylaws of the Association, when formed and registered with the State of Utah.

8. **Capital Improvement** shall mean and refer to all new improvements intended to add to, enhance or upgrade the nature, scope, utility, value, or beauty of the Project, as opposed to ordinary repair and maintenance.

9. **City** shall mean and refer to the City of Heber, Utah.

10. **Committee** shall mean and refer to the Management Committee of the Association as duly constituted.

11. **Common Areas** shall mean and refer to all real property in the Project owned in common by the unit owners including but not limited to the following items:

- a) The real property and interests in real property submitted hereby, including the entirety of the Tract and all improvements constructed thereon, excluding the individual Units.

- b) All Common Areas and Facilities designated as such in the Condominium Plat;
- c) All Limited Common Areas designated as such in the Condominium Plat;
- d) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Project and intended for the common use of all Unit Owners, such as telephone, electricity, gas, water, cable TV and sewer;
- e) The Project's outdoor grounds, lighting, perimeter fences, landscaping, sidewalks, parking, clubhouse, swimming pool, tot lot, and roadways;
- f) All portions of the Project not specifically included within the individual Units; and
- g) All other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Property owned by the Association for the common benefit of its Members.

Provided, however, utility installation such as telephone, electricity, gas, water, and sewer may be dedicated to the City and, if so, this definition shall not be construed to allow the Association to exclude the City from the ownership and control of the utility systems so dedicated.

12. **Common Expense** shall mean and refer to: (a) The expense of all irrigation or secondary water; (b) Expenses of administration, maintenance, repair or replacement of the Project; (c) Expenses allocated by the Association among the Owners; (d) Expenses agreed upon as common expenses by the Association; and (e) Expenses declared common expenses by the Declaration.

13. **Community** shall mean and refer to the Project.

14. **Community Wide Standard** shall mean and refer to the standard of conduct, maintenance, or other activity generally prevailing in the Community, as determined by the Management Committee from time to time.

15. **Condominium Plat** shall mean and refer to the Condominium Plat of The Village on 12th Condominiums on file in the office of the County Recorder of Wasatch County, as amended or supplemented from time to time.

16. **Declaration** shall mean and refer to this Declaration of Condominium for The Village on 12th Condominiums.

17. **Design Guidelines** shall mean and refer to the architectural and engineering plans and specifications and guidelines prepared by the Declarant and approved by the City for the construction of the Buildings, Units, and other physical improvements in the Project, including by way of illustration but not limitation all structural components and Exterior Materials. The City shall assume no responsibility for enforcement of the Design Guidelines but reserves the right to and may enforce any Design Guideline at any time and in its sole discretion.

18. **Eligible Insurer** shall mean and refer to an insurer or governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

19. **Eligible Mortgagee** shall mean and refer to a mortgagee, beneficiary under a trust deed, or

lender who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

20. **Eligible Votes** shall mean and refer to those votes available to be cast on any issue before the Association or the Committee. A vote which is for any reason suspended is not an “*eligible vote*”.

21. **Exterior Materials** shall mean and refer to cultured stone, rock, stucco, wood, or vinyl or cement fiber siding, finished lumber, brick, or other similar materials but shall not mean cinder block or concrete block or aluminum or vinyl siding. Exterior residence materials shall be of a noncombustible material as approved by the City. The City shall assume no responsibility for enforcement of the External Materials but reserves the right to and may enforce any External Material requirement at any time and in its sole discretion. The determination whether any specific material constitutes an acceptable Exterior Material shall be made by Declarant or its designee.

22. **Family** shall mean one of the following: (1) a single person living alone; (2) a group of natural persons related to each other by blood, or legally related to each other by marriage or adoption, such as a parent, child, grandparent, grandchild, brother, sister, uncle, aunt, nephew, niece, great-grandparent, great-grandchild, with an additional person or persons as domestic help or a caretaker; or (3) a group of not more than three unrelated persons living and cooking together as a single housekeeping unit and maintaining a common household, but not as a boarding or rooming house.

23. **Guest** shall mean and refer to an invitee, temporary visitor or any person whose presence within the Project is approved by or is at the request of a particular Resident.

24. **Land** shall mean and refer to all of the real property subject to this Declaration.

25. **Limited Common Areas** shall mean and refer to those Common Areas designated in this Declaration or in the Condominium Plat as reserved for the use of a certain Unit Owner to the exclusion of the other Unit Owners. Any portico, colonnade, Unit entry, doorsteps, landings, porches, balconies, decks, patios, private yard areas, garages, carports, assigned parking spaces, storage lockers, or other improvements intended to serve only a single Unit, shall constitute Limited Common Area appertaining to that Unit exclusively, whether or not the Condominium Plat makes such a designation.

26. **Majority** shall mean and refer to those eligible votes of Owners or other groups as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

27. **Management Committee** shall mean and refer to the committee of Owners elected to direct the affairs of the Association

28. **Manager** shall mean and refer to the person or entity appointed or hired by the Association to manage and operate the Project and/or assist in the administration of the Association.

29. **Map** shall mean and refer to the Condominium Plat.

30. **Member**, unless the context clearly requires otherwise, shall mean and refer to the Owner of a Unit, each of whom is obligated, by virtue of his ownership to be a member of the Association.

31. **Mortgage** shall mean and refer to both a first mortgage or first deed of trust on any Unit but shall not mean or refer to an executory contract of sale.

32. **Mortgagee** shall mean and refer to a mortgagee under a first mortgage or a beneficiary under

a first deed of trust on any Unit but shall not mean or refer to a seller under an executory contract of sale.

33. **Owner** shall mean and refer to the person who is the owner of record (in the office of the County Recorder of Wasatch County, Utah) of a fee or an undivided fee interest in a Unit, excluding a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

34. **Period of Declarant's Control** shall mean and refer to a period of time commencing on the date this Declaration is recorded and terminating on the occurrence of the earliest of the following events: (a) five (5) years from the effective date of this Declaration, (b) not less than 120 days after 75% of the Units have been conveyed, or (c) the Declarant executes and records a written Waiver of his right to control.

35. **Permanent Resident** shall mean and refer to anyone who resides in the Project for more than four (4) consecutive weeks or for more than eight (8) weeks in any calendar year.

36. **Person** shall mean and refer to a natural person, corporation, partnership, trust, limited liability company, or other legal entity.

37. **Project** shall mean and refer to this: The Village on 12th Condominium Project.

38. **Project Documents** shall mean and refer to the Declaration, ByLaws, Rules and Regulations, and Articles of Incorporation associated with this project and the Association.

39. **Property** shall mean and refer to all of the land or real estate, improvements and appurtenances submitted to the Act and this Declaration.

40. **Recreational, Oversized or Commercial Vehicle** shall mean and refer to any recreational, commercial or oversized vehicle, motor home, commercial vehicle, tractor, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other recreational or commercial transportation device of any kind.

41. **Repair** shall mean and refer to merely correcting the damage done sometimes by accident or fire or other cause, but more often due to the ravages of time and the deterioration resulting from ordinary wear and tear, by substituting for the damage, decayed or worn-out parts, new material, usually similar to that replaced, and so restoring the structure to its original sound condition.

42. **Resident** shall mean and refer to any person living or staying at the Project. This includes but is not limited to all lessees, tenants and the family members, agents, representatives, or employees of Owners, tenants or lessees.

43. **Single Family** shall mean one family unit.

44. **Single Family Residence** shall mean and refer to both the architectural style of a Unit and the nature of the residential use permitted.

45. **Unit** shall mean and refer to a separate physical part of the Property intended for independent use, including one or more rooms or spaces located in one or more floors or part or parts of floors in a building. Mechanical equipment and appurtenances located within anyone Unit, or located without said Unit but designated and designed to serve only that Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures

and the like, shall be considered part of the Unit; so shall all decorated surfaces of interior walls, floors and ceilings, including but not limited to all paint, wallpaper, wall coverings, windows and window frames, doors and door frames, trim, carpeting, tile and linoleum. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Unit or serving only the Unit, and any structural members, parts, components or any-other property of any kind, including fixtures of appliances within any Unit, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the Building within which the Unit is located shall be deemed to be part of the Unit.

46. **Unit Number** shall mean and refer to the number, letter or combination thereof designating a particular Unit.

II. SUBMISSION

The Land described with particularity on Exhibit A attached hereto and incorporated herein by this reference is hereby submitted to the Act.

The Land is hereby made subject to and shall be governed by the Act, and the covenants, conditions and restrictions set forth herein. The Land is also subject to the right of the City to access the roads within the Project for emergency vehicles and service vehicles, and to all of the utility installations, up to the residential meters.

The Land is SUBJECT TO the described easements and rights-of-way. Easements and rights-of-way in favor of the City include any dedicated roadways and public utility easements as are depicted on the Condominium Plat.

TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property, including, by way of illustration and not limitation, all easements and rights-of-way in and to any detention basin, entry way, monument, and park.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all patent reservations and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described Tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any easements, rights of-way, encroachments, or discrepancies shown on or revealed by the Condominium Plat or otherwise existing; an easement for each and every common area improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described Tract; and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such common area improvements, equipment, pipes, lines, cables, wires, utility systems, and similar facilities.

III. COVENANTS, CONDITIONS, AND RESTRICTIONS

The foregoing submission is made upon, under and subject to the following covenants, conditions, and restrictions:

1. **Description of Improvements.** The Project is expandable and will be developed in five phases as described in Exhibit B, and as shown on the Phasing Map in Exhibit C. When all phases are completed, the Project will consist of ten (10) 3-Story, 12-Plex condo style buildings, which will contain one hundred twenty (120) three bedroom/two bathroom condominiums of roughly 1,200 square feet each.

The Units will be constructed principally of concrete foundations with exterior walls of thin brick/stone, Hardi board & stucco, pitched roofs, interior walls of wood studs, plywood, and dry wall plaster. The Common Area and Facilities will include the following: the project will have an exterior open space area, a 900 square foot clubhouse, Splash Pad, Tot-lot, open space ball field & volleyball area at the rear of the buildings, and it will also have guest parking areas, open space, roadways, and walks. The Project will also contain other improvements of a less significant nature. The location and configuration of the improvements referred to in the foregoing sentence are depicted on the Condominium Plat.

2. Description and Legal Status of the Property. The Condominium Plat shows each Unit, its location, those Limited Common Areas and Facilities which are reserved for its use, and the Common Areas and Facilities to which it has immediate access. All Units shall be capable of being independently owned, encumbered, and conveyed; and shall have an appurtenant undivided percentage of ownership interest in the Common Areas and Facilities, subject to the rights of Declarant, the City, and all easements of record.

3. Membership in the Association. Since membership in the Association is mandatory, each Owner is a member of the Association and membership may not be partitioned from the ownership of a Unit. In addition, any Person who seeks to become an Owner must comply with the following requirements:

a) Leases. No leasing, rental, or non-Owner occupation (where consideration of some sort is charged for such occupation) of a Unit (hereinafter referred to as a "Lease") will be permitted without full compliance with this Section 3 and must include the express written consent of the Management Committee for the purpose of enforcing the leasing cap described herein.

b) Priority Renters List. The "List" shall mean a list, which will be published from time to time (but not less often than once a year), of Owners who (A) desire to Lease their Units and (B) are Leasing their Units, prioritized as set forth in Section 3(c) below.

c) Priority on List.

i) Owners who are renting their Units as of the effective date of this Amendment (the "First Priority Group") shall have priority on the List over all other Owner-Occupants. Within the First Priority Group, priority on the List will be established and determined according to the date that the Owner has requested to be included on the List pursuant to this Section 3(c)(i). If more than one Owner from the First Priority Group should request to be added to the List on the same date, then priority on the List will be established and determined according to the relative length of ownership of each Unit in question.

ii) After the First Group has been determined, Owners who occupy their own Unit at the time of the request to be added to the List ("Owner-Occupants") shall have priority on the List over all other Owners who are Leasing their Unit (the Second Priority Group). Within the Second Priority Group, priority on the List will be established and determined according to the date that the Owner has requested to be included on the List pursuant to Section 3(c)(ii), or, where applicable, according to such Owner-Occupant's relative length of ownership of record. If more than one Owner from the Second Priority Group should request to

be added to the List on the same date, then priority on the List will be established and determined according to the relative length of ownership of each Unit in question.

d) Priority Name. The "Priority Name" is hereby defined as the Owner who is in the first position on the List and who shall be next entitled to rent a Unit to a prospective tenant.

e) Limitation on Number of Units Leased.

i) Notwithstanding Section 3(e)(ii) below, and subject to the provisions of Section 3(g) and 3(h), those Owners who are Leasing their Units as of the effective date of this Amendment may continue to rent and/or lease their Units until they are no longer Leasing their Unit for a period of time in excess of sixty (60) days.

ii) No Units shall be Leased until such time as the total number of Units Leased is, in the aggregate, equal to or less than forty-nine percent (49%) of total number of Units.

f) Use of List. To the extent that the number of Units Leased is at any time equal to or less than forty-nine percent (49%) of the total number of Units, the Management Committee will notify the Priority Name Owner that he or she has the right to Lease his or her Unit subject to the terms, conditions and requirements that are hereinafter set forth. An Owner who is the Priority Name shall have sixty (60) days after receipt of said notice to Lease his or her Unit. In the event that the Priority Name Owner fails to Lease his or her Unit within the foregoing sixty (60) day period, such Owner will be replaced as the Priority Name on the List with the next Owner in line on the List. For purposes of this Section 3(f) the phrase "Lease his or her Unit" shall mean the date upon which tenant actually takes possession of the Unit.

g) Change in Ownership of Rental Unit. If a Unit is sold and at the time of the sale such Unit was properly Leased pursuant to the provisions of this Section 3, the Unit shall continue to be considered a Leased Unit under the provisions of this Section 3 unless the new Owner notifies the Association that the Unit will be Owner-Occupied. If such should occur, the new Owner may, in the future, fill out the "Owner-Occupant Application for Priority List Inclusion" which will then add such Owner to the List according to the terms of Section 3(c).

h) Ninety Day Interruption of Rental Status. If an Owner occupies a Unit for ninety (90) days or more which was previously Leased pursuant to the provisions of this Section 3, the Unit shall no longer be considered to be a Leased Unit.

i) Assignment. Owners shall not be allowed to assign their priority on the List to any other Owners. All notices provided for herein shall be deemed conclusively to have been given when mailed to the last known address of the Owner according to the records of the Association.

j) Miscellaneous.

i) The provisions of this Section 3 shall be applied pursuant to the uniform and objective standards outlined above. The race, color, creed, national origin or sex

of the Owners and renters shall not be considered.

ii) To the extent that any of the provisions of this Section 3 are in conflict with applicable federal or state statutes and regulations, the provisions of such statutes and regulations shall apply. Invalidation of any provision which conflicts with applicable federal and/or state statutes and regulations, shall not in any way affect any other provisions herein set forth. Such provisions shall remain in full force and effect.

iii) Department of Veterans Affairs Financing: To the extent that any provision set forth in this declaration and bylaws regarding leasing and a right of first refusal is inconsistent with the requirement(s) of guaranteed or direct loan programs of the United States Department of Veterans Affairs, as set forth in chapter 37 of title 38, United States Code, or part 36 of title 38, Code of Federal Regulations ("DVA Financing"), such provision shall not apply to any Unit that is: (i) encumbered by DVA Financing or; (ii) owned by the Department of Veterans Affairs.

4. Allocation of Profits, Losses and Voting Rights. Profits, losses and voting rights shall be distributed among the Owners equally. The percentage of ownership interest in the Common Areas and Facilities appurtenant to each Unit is equal. The ownership interest of each Unit for each phase of development is described in Exhibit B. The undivided interest of each Unit Owner in the Common Areas and Facilities shall have a permanent character and shall not be altered without the consent of two thirds (2/3) of the Unit Owners expressed in an amended declaration duly recorded.

5. Limited Common Areas. Limited Common Areas are also Common Areas. Limited Common Area may not be partitioned from the Unit to which it is appurtenant. The exclusive use of Limited Common Area is reserved to the Unit to which it is assigned on the Condominium Plat, as amended from time to time.

6. Conveyancing. Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a Unit shall describe the interest or estate involved substantially as follows:

All of Unit No. ___ in Building No. ___, The Village on 12th Condominiums, as the same is identified in the Condominium Plat recorded in Wasatch County, Utah as Entry No. ___ in Book ___ at Page ___ of the official records of the County Recorder of Wasatch County, Utah (as said Condominium Plat may have heretofore been amended or supplemented) and in the Declaration of Condominium for The Village on 12th Condominiums, recorded in Wasatch County, Utah as Entry No. ___ in Book- ___ at Page ___ of the official records of the County Recorder of Wasatch County, Utah (as said Declaration may have heretofore been supplemented), together with an undivided percentage of ownership interest in the common areas and facilities.

Regardless of whether or not the description employed in any such instrument is in the above-specified form, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit. Neither the membership in the Association, nor percentage of ownership interest in the Common Areas, nor the right of exclusive use of a Limited Common Area shall be separated from the Unit to which it appertains; and, even though not specifically mentioned in the instrument of transfer, such mandatory membership in the Association and such right of exclusive use shall automatically accompany the transfer of the Unit to which they relate.

7. Architectural and Design Guidelines. The Declarant has prepared Design Guidelines for the

Project, which have been approved by the City. The City shall assume no responsibility for enforcement of the Design Guidelines, but reserves the right to and may enforce any Design Guideline at anytime and in its sole discretion. The approved Design Guidelines shall apply to all construction activities within the project. The Declarant shall have sole and full authority to change, amend, and supplement the Design Guidelines as long as it owns any of the Property; provided however, the approved Design Guidelines may not be at anytime be changed, amended, or supplemented without the express written consent of the City. The Declarant or, after transition of the Project, the Association must stamp all proposed plans and specifications to construct or remodel a Building or Unit approved and in compliance with the Declaration and Design Guidelines before presenting such plans and specifications to the City for the issuance of a building permit.

8. Ownership and Use Restrictions. Each Owner, of whatever kind, shall be entitled to the exclusive ownership and possession of his Unit, to an undivided percentage of ownership interest in the Common Areas, and to membership in the Association as set forth herein, subject to the following use restrictions:

a) Nature and Restrictions on Ownership and Use in General. Each Owner shall have and enjoy the privileges of fee simple ownership of his Unit. There shall be no requirements concerning who may own a Unit, it being intended that they may and shall be owned as any other property rights by persons. The Common Areas shall only be used in a manner consistent with the residential nature of the Project.

b) Title to the Common Area. Each Unit Owner shall be entitled to an undivided percentage of undivided ownership interest in and to the Common Areas and Facilities, free and clear of all liens (other than current years taxes, if any) prior to the Declarant's first conveyance of a Unit.

c) Mandatory Association. Each purchaser of a Unit, by virtue of accepting a deed or other document of conveyance thereto, shall automatically become a member of the Association.

d) Member's Easements and Rights of Way. Every Member of the Association shall as an Owner have the right and non-exclusive easement to use and enjoy the Common Area. Such right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following restrictions:

(1) The right of the Association to limit the number of guests, and to adopt administrative rules and regulations from time to time governing the use and enjoyment of the Common Area;

(2) The right of the Association to suspend the voting rights and the privilege to use the recreational amenities by a member for: (a) any period during which his Common Area Assessment remains delinquent, and (b) a period not to exceed thirty (30) days after notice and hearing as may be set forth hereinafter for any infraction of the Association rules;

(3) Subject to the prior written consent of Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Department of Veterans Affairs (VA) (where

appropriate), the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for the purpose of providing utilities and similar or related purposes. During the Declarant's Period of Control, any such dedication or transfer shall be effective only if approved in writing by the Declarant; and

(4) The right of the Association to charge a reasonable admission or other user fee for the use of any recreational facility situated upon the Common Area.

e) Rules and Regulations. The Association, acting through its Management Committee, shall have the power and authority to adopt administrative and/or house rules and regulations and, in its sole discretion, to impose reasonable user fees for the amenities. Such rules, regulations and use restrictions shall be binding upon all Owners and Residents, their guests and invitees.

(1) *Parties, Bound.* All provisions of the Project Documents shall be binding upon all Owners and Residents, their families, guests and invitees.

(2) *Nuisance.* It shall be the responsibility of each Owner and Resident to prevent the creation or maintenance of a nuisance in, on or about the Project. The term "nuisance" includes but is not limited to the following:

a. The development of any unclean, unhealthy, unsightly condition on, in or about his Unit or the Common Areas;

b. Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community by other residents, their guests or invitees, including placing or storing anything other than patio furniture, in good condition, on balconies or patios.

c. Unreasonable amounts of noise or traffic in, on or about any Unit or the Common Area, especially after 10:00 p.m. and before 7:00 a.m. during the week and midnight and 8:00 a.m. during weekends; and

d. Drug houses and drug dealing; the unlawful sale, manufacture, service, storage, distribution, dispensing or acquisition occurs of any controlled substance; gambling; criminal activity; parties which occur frequently which bother, annoy or disturb other reasonable residents or interfere with their quiet and peaceful enjoyment of the premises; prostitution; or other violation of U.C.A., Section 78B-6-1107, as amended or supplemented.

(3) *Removing Garbage, Dust and Debris.* All rubbish, trash, refuse, waste, dust, debris and garbage shall be deposited in sealed plastic bags or other authorized containers, shall be regularly removed from the Unit, not being allowed to accumulate therein so as to create a sanitation, health or safety hazard, and shall be disposed of within dumpsters provided by the Association.

(4) *Subdivision of a Unit.* No Unit may be subdivided.

(5) *No Severance.* The elements of a Unit and other rights appurtenant to the ownership of a Unit, including interest in Common Areas and Facilities and Limited Common Areas and Facilities, if any, are inseparable, and each Owner agrees that he shall not, while this Declaration is in effect, make any conveyance of less than an entire Unit and such appurtenances. Any conveyance made in contravention of this Subsection, including under any conveyance, encumbrance, judicial sale or other transfer (whether voluntary or involuntary) shall be void.

(6) *No Hazardous Activities.* No activities shall be conducted on any Lot or Unit and no improvements shall be constructed on any Lot or Unit which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires shall be lighted or permitted on the Property except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace if such is permitted by City ordinances.

(7) *Temporary Structures.* No Owner or occupant shall place upon any part of the Project any temporary structures, including but not limited to dog runs, storage units, tents, trailers and sheds or their equivalent, without the prior written consent of the Committee; provided, however, that tents may be allowed for up to forty-eight (48) hours by unit owners in their Limited Common Areas or the Common Area immediately adjacent to their buildings.

(8) *Trees, Shrubs and Bushes; Maintenance of Proper Sight Distance at Intersections.* All property located at or near driveways, entrances, exits, walkways, paths and street intersections or corners shall be landscaped so as to remove any obstructions and to permit safe sight. No fence, wall, hedge, shrub, bush, tree or monument, real or artificial, shall be planted or placed by any Owner or occupant in, on or about the Common Areas without the prior written consent of the Committee. The Management Committee may alter or remove any objects planted or placed in violation of this subsection and shall not be guilty of a trespass.

(9) *Energy Conservation Equipment.* No solar energy collector panels, other energy conservation equipment or attendant hardware shall be constructed or installed on the Project without the prior written consent of the Committee.

(10) *Business Use.* No Business Use and Trade may be conducted in or from any Unit unless: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the residence; (b) the business activity conforms to all zoning requirements for the project; (c) the business activity does not involve persons coming onto the Project who do not reside in the Project or door-to-door solicitation of residents of the Project; and (d) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of other residents of the Project, as may be determined in the sole discretion of the Committee.

Notwithstanding the above, the leasing of a residence shall not be considered a trade or business within the meaning of this sub-section.

(11) *Storage and Parking of Vehicles.* The driving, parking, standing and storing of motor vehicles in, on or about the Project shall be subject to the following:

- a. The parking rules and regulations adopted by the Committee from time to time;
- b. The parking areas are not designed for recreational, commercial or oversized motor vehicles, and the Management Committee has the right to make rules and regulations restricting or prohibition their use. Unless otherwise determined by the Management Committee, all recreational, Commercial and Oversized Vehicles shall be parked outside the Project.
- c. No motor vehicle or trailer may be parked or stationed in such a manner so as to create potentially dangerous situation.
- d. Except for purposes of loading and unloading, no motor vehicle or trailer maybe parked or stationed in such a manner so as to create an obstacle or along any street or road, or in front of any garage, walkway, driveway, Building or Unit, or in an unauthorized Common Areas.
- e. Residents may only park their motor vehicles within their designated garages, driveways, covered parking spaces or uncovered parking spaces, or in other designated Common Areas.
- f. Residents may not park their motor vehicles in red zones, fire lanes, guest or visitor parking, or other unauthorized areas.
- g. Visitors or guests shall park their motor vehicles in Common Areas designated for Guest or visitor parking, or with permission, driveways.
- h. No Owners or Residents shall repair or restore any vehicle of any kind in, on or about any Unit or the Common Area, except for emergency repairs, and then only for a seventy-two (72) hour period to enable movement thereof to a proper repair facility.
- i. No garage may be altered in such a manner that the number of motor vehicles which may reasonably be parked therein after the alteration is less than as originally designed and constructed.
- j. No motor vehicle shall be parked in such a manner as to inhibit or block access to a Unit, garage, covered parking space, uncovered parking space, entrance, exit, or parking area, and all parking areas shall be used solely for the parking and storage of motor vehicles used for personal transportation.

(12) *Aerials, Antennas and Satellite Systems.* Antennas and satellite dishes shall be prohibited, except (a) antennas or satellite dishes designed to receive direct broadcast satellite service which are one meter or less in diameter or diagonal measurement; (b) antennas or satellite dishes designed to receive video programming services via multipoint distribution services which are one meter or less in diameter or diagonal measurement; or (c) antennas or satellite dishes

designed to receive television broadcast signals ("Permitted Devices") shall be permitted, provided that any such Permitted Device is: (1) located in the attic, crawl space, garage, or other interior spaces of the Unit or another approved structure on the property, so as not to be visible from outside the Unit or other structure; and (2) attached to or mounted in the Limited Common Area immediately adjacent to the Unit, such as a balcony, deck or patio in the rear of the building, and extending no higher than the eaves of that portion of the roof of the Unit directly in front of such antenna. The Management Committee may adopt rules establishing a preferred hierarchy of alternative locations and requiring screening of all permitted Devices, so long as such rules do not unreasonably increase the cost of installation, maintenance, or use of the Permitted Device in the authorized areas.

(13) *Window Treatments.* No window coverings shall be allowed on any Unit except for 2" wide white PVC blinds or Wood blinds. Sun shades are not allowed on the exterior of any building, unless the color, style, construction material and uniformity of appearance are approved by the Management Committee.

(14) *Windows.* All windows and window panes in the Project shall be harmonious, and comparable in size, design and quality so as not to detract from uniformity in appearance and quality of construction;

(15) *Pets.* No pets, animals, livestock or poultry of any kind shall be bred in, on or about the Project. Up to two (2) domestic pets per unit are allowed. All pets must be properly licensed and registered with the appropriate governmental agency and abide by all pet rules and regulations adopted by the Management Committee from time to time. Pets may not create a nuisance. The following acts of an animal may constitute a nuisance: (a) it causes damage to the property of anyone other than its owner; (b) it causes unreasonable fouling of the air by odors; (c) it causes unsanitary conditions; (d) it defecates on any common area and the feces are not immediately cleaned up by the responsible party; (e) it barks, whines or howls, or makes other disturbing noises in an excessive, continuous untimely fashion; or (f) it molests or harasses passersby by lunging at them or chasing passing vehicles. Pets may not be tied or tethered in the Common Area. The Management Committee may require a pet deposit or a pet registration fee.

(16) *Insurance.* Nothing shall be done or kept in, on or about any Unit or in the Common Areas or limited Common Areas which may result in, the cancellation of the insurance on the Property or an increase in the rate of the insurance on the Property, over what the Management Committee, but for such activity, would pay.

(17) *Laws.* Nothing shall be done or kept in, on or about any Unit or Common Areas, or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

(18) *Damage or Waste.* No damage to, or waste of, the Common Areas or Limited common Areas shall be committed by any Owner or Resident, their guests or invitees; and each Owner and Resident shall indemnify and hold the Management Committee and the other Owners in the Project harmless against all loss resulting from any such damage or waste caused by that owner or Resident,

their guests or invitees; provided, however, that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee or any other Owner.

(19) *Structural Alterations.* Except in the case of an emergency repair, no structural alteration, plumbing, electrical or similar work within the Common Areas or Limited Common Areas shall be done or permitted by any Owner without the prior written consent of the Management Committee.

f) In no event shall any Owner own more than 10% of the Units, either directly or indirectly. An Owner that is not a natural person may not own more than 10% of the Units, either directly or indirectly, nor shall any group of persons or entities that are to be controlled by substantially the same persons or entities who controlled it own more than 10% of the Units.

9. **Leases.** By virtue of taking possession of a Unit, each lessee of a Lease agrees to be subject to and abide by these restrictive covenants and agrees that the Lease shall be governed, in addition to any terms set forth in the Lease agreement, by the terms of this Declaration. No Owner shall be permitted to Lease their Unit for transient, hotel, seasonal, rental pool or corporate/executive use purposes, which by way of illustration and not limitation includes any rental with an initial term of less than one (1) year. Daily, weekly, or other short-term rentals are prohibited. No Owner may lease individual rooms to separate persons or less than his entire Unit. Within ten (10) days after delivery of written notice of the creation of a nuisance or material violation of these restrictive covenants, the Owner shall proceed promptly to abate the nuisance or cure the default and notify the Management Committee in writing of their actions. Other than as stated in this Section 9, there is no restriction on the right of any Owner to lease or otherwise grant occupancy rights to a Unit.

10. **Easements—Support, Maintenance and Repair.** There is hereby RESERVED to the City and the Association, and the City and the Association is hereby GRANTED a nonexclusive easement over, across, through, above and under the Units and the Common Area for the operation, maintenance, and repair of the Common Ares and Facilities, and regulation of the Design Guidelines. The City shall assume no responsibility for enforcement of the Design Guidelines but reserves the right to and may enforce any Design Guideline at anytime and in its sole discretion.

11. **Liability of Owners, and Residents for Damages and Waste.** Each Owner or Resident shall be liable to the Association, or other Owners or Residents, for damages to person or property and waste in the Community caused by their negligence.

12. **Encroachments.** If any portion of Common Area, Limited Common Area, or a Unit encroaches or comes to encroach upon other Common Area, Limited Common Area, or a Unit as a result of construction, reconstruction, repair, shifting, settling, or movement, an easement for such encroachment is created hereby and shall exist so long as such encroachment exists.

13. **Management Committee.** The Association shall be managed by a Management Committee.

14. **Officers and Agents.** The Management Committee shall elect and/or appoint officers and agents of the Association, including without limitation a President, Secretary, and Treasurer.

15. **Management Committee Meetings.** The Management Committee shall meet at regular intervals and at least monthly.

16. **Status and General Authority of Management Committee.** Any instrument executed by

the Management Committee that recites facts which, if true, would establish the Committee's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The Association shall, in connection with its exercise of any of the powers delineated in subparagraphs (a) through (m) below, constitute a legal entity capable of dealing in its Committee name. The Management Committee shall have, and is hereby granted, the following authority and powers:

- a) Access. The right, power and authority to have access to each Unit: (1) from time to time during reasonable hours and after reasonable notice to the occupant of the Unit being entered, as may be necessary for the maintenance, repair or replacement of any of the Common Areas and Facilities; or (2) for making emergency repairs necessary to prevent damage to the Common Areas and Facilities or to another Unit or Units, provided that a reasonable effort is made to provide notice to the occupant of the Unit prior to entry.
- b) Grant Easements. The authority, without the vote or consent of the Owners, Mortgagees, insurers or guarantors of any Mortgage, or of any other person, to grant or create, on such terms as it deems advisable, reasonable permits, licenses, and non-exclusive easements over, under, across, and through the Common Areas for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance, operation or regulation of the Project.
- c) Execute Documents. The authority to execute and record, on behalf of all Owners, any amendment to the Declaration or Condominium Plat which has been approved by the vote or consent necessary to authorize such amendment.
- d) Standing. The power to sue and be sued.
- e) Enter Into Contracts. The authority to enter into contracts which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.
- f) Transfer Interests in Real Property. The power and authority to exchange, convey or transfer any interest in real property, so long as it has been approved by at least seventy five percent (75%) of the Association Members.
- g) Purchase Property. The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as it has been approved by at least seventy five (75%) percent of the Association Members.
- h) Add Property. The power and authority to add any real property, or interest therein, obtained pursuant to subparagraph (g) above to the Project, so long as it has been approved by at least seventy five percent (75%) of the Association Members.
- i) Borrow Money and Pledge Collateral. The power and authority to borrow money and pledge collateral so long as it has been approved by at least seventy five percent (75%) of the Association Members.
- j) Promulgate Rules. The authority to promulgate such reasonable administrative guidelines, rules, regulations, policies and procedures as may be necessary or desirable to aid the Committee in carrying out any of its functions or to insure that the Project is

maintained and used in a manner consistent with the Act and this Declaration.

k) Meetings. The authority to establish procedures for the conduct of its meetings, including but not limited to the power to decide what portion of the meeting shall be open or closed to Owners or Residents not on the Committee, to retire to executive session, to regulate record keeping, and to allow, control or prohibit the electronic reproduction (video or audio) of Committee meetings.

l) Delegation of Authority. The power and authority to delegate its responsibilities over the management and control of the Common Areas and regulation of the Project to a professional manager, reserving the right, power and authority, however, to control and over see the administration thereof.

m) All other Acts. The power and authority to perform any and all other acts, and to enter into any other transactions which may be reasonably, necessary for the Management Committee to perform its functions on behalf of the Owners.

Anything to the contrary notwithstanding, while Declarant controls the Association and before the end of the Period of Declarant's Control, any amendments to the Declaration or mergers must (where appropriate) be approved in writing and in advance by Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Department of Veterans Affairs (VA).

17. Delegation of Management Responsibilities: The Management Committee may delegate some of its management responsibilities to either a professional management company, an experienced on-site manager, an independent contractor, through service contracts, or any combination thereof. The Manager may be an employee or an independent contractor. The termination provision of any such contract must not require a termination penalty or any advance notice of any more than sixty (60) days, and no such contract or agreement shall be for a term greater than one (1) year. The Management Committee may also employ general laborers, grounds crew, maintenance, bookkeeping, administrative and clerical personnel as necessary to perform its management responsibilities. Provided, however, any management contract may be terminated for cause on thirty (30) days notice in accordance with Title 38, Code of Federal Regulations, Section 36.4360a, as it may be amended from time to time.

18. Owners Meeting. The Association shall meet at least annually.

19. Lists of Owners, Renters, Eligible Mortgagees, Insurers and Guarantors. The Management Committee shall maintain up to date lists of the name, address and phone number of all Owners, Renters, Eligible Mortgagees, Insurers and Guarantors. The Owners, Mortgagees, Insurers and Guarantors have a duty to provide this information to the Committee.

20. Capital Improvements. All expenses for capital improvements shall be governed by and subject to the following conditions, limitations and restrictions:

a) Committee Discretion/Expenditure Limit. Any capital improvement to the Project which costs ten percent (10%) or less of the Total Annual Budget, and does not alter the nature of the Project, may be authorized by the Management Committee alone (the "Capital Improvement Ceiling").

b) Owner Approval/Expenditure Limit. Any capital improvement, the cost of which will exceed the Capital Improvement Ceiling, must, prior to the commencement of construction, be authorized by at least a majority of the percentage of undivided ownership interest in the Common Area.

c) Owner Approval/Changing the Nature of the Project. Any capital improvement which would materially alter the nature of the Project (e.g., changing the roofing materials, the construction of the external Building surfaces, color scheme, etc.) must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least sixty-seven (67%) percent of the undivided ownership interest in the Common Areas.

21. Operation, Maintenance and Alterations. Each Unit, the Limited Common Area, Common Area shall be maintained, repaired, and replaced in accordance with the following covenants, conditions and restrictions:

a) Clean, Safe, Sanitary and Attractive Condition. The Units, Limited Common Area, and Common Area shall be maintained in a usable, clean, functional, safe, sanitary, attractive and good condition, consistent with Community Standards.

b) Landscaping. All landscaping in the Project shall be maintained and cared for in a manner consistent with the standards of design and quality originally established by Declarant and in accordance with Community Standards. Specific written guidelines, standards, controls, and restrictions on landscaping may be adopted or amended by the Committee from time to time. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, or cover of shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed and trees, shrubs and bushes shall be neatly trimmed. In a word, all landscaping shall be tasteful, so as not to affect adversely the value or use of any other Unit, or to detract from the uniform design and appearance of the Project.

c) Area of Common Responsibility. Unless otherwise expressly noted, the Association shall maintain, repair and replace all of the Common Area and Facilities within or serving the Project, including by way of illustration but not limitation the swimming pool, clubhouse, tot lot, open space, common landscaping, entry and monument. The Association shall also repair and replace all Limited Common Area improvements as may be required from time to time (the "Area of Common Responsibility")

d) Area of Personal Responsibility. Each Owner shall maintain, repair and replace, his Unit, including without limitation, all individual services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, fixtures, windows and window systems, glass, doors and door systems, garage doors and garage door systems, patios, balconies and decks, subject to the approval of the Management Committee as to construction materials, quality of construction and installation. Each Unit Owner shall also be responsible for maintaining and keeping his Unit and Limited Common Area clean, attractive, tidy, uncluttered, safe, sanitary and functional condition, so as not to detract from the health, safety or uniform appearance or design of the Project, and in a manner consistent with Community Standards, and to repair the plumbing fixtures and lateral pipes servicing only his Unit, including any damage caused thereby and not covered by insurance.

e) Default Provisions. If (except in the case of an emergency) after written notice and a

hearing, it is determined that any responsible party has failed or refused to discharge properly his obligation with regard to the maintenance, repair, or replacement of the real property and improvements described herein, or that the need for maintenance, repair, or replacement thereof is caused through the willful or negligent act of any person, then the association or Management Committee may, but is not obligated to, provide such maintenance, repair, or replacement at the defaulting of responsible party's sole cost and expense (the "Default Maintenance Cost"). The Default Maintenance Cost is the debt of such defaulting or responsible party at the time the expense is paid and shall be collectible as such. In addition, it may be considered a "Fine" against a Unit Owner. A Fine assessed hereunder which remains unpaid after the time for appeal has expired becomes a lien against the Unit Owner's interest in the property in accordance with the same standards as a lien for assessments and cost of collection under U.C.A., Section 57-8-44.

f) Alterations to the Common Area. The Declarant may make changes to the design and construction of the improvements located in or on the Common Areas without additional approval required including without limitation the consent of the Management Committee or Members of the Association; provided, however, no Owner or Resident may make any structural alterations to the Common Area (including the Limited Common Area), without the express prior written consent of the Management Committee.

g) Certain Work Prohibited. No Unit Owner shall do any work or make any alterations or changes which would jeopardize the soundness or safety of the Property, reduce its value or impair any easement or hereditament) without in every such case the unanimous written consent of all the other Unit Owners being first had and obtained.

22. Common Expenses. Each Owner shall pay his Assessments subject to and in accordance with the procedures set forth below.

a) Declarant. Anything to the contrary notwithstanding, the Declarant shall not be obligated to pay Assessments on any Units owned by it until such time as: (1) the physical structures are substantially completed; (2) certificates of permanent occupancy are issued and the Units are sold or rented; or (3) Declarant elects in writing to pay the Assessments, whichever first occurs.

b) Purpose of Common Area Expenses. The Assessments provided for herein shall be used for the general purpose of operating the Project, promoting the recreation, health, safety, welfare, common benefit and enjoyment of the owners and residents, including the maintenance of any real and personal property owned by the Association, and regulating the Community, all as may be more specifically authorized from time to time by the Committee.

c) Creation of Assessments. Since the Assessments shall pay for the common expenses of the Association, as shall be determined by the Management Committee from time to time, each Owner, by acceptance of a deed to a Unit, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association in a timely manner all Assessments assessed by the Committee.

d) Budget. At least thirty (30) days prior to the Annual Homeowners Meeting, the Management Committee shall prepare and deliver to the Owners a proposed Budget which:

(1) *Itemization.* Shall set forth an itemization of the anticipated Common Expenses for the twelve (12) month calendar year, commencing with the following January 1.

(2) *Basis.* Shall be based upon advance estimates of cash requirements by the Management Committee to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas and regulation of the Association, which estimate shall include but is not limited to expenses of management, irrigation water, grounds maintenance, taxes and special assessments, premiums for all insurance which the Committee is required or permitted to maintain, common lighting and heating, water charges, trash collection, sewer service charges, carpeting, painting, repairs and maintenance of the Common Areas and replacement of those elements of the Common Areas that must be replaced on a periodic basis, wages for Management Committee employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus or sinking fund, capital improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration.

e) Apportionment. The common profits, losses and voting rights of the Project shall be distributed among and the common expenses shall be charged equally to the Unit Owners.

f) Approval of Budget and Assessments. The proposed Budget and the Assessments shall become effective unless disapproved at the Annual Meeting by a vote of at least a majority of the percentage of ownership interest in the Common Areas. Notwithstanding the foregoing, however, if the membership disapproves the proposed budget and Assessments or the Management Committee fails for any reason to establish the Budget and Assessments for the succeeding year, then and until such time as a new budget and new Common Area Assessment schedule shall have been established, the Budget and the Assessments in effect for the then current year shall continue for the succeeding year.

g) Payment of Assessments. The Management Committee has the sole authority and discretion to determine how and when the annual Assessments are paid.

h) Personal Obligation of Owner. Owners are liable to pay all Assessments assessed and Additional Charges; provided, however, no first mortgagee or beneficiary under a first deed of trust (but not the Seller under a uniform real estate contract, land sales contract, or other similar instrument), who obtains title to a Unit pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid Assessments which accrued prior to the acquisition of title. For purposes of this Section, the term "Owner" shall mean and refer jointly and severally to: (1) the Owner of both the legal and equitable interest in any Unit; (2) the owner of record in the offices of the County Recorder of Wasatch County, Utah; and (3) both the Buyer and Seller under any executory sales contract or other similar instrument.

i) Equitable Changes. If the aggregate of all monthly payments on all of the Units is too large or too small as a result of unanticipated income or expenses, the Committee may from time to time effect an equitable change in the amount of said payments, but, without the prior approval of a majority of the percentage of ownership interest in the Common Area, not greater than fifteen (15%) percent of the Common Area Assessment in any

calendar year. Owners shall be given at least thirty (30) days written notice of any changes.

j) Dates and Manner of Payments. The dates and manner of payment shall be determined by the Committee.

k) Reserve Account. The Committee shall establish and maintain a reserve account or accounts to pay for unexpected operating expenses and capital improvements.

l) Analysis Report. The Management Committee shall prepare and update at least annually a written Capital Asset Replacement and Reserve Account Analysis, and make the report available to the Owners at the annual meeting of the Association.

m) Acceleration. Assessments shall be paid in the manner and on dates fixed by the Committee who may, at its option and in its sole discretion, elect to accelerate the entire annual Common Area Assessment for delinquent Owners. If, however, the Common Area Assessment is accelerated and an Owner subsequently files bankruptcy or the Committee otherwise decides acceleration is not in its best interest, the Committee, at its option and in its sole discretion, may elect to decelerate the obligation.

n) Statement of Assessments Due. Upon written request, the Committee shall furnish to any Owner a statement of Assessments due, if any, on his Unit. Failure to provide the certificate within ten (10) days after a written request is received by the Secretary shall be deemed conclusive evidence that all Assessments are paid current. The Association may require the advance payment of a processing charge not to exceed \$15.00 for the issuance of such certificate.

o) Superiority of Assessments. All Assessments and liens created to secure the obligation to pay Assessments are superior to any homestead exemptions to which an Owner may be entitled which insofar as it adversely affects the Association's lien for unpaid Assessments each Owner by accepting a deed or other document of conveyance to a Unit hereby waives.

p) Suspension of Right to Use Amenities for Non-Payment. At the discretion of the Management Committee, the right to use any amenities in the Project may be suspended for up to ninety (90) days if the Owner is in arrears on his obligation to pay Assessments and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

q) Suspension of Right to Vote for Non-Payment. At the discretion of the Committee, the right of an Owner to vote on issues concerning the Association may be suspended for up to ninety (90) days if the Owner is delinquent in the payment of his Assessments, and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

r) Transfer Assessment. In addition, each Unit Owner (other than the Declarant), shall be required to prepay at the time of any transfer of his or her Unit, whether as a first-time or subsequent Unit Owner, \$295 as a transfer assessment, which shall be paid in addition to any other proration or assessment which may be due for the month in which such transfer takes place. Such transfer assessment shall become part of the Association's general fund to be utilized at the sole discretion of the Committee.

23. **Special Assessments.** In addition to the other Assessments authorized herein, the Association may levy special assessments in any year, subject to the following:

- a) Committee Based Assessment. So long as the special assessment does not exceed the sum of Five hundred and 00/100th Dollars (\$500.00) per Unit in any one fiscal year (the "Special Assessment Limit"), the Committee may impose the special assessment without any additional approval.
- b) Association Approval. Any special assessment which would exceed the Special Assessment limit shall be effective only if approved by a majority of the members of the Association. The Committee in its discretion may allow any special assessment to be paid in installments.

24. **Benefit Assessments.** If an Owner has the choice to accept or reject the benefit, then the Management Committee shall have the power and authority to assess an Owner in a particular area as follows:

- a) Benefit Only To Specific Unit. If the expense benefits less than all of the Units, then those Units benefitted may be specifically assessed, and the specific assessment shall be equitably apportioned among those Units according to the benefit received.
- b) Unequal or Disproportionate Benefit. If the expense benefits all Units but does not provide an equal benefit to all Units, then all Units shall be specifically assessed, but the specific assessment shall be equitably apportioned among all Units according to the benefit received.

Failure of the Committee to exercise its authority under this Section shall not be grounds for any action against the Association or the Committee and shall not constitute a waiver of the Committee's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Committee has not previously exercised its authority under this: Section.

25. **Individual Assessments.** Individual Assessments shall be levied by the Committee against a Unit and its Owner to reimburse the Association for: (a) administrative costs and expenses incurred by the Committee in enforcing the Project Documents; (b) costs associated with the maintenance, repair or replacement of Common Area for which the Unit Owner is responsible; (c) any other fine, charge, fee, due, expense, or cost designated as an Individual Assessment in the Project Documents or by the Management Committee; and (d) attorneys' fees, interest, and other charges relating thereto as provided in this Declaration.

26. **Collection of Assessments.** The Owners must pay their Assessments in a timely manner. Payments are due in advance on the first of the month. Payments are late if received after the 10th day of the month in which they were due.

- a) Delinquent Assessments. Any Assessment not paid when due shall be deemed delinquent and a lien securing the obligation shall automatically attach to the Unit, regardless of whether a written notice is recorded.
- b) Late Fees and Accruing Interest. A late fee of twenty-five dollars (\$25.00) or five percent (5%) of the delinquent amount, whichever is greater, shall be assessed on all tardy

payments. Default interest at the rate of one percent (1.0%) per month or twelve percent (12%) per annum shall accrue on all delinquent accounts.

c) Lien. If any Unit Owner fails or refuses to make any payment of any Assessment or his portion of the Common Expenses when due, that amount shall constitute a lien on the interest of the Owner in the Property, and upon the recording of notice of lien by the Manager, Management Committee or their designee it is a lien upon the Owner's interest in the Property prior to all other liens and encumbrances, recorded or unrecorded, except: (1) tax and special assessment liens on the Unit in favor of any assessing unit or special improvement district; and (2) encumbrances on the interest of the Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

d) Foreclosure of Lien and/or Collection Action. If the Assessments remain unpaid, the Association may, as determined by the Committee, institute suit to collect the amounts due and/or to foreclose the lien.

e) Personal Obligation. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him or her personally for the collection of the charges as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed.

f) No Waiver. No Owner may waive or otherwise exempt himself or herself from liability for the Assessments provided for herein, including but not limited to the non-use of Common Areas or the abandonment of his Unit.

g) Duty to Pay Independent. No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Committee to take some action or perform some function required to be taken or performed by the Association or committee under this Declaration or the By Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of each Owner.

h) Application of Payments. All payments shall be applied as follows: Additional Charges, Delinquent Assessments and Current Assessments.

i) Foreclosure of Lien as Mortgage or Trust Deed. The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's interest therein by the Committee. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney's fees, and a reasonable rental for the Unit during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Committee may bid for the Unit at foreclosure or other sale and hold, lease, mortgage, or convey the same.

j) Appointment of Trustee. If the Committee elects to foreclose the lien in the same

manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Unit hereby irrevocably appoints the attorney of the Association, provided s/he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In addition, Owner hereby transfers in trust to said Trustee all of his right, title and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein. Declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8-45 to the attorney of the Association, with power of sale, the unit and all improvements to the unit for the purpose of securing payment of assessments under the terms of the declaration.

k) Attorney in Fact. Each Owner by accepting a deed to a Unit hereby irrevocably appoints the association as his attorney in fact to collect rent from any person renting his Unit, if the Unit is rented and Owner is delinquent in his assessments. Rent due shall be paid directly to the Association, upon written demand, until such time as the Owner's Assessments are current; and the Owner shall credit the Renter, against rent due, for the amount of money paid to the Association.

27. Liability of Management Committee. The Association shall indemnify every officer and member of the Committee against any and all expenses, including but not limited to attorney fees reasonably incurred by or imposed upon any officer or member of the Committee in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Committee) to which he or she may be a party by reason of being or having been an officer or member of the Committee. The officers and members of the Committee shall not be liable for any mistake of judgment, negligent at otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and members of the Committee shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or members of the Committee may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and member of the Committee free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall, be exclusive of any other rights to which any officer or member of the Committee, or former officer or member of the Committee, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officer's and director's insurance coverage to fund this obligation, if such insurance is reasonably available.

28. Insurance. The Manager, Management Committee or Association will obtain insurance against loss or damage by fire and other hazards for: (a) all Common Elements and Facilities; and (b) all buildings that contain more than one Unit, including any improvement which is a permanent part of a Building. The insurance coverage shall be written in the property in the name of the Manager, Management Committee or Association, as trustee for each of the Unit Owners in the percentages established in this Declaration. The insurance premiums shall be a Common expense. This section is without prejudice to the right of each Unit Owner to insure his own Unit for his benefit. The Manager, Management Committee or Association shall satisfy at least the following minimum requirements:

a) Property Insurance. Blanket property insurance using the standard "Special" or "All Risk" building form. Loss adjustment shall be based upon replacement cost. For purposes of this sub-section, the term "casualty insurance" shall not mean or refer to "earthquake" or other special risks not included in the standard 'condominium' casualty policy. This additional coverage may be added by the Committee as it deems necessary in its best judgment and in its sole discretion.

b) Flood Insurance. If any parts of the Project's improvements are in a Special Flood Hazard Area which is designated as A, AE, AH, AO, AI-30, A-99, V, VE, or VI-30 on a Flood Insurance Rate Map (FIRM) the Association shall obtain a "master" or "blanket" policy of flood insurance and provide for the premiums to be paid as a common expense. The policy should cover any common element buildings and any other common property. The Unit Owner may also be required to purchase an individual policy. The amount of flood insurance should be at least equal to the lesser of 100% of the insurable value if the facilities or the maximum coverage available under the appropriate National Flood Insurance Administration program.

c) Liability Insurance. A public liability policy covering the Common Area, the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. The public liability policy shall have at least a One Million (\$1,000,000) Dollar single person limit as respects bodily injury and property damage, a Two Million (\$2,000,000) Dollar limit per occurrence if reasonably available, and a One Million (\$1,000,000) Dollar Minimum property damage limit. If possible, the policy should be written on the comprehensive form and shall include non-owned and hired automobile liability protection.

d) Directors and Officers Insurance. A director's and officer's liability or errors and omissions policy, if reasonably available, with at least One Million (\$1,000,000) Dollars in coverage.

e) Fidelity Bond. A separate fidelity bond in a reasonable amount to be determined by the management Committee to cover all non-compensated officers as well as all employees for theft of Association funds, subject to the following:

(1) *Agents*. Where the Committee or the Association has delegated some or all of the responsibility for the handling of funds to a management agent, such bonds are required for the management agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Committee or the Association.

(2) *Amount of Coverage*. The total amount of fidelity bond coverage required shall be based upon the Committee's best business judgment but shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Committee, the Association, or the management agent as the case may be, at any given time during the term of each bond. Nevertheless, in no event may the amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Lots, plus reserve funds.

(3) *Quality of Coverage*. The bonds required shall meet the following additional requirements: (a) they shall name the Committee, the Owners Association, and the Property Manager as obligee; (b) if the contract or bond excludes coverage for damages caused by persons serving without compensation, and may use that exclusion as a defense or reason not to pay a claim, the insurance company shall, if possible, be required to waive that exclusion or defense; (c) the premiums on all bonds required herein for the Committee and the Association (except for premiums on fidelity bonds maintained by a management agent for its office, employees and agents) shall be paid by the Committee or the Association as part of the Common Expenses; and (d) the bonds shall provide that they may not be

canceled or substantially modified, including cancellation for nonpayment of premium, without at least ten days' prior written notice to the Committee and the Association, to any Insurance Trustee, and to each service of loans on behalf of any Mortgagee, and FNMA.

f) Earthquake Insurance. shall not be required unless requested by at least Seventy five percent (75%) of the Members of the Association.

g) Miscellaneous Items. The following provisions shall apply to all insurance coverage:

(1) *Quality of Carrier*. A "B" or better general policyholder's rating or a "B" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance reports – International Edition, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "BBB" qualified solvency ratio or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating Service --if the carrier is issuing a master policy or an insurance policy for the common elements in the Project.

(2) *The Insured*. The name of the insured under each policy required to be maintained hereby shall be set forth therein substantially as follows: "Association of Unit Owners for The Village on 12th Condominiums, for the use and benefit of the individual Owners."

(3) *Designated Representative*. The Association may designate an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Owners.

(4) *Beneficiary*. In any policy covering the entire Project, each owner and his Mortgagee, shall be beneficiaries of the policy in an amount equal to the Owner's percentage of undivided Ownership interest in the Common Areas and Facilities.

(5) *Certificate of Insurance*. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

(6) *Mortgage Provisions*. Each policy shall contain a standard mortgage clause or its equivalent and shall provide that the policy may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association and to each Mortgagee.

(7) *Miscellaneous Provisions*. Each insurance policy shall contain at least the following additional miscellaneous items: (a) A waiver of the right of a subrogation against Owners individually; and (b) A provision that the insurance is not prejudiced by any act or neglect or any individual Owner.

(8) *Prompt Repair*. Each Owner further covenants and agrees that in the event of any partial loss, damage or destruction of his Unit, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent

with the original construction.

(9) *Disbursement Proceeds*. Proceeds of insurance policies shall be disbursed to repair promptly and reasonably the damages. Any proceeds remaining thereafter shall be placed in the Capital Improvement Reserve Account and retained by and for the benefit of the Association. This is a covenant for the benefit of the Association and any Mortgagee of a Unit, and may be enforced by them.

(10) *Special Endorsements*. Each policy shall also contain or provide those endorsements commonly purchased by other Associations in similarly situated first class subdivisions in the county, including but not limited to a guaranteed replacement cost endorsement under which the insurer agrees to replace the insurable property regardless of the cost and, or a Replacement Cost Endorsement under which the insurer agrees to pay up to 100% of the property's insurable replacement cost, but no more, and, if the policy includes a coinsurance clause, an Agreed Amount Endorsement which waives the requirement for coinsurance; an Inflation Guard Endorsement when it can be obtained, a Building Ordinance or Law Endorsement, if the enforcement of any building zoning or land-use law would result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs, and increased costs of reconstruction; Steam Boiler and Machinery Coverage Endorsement if the Project has any central heating or cooling.

(11) *Restrictions on Policies*. No insurance policy shall be maintained where:

a. Individual Assessments Prohibited. Under the term of the carrier's charter, By-Laws, or policy, contributions may be required from, or assessments may be made against, an Owner, a borrower, a Mortgagee, the Management Committee, the Association, FNMA, or the designee of FNMA.

b. Payments Contingent. By the terms of the Declaration, By-Laws, or policy, payments are contingent upon action by the carrier's board of directors, policyholder, or member; or

c. Mortgagee Limitation Provisions. The policy includes any limited clauses (other than insurance conditions) which could prevent the party entitled (including, without limitation, the Committee, the Association, an Owner, FNMA, or the borrowers) from collecting insurance proceeds.

(12) *Intent*. The foregoing provisions shall not be construed to limit the power or authority of the Association, Committee or Owners to obtain and maintain insurance coverage, in amounts and in such forms as the Management Committee or Association may deem appropriate from time to time.

(13) *Deductible*. The deductible on a claim made against the Association's Property Insurance Policy shall be paid for by the party who would be liable for the loss, damage, claim, or repair in the absence of insurance, and in the event of multiple responsible parties, the loss shall be allocated in relation to the amount each party's responsibility bears to the total. If a loss is caused by an act of God or

nature or by an element, risk or peril beyond the control of the Unit Owner, then the Association shall be responsible for the deductible.

h) Adjusting Claims. The Management Committee has the authority to adjust claims and, if the claim may be filed with the Unit Owner's or renter's insurance carrier, may require from the prospective claimant's insurance company a formal notice of rejection and an unconditional denial of the claim or its equivalent before submitting the claim to the Association's insurance company, particularly if (1) it risks cancellation of the Association's insurance, or (2) the problem occurred in the Unit, or (3) was caused by the claimant, or (4) the claim is legally or primarily the responsibility of the claimant, and (5) there is a substantial likelihood that the claim will be covered by the Owner's or renter's insurance company. The Management Committee may also elect to self-insure any claim and in such an instance the person legally responsible for the loss or maintenance shall pay the deductible.

29. Destruction, Condemnation and Obsolescence. The following provisions shall apply with respect to the destruction, condemnation, or obsolescence of the Project.

a) Definitions. Each of the following terms shall have the meaning indicated:

(1) "*Substantial Destruction*" shall exist whenever, as a result of any damage or destruction to the Project or any part thereof, the excess of the estimate cost of restoration over the funds available is Twenty five percent (25%) percent or more of the estimated restored value of the Project.

(2) "*Partial Destruction*" shall mean any other damage or destruction to the Project or any part thereof.

(3) "*Substantial Condemnation*" shall exist whenever a complete taking of the Project or a taking of part of the Project has occurred under eminent domain or by grant or conveyance in lieu of condemnation, and the excess of the estimated cost of restoration over the funds available is Twenty-five (25%) percent or more of the estimated restored value of the Project.

(4) "*Partial Condemnation*" Shall mean any other such taking by eminent domain or grant or conveyance in lieu thereof.

(5) "*Substantial Obsolescence*" shall exist whenever the Project or any part thereof has reached such a state of obsolescence or disrepair that the excess of the estimated cost of restoration over the funds available is Twenty five percent (25%) percent or more of the estimated restored value of the Project.

(6) "*Partial Obsolescence*" shall mean any state of obsolescence or disrepair which does not constitute Substantial Obsolescence.

(7) "*Restored Value*" shall mean the fair market value of the Project after Restoration as determined by an MAI or other qualified appraisal.

(8) "*Estimated Cost of Restoration*" shall mean the estimated costs of restoring the Project to its former condition.

(9) "*Available Funds*" shall mean any proceeds of insurance; condemnation awards, and any uncommitted funds of the Management Committee or Association Available Funds shall not include that portion of insurance proceeds legally required to be paid to any party other than the Association, including a mortgagee, or that portion or any condemnation award or payment in lieu of condemnation payable to the Owner or Mortgagee for the condemnation or taking of the Unit in which they are interested.

b) Determination by Committee. Upon the occurrence of any damage or destruction to the Project or any part thereof, or upon a complete or partial taking of the Project under eminent domain or by grantor conveyance in lieu thereof; the Committee shall make a Determination as to whether the excess of Estimated Costs of Restoration over Available Funds is twenty-five percent (25%) or more of the estimated Restored Value of the Project. In addition, the Committee shall, from time to time, review the condition of the Project to determine whether there is Substantial Obsolescence. In making, such determinations the Committee may retain and rely upon one or more qualified appraisers or other professionals.

c) Restoration of the Project. Restoration of the Project shall be undertaken by the Committee promptly without a vote of the Owners in the event of Partial Destruction, Partial Condemnation, or Partial Obsolescence and shall also be undertaken in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence unless the failure to make Restoration is consented to by Owners collectively holding at least sixty-seven percent of the Project's undivided Ownership interest and is further consented to by Eligible Mortgagees holding Mortgages on Units which have appurtenant at least fifty-one (51 %) percent of the undivided ownership interest in the Common Areas and Facilities which is then subject to Mortgages held by Eligible Mortgagees.

d) Notices of Destruction or Obsolescence. Within thirty (30) days after the Committee has determined Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence exists, it shall send to each Owner and Eligible Mortgagee a written description of the destruction, condemnation, or state of obsolescence involved, shall take appropriate steps to ascertain the preferences of the Eligible Mortgagees concerning Restoration, and shall, with or, without a meeting of the Owners (but in any event in accordance with the applicable provisions of this Declaration), take appropriate steps to determine the, preferences of the Owners regarding Restoration.

e) Excess Insurance. In the event insurance proceeds, condemnation awards, or payments in lieu of condemnation actually received by the Committee or Association exceed the cost of Restoration when Restoration is undertaken, the excess shall be paid and distributed to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Unit is the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

f) Inadequate Insurance. If the cost of Restoration exceeds Available Funds, the Management Committee may elect to make a special assessment in accordance with Article III, Section 21 above to pay for the deficiency.

g) Reallocation in Event of Partial Restoration. In the event that all or any portion of one or more Units will not be the subject of Restoration (even though the Project will continue as a condominium project) or is taken in a condemnation proceeding or pursuant to any

agreement in lieu thereof, the undivided Ownership interest in the Common Areas and Facilities shall be immediately reallocated to the remaining Units.

h) Sale of Project. Unless Restoration is accomplished as set forth above, the Project shall be sold in the event of Substantial Destruction, Substantial Condemnation, or Substantial Obsolescence. In the event of such sale, Condominium Ownership under this Declaration and the Condominium Plat shall terminate and the proceeds of sale and any Available Funds shall be distributed by the Committee to the Owners in proportion to their respective undivided interests in the Common Areas. Payment to any Owner whose Unit is then the subject of a Mortgage shall be made jointly to such Owner and the interested Mortgagee.

i) Authority of Committee to Represent Owners in Condemnation or to Restore or Sell. The Committee, as attorney-in-fact for each Owner, shall represent all of the Owners and the Association in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the Common Areas and Facilities.

j) Settlement Proceeds. The award in any condemnation proceeding and the proceeds of any settlement related thereto shall be payable to the Association for the use and benefit of the Owners and their mortgagees as their interests may appear.

k) Restoration Power. The Committee, as attorney-in-fact for each Owner, shall have and is hereby granted full power and authority to restore or to sell the Project and each Unit therein whenever Restoration or sale, as the case may be, is undertaken as hereinabove provided.

l) Right of Entry. Such authority shall include the right and power to enter the premises as reasonably necessary with reasonable advance notice, as well as the right to enter into any contracts, deeds or other instruments which may be necessary or appropriate for Restoration or sale, as the case may be.

m) Termination of Legal Status. Any action to terminate the legal status of the Project after Substantial Destruction or Condemnation occurs shall be agreed to by Unit Owners who represent at least sixty-seven (67%) percent of the total allocated votes in the Association and by Eligible Mortgage holders who represent at least fifty-one (51%) percent of the votes of the Units that are subject to mortgages held by eligible holders.

The termination of the legal status of the Project for reasons other than Substantial Destruction or Condemnation of the property shall be agreed to by Eligible Mortgage holders that represent at least sixty-seven (67%) percent of the votes of the mortgaged Units. However, implied approval may be assumed when an Eligible Mortgage holder (except (where appropriate) the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Department of Veterans Affairs (VA)) fails to submit a response to any written proposal for an amendment within sixty (60) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a "return receipt" requested.

30. **Consent in Lieu of Vote.** In any case in which this Declaration requires the vote of an Owner for authorization or approval of an act or a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners who collectively hold the required percentages, subject to the following conditions:

- a) Sixty-Day Limit. All necessary consents must be obtained prior to the expiration of sixty (60) days from the time the first written consent is obtained; and
- b) Change in Ownership. Any change in Ownership of a Unit which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose; and
- c) Notice. If approved, written notice of the approval must be given to all Unit Owners at least ten (10) days before any action is required by them.

31. **Mortgage Protection.** Nothing herein contained, and no violation of these covenants, conditions, and restrictions, shall invalidate or impair the lien of any mortgage or deed of trust, given in good faith and for value. Mortgagees are excluded from any leasing or rental restrictions when obtaining or after obtaining a Unit in foreclosure. The lien or claim against a Unit for unpaid Assessments levied by the Management Committee or by the Association pursuant to this Declaration shall be subordinate to any Mortgage recorded on or before the date such Assessments become due. In addition:

- a) Effects of Voluntary and Involuntary Sale. The lien or claim against a Unit for such unpaid Assessments shall not be affected by any sale or transfer of such Unit, except that a sale or transfer pursuant to a foreclosure of the Mortgage affecting such Unit or the exercise of a power of sale available thereunder shall extinguish any debt payable prior to such sale or transfer. Nevertheless, any such unpaid Assessments which are extinguished in accordance with the foreclosure or power of sale shall not relieve the purchaser or transferee of such Unit from liability for, nor such Unit the lien of any Assessments becoming due thereafter.
- b) Books and Records Available for Inspection. The Committee or the Association shall make available to the Owners, to Mortgagees, and lenders, and to holders, insurers, or guarantor of any Mortgage current copies of the Declaration, By-Law, and administrative rules and regulations concerning the Project, as well as the books, records, and financial statements of the Committee and the Association. The term "Available," as used in the Paragraph, shall mean available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association shall have right to recover its photocopying and service charges incurred in making the inspection and photocopying available.
- c) Right to Financial Statement. The holder, insurer or guarantor of any Mortgage shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal year. Any financial statement requested pursuant hereto shall be furnished to the requesting party within a reasonable time following such request.
- d) Management Contracts. Any agreement for professional management of the Project, and any contract for goods or services, or any lease which is entered into by the Management Committee shall provide, or be deemed to provide hereby, that:

- (1) Either party may terminate the contract with cause upon at least thirty (30)

days prior written notice to the other party; and

(2) No contract may be for an initial term greater than one (1) year.

e) Eligible Mortgagee Designation. Upon written request to the Committee or the Association by the holder, insurer, or guarantor of a Mortgage (which request identifies the name and address of such holder, insurer or guarantor and the Unit Number or address of the property encumbered by the Mortgage held or insured by such holder, insurer, or guarantor), such holder insurer, or guarantor shall be deemed thereafter to be an "Eligible Mortgagee" or "Eligible Insurer" or "Eligible Guarantor," as the case may be, shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:

(1) *Condemnation Loss or Award.* Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a Mortgage held, insured, or guaranteed by such Eligible Insurer or Guarantor.

(2) *Delinquency.* Any delinquency in the payment of Assessments owed by an Owner of a Unit subject to a Mortgage held, insured or guaranteed by such Eligible Insurer or Guarantor, which delinquency, remains uncured for a period of sixty days.

(3) *Lapse of Insurance.* Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Committee or the Association.

(4) *Consent Required.* Any proposed action which would require that consent of a specified percentage of Eligible Mortgagees.

f) Approval of Proposed Action or Transaction. Any Mortgagee who receives, by certified or registered mail, a written request with a return receipt requested, to approve any act, transaction or amendment to the Declaration, and who does not return a negative response within thirty (30) days shall be deemed to have approved such request; provided, however and anything to the contrary notwithstanding, so long as Declarant is in control of the owner's association, such action or transaction must be approved in writing by the Department of Veterans Affairs (VA) pursuant to CFR, Title 38, Section 36.4357(b)(4) and, if any financing or the guaranty of any financing of a Unit is provided by the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA), by such agencies.

32. Amendment. This Declaration may be amended as follows:

a) Amendments by Declarant. Until after the termination of the Declarant's Period of Control, this document and the Condominium Plat may be unilaterally amended by the Execution by Declarant of an instrument amending the same without any additional approval required, and no other amendment shall be valid or enforceable without the Declarant's prior written consent. Declarant expressly reserves the right to change the definition of Common Area and/or Unit, and their designation on the Plat, in order to expand the definition of a Unit to include the roof, exterior walls, footings and

foundations, etc., provided the maintenance, repair and replacement of such items remain part of the Area of Common Responsibility and the Project is developed in accordance with the approved development plan of the City's planning commission.

b) Consent of the Owners. After the termination of the Declarant's Period of Control, the affirmative vote of at least sixty-seven percent (67%) of the Owners shall be required and shall be sufficient to amend the Declaration or the Condominium Plat. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by the Management Committee. In such instrument the Committee shall certify that the vote required by this Section for, amendment has, occurred, and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained.

c) Protection of Declarant Rights. An amendment shall not terminate or decrease any unexpired development right, or Period of Declarant Control unless the Declarant approves or consents in writing.

d) Execution of Amendments. An amendment or revocation which only requires the execution of an instrument by Declarant as hereinabove provided shall be effective when executed by Declarant and when recorded in the office of the County Recorder of Wasatch County, Utah. An amendment which requires the affirmative written assent or vote of the Owners as hereinabove provided shall be effective when executed by the President and Secretary of the Association who shall certify that the amendment has been so approved and the Declarant if the Declarant's consent is also required, and, when the amendment has been recorded in the office of the County Recorder of Utah County, Utah.

e) Consent of Eligible Mortgagee to Terminate Legal Status of Project. The consent of at least sixty-seven percent (67%) of the Eligible Mortgagees shall be required to any amendment which would terminate the legal status of the Project.

f) Consent of Eligible Mortgagees to Add or Amend Any Material Provision. The consent of Eligible Mortgagees holding at least fifty-one (51%) percent of the undivided ownership interest in the Common Areas shall be required to add to or amend any material provision of this Declaration or the Condominium Plat which establishes, provides for, governs, or regulates any of the following:

- Voting rights;
- Increases in Assessments that raise the previously assessed amount by more than 25%, Assessment liens, or the priority of Assessment liens;
- Reductions in reserves for, maintenance, repair, and replacement of Common Areas, Facilities and Elements;
- Responsibility for maintenance and repairs;
- Reallocation of interests in the Common Area, Limited Common Area, and general or limited common elements, or rights to their use;
- Redefinition of any Unit boundaries;

- Convertibility of Units into Common Area or Elements, or vice versa;
- Expansion or contraction of the Project, or the addition, annexation, or withdrawal of property to or from the Project;
- Hazard or fidelity insurance requirements;
- Imposition of any restrictions on the leasing of Units;
- Imposition of any restrictions on a Unit Owner's right to sell or transfer his Unit;
- A decision by the Association (if the Project consists of more than 50 Units) to establish self-management if professional management had been required previously by the Project Documents, or by an Eligible Mortgage holder;
- Restoration or repair of the Project (after damage or partial condemnation) in a manner other than that specified in the documents; and
- Any provisions that expressly benefit Mortgage holders, insurers or guarantors.

Any addition or amendment shall not be considered material for purposes of this paragraph if it is for the clarification only or to correct a clerical error. Notice of any proposed amendment to any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Condominium Plat is required shall be mailed postage prepaid to the address for such Mortgagee shown on the list maintained by the Association. Any Eligible Mortgagee who does not deliver to the Committee or the Association a negative response to the notice of the proposed amendment within thirty (30) days from the date of such mailing shall be deemed to have approved the proposal. The foregoing consent requirements shall not be applicable to amendments to this Declaration and the Condominium Plat or the termination of the legal status of the Project if such amendments or such termination are made or accomplished in accordance with the provisions of this Declaration regarding Condemnation or Substantial Obsolescence.

33. Due Process Requirements; Notice of Hearing; Opportunity to be Heard. In the event of a claimed violation of the Project Documents or the Act, no citation or suspension shall be imposed without the Management Committee first giving the alleged violator written notice of the violation and an opportunity to be heard by the Committee. Provided, however, nothing herein shall be construed to prevent the Management Committee from (a) immobilizing, towing or impounding a motor vehicle in violation of the parking rules and regulations for which no additional notice is required, or (b) making emergency repairs or taking any other emergency action it deems necessary and subsequently providing notice to the Unit Owner or Resident and giving them an opportunity to be heard.

34. Declarant's Sales Program. Anything to the contrary notwithstanding, until Declarant has sold all Units owned by it, or the expiration of seven (7) years following the date on which the Declaration is filed for record in the Office of the Wasatch County Recorder, whichever first occurs, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligations of an Owner to pay his portion of the Common Expenses or other Assessments, except as herein otherwise provided. Neither the Owners, the Association, nor the Management Committee shall interfere with the completion of improvements and sale of Declarant's Units, and Declarant shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Units owned by Declarant:

- a) Sales Office and Model Units. Declarant shall have the right to maintain one (1) or more sales offices and (1) or more model Units at any one time. Such office and/or models may be one or more of the units owned by the Declarant, one or more separate structures or facilities placed on the Property for the purpose of aiding Declarant's sales effort, or any combination of the foregoing;
- b) Promotional. Declarant shall have the right to maintain a reasonable number of promotional advertising and/or directional signs, banners or similar devices at any place or places on the Property.
- c) Common Area Use. Declarant shall have the right to use the Common Areas of the Project including but not limited to the right to use the Clubhouse as a sales office and in any other way necessary to facilitate sales.
- d) Relocation and Removal. Declarant shall have the right from time to time to locate or relocate any of its sales offices, models, or signs, banners or similar devices, but in connection with each such location or relocation shall observe the limitations imposed by the preceding portion of this Section. Within a reasonable period of time after the happening of the Event, Declarant shall have the right to remove from the Project any signs, banners or similar devices and any separate structure or facility which was placed on the Property for the purpose of aiding Declarant's sales effort.
- e) Restrictions in Favor of the Declarant. The recreational amenities or facilities at the Project may not be subject to any restriction or reservation in favor of the Declarant or any of its affiliates.

35. Limitation on Improvements by Association. Until such time as the earlier of the following events occur: (a) all of the Additional land has been added and the Declarant has sold or rented all of the Units, or (b) seven (7) years after the date of the sale of the first Unit, or (c) such time as Declarant chooses, neither the Association nor the Committee shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas and Facilities created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally created or constructed by Declarant.

36. Completion Obligation. Declarant hereby covenants in favor of each Owner that within two (2) years from the date of any contract of sale:

- a) Units. Each Unit which an Owner has contracted to purchase, the Building within which such Units is contained or is to be contained, and the appurtenant Limited Common Area shall be substantially constructed, and ready for use or occupancy (as the case may be); and
- b) Common Area. There shall be substantially completed and usable as part of the Common Areas all planned landscaping, green space, sidewalks, parking facilities, roads, fences, outdoor light and utility lines and conduits adjacent to the Unit or Building in which a Unit is located, and necessary for its use.

37. Declarant's Rights Assignable. All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance transfer or

assignment. Any Mortgage covering all Units or Buildings in the Project title to which is vested in Declarant shall, at any given point in time and whether or not such Mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protections and controls which are accorded to Declarant (in its capacity as Declarant) herein.

38. Mortgagee Approval. Until the termination of the Period of Declarant's Control, the Declarant shall not annex additional properties or amend the Declaration without the prior written consent (where appropriate) of the Federal Housing Administration of the United States Department of Housing and Urban Development (FHA), the Federal Home Loan Mortgage Corporation or the Mortgage Corporation (FHLMC), Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA) or the Department of Veterans Affairs (VA

39. Transfer of Management. Anything to the contrary notwithstanding, Declarant may at any time relinquish its reserved right to select the Members of the Committee and may elect to transfer the management of the Project to a Committee elected by the Owners. Upon the termination of the Period of Declarant's Control, or sooner if the Declarant so elects, Declarant shall notify Owners in writing of the effective date of such transfer (the "Transfer Date") at least forty five (45) days prior thereto. Thereupon, the Owners shall call a meeting to elect the Members of the Management Committee to take office as of the Transfer Date. Declarant may make or add enforceable supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Unit in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration;

40. Enforcement and Right to Recover Attorneys Fees. Should the Association or Committee be required to take action to enforce the Declaration, By-Laws or any administrative rules or regulations adopted from time to time, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including a reasonable attorneys fee, which may arise or accrue.

41. Agent for Service of Process. The President of the Association is the person to receive service of process in the cases authorized by the Act and the office. The initial registered Agent is Brad Morgan and the initial office of the Registered Agent is 998 North 1200 West Orem, Utah 84057.

42. Combination of Units. An Owner of two or more adjoining units shall have the right upon approval of the Management Committee and the mortgagees of said units, to combine one or more adjoining units or portions thereof and to alter or amend the declaration and map to reflect such combination.

a) Such amendments may be accomplished by the unit owner recording an amendment or amendments to this declaration, together with an amended map or maps containing the same information with respect to the altered units as required in the initial declaration and map with respect to the initial units. All costs and expenses required in such amendments shall be borne by the unit owner desiring such combination.

b) All such amendments to the declaration and map must be approved by attorneys employed by the Management Committee to insure the continuing legality of the declaration and the map. The cost of such review by the attorneys shall be borne by the person wishing to combine the units.

c) Any amendment of the declaration or map pursuant to this paragraph 20 shall reflect the changes occasioned by the alteration. Such changes shall include a change in the

percentage of undivided interest in the common areas and facilities which are appurtenant to the units involved in the alterations. The remaining combined unit, if two or more units are totally combined, will acquire the total of the percentage of undivided interest in the common areas and facilities appurtenant to the units that are combined as set forth in Exhibit B. If a portion of one unit is combined with another, the resulting units shall acquire a proportionate percentage of the combination on the basis of area remaining in the respective, combined units. The percentage of undivided interest in the common areas and facilities appurtenant of all other units shall not be changed. All such amendments must, in all instances, be consented to by the management committee and also all other persons holding interest in the units affected. The consent of other unit owners need not be obtained to make such amendments or alterations valid providing the percentages of undivided interest in the common areas and facilities of the other unit owners remain unchanged.

43. **Fines.** Each Owner and Resident is responsible for adhering to the Project Documents governing the Project. Pursuant to U.C.A., Section 57-8-37 (2001), a breach of these restrictive covenants and rules is subject to enforcement pursuant to the declaration and may include the imposition of a fine. Each Owner is also accountable and responsible for the behavior of his or her residents, tenants and/or guests. Fines levied against residents, tenants, and guests are the responsibility of the Owner. The Management Committee shall react to each material violation in the following manner:

a) That the following schedule of fines be adopted:

(1) List of Violations: Any violation of the Declaration, rules and regulations, and Bylaws shall be subject to a fine.

(2) Schedule of Fines:

(i) 1st violation: \$100

(ii) 2nd violation or failure to cure after 1st violation: \$250

(iii) 3rd violation or failure to cure after 2nd violation: \$500;

(iv) 4th violation and all other subsequent violations or failure to cure after 3rd violation or subsequent violations: \$1,000 additional fines or legal action.

Enforcement remedies are cumulative; accordingly, the Management Committee reserves its right to pursue any enforcement action authorized by law of the Declaration at any time during the fining process.

b) That all following procedures will be followed prior to levying a fine:

(1) Notice of Violation: All owners will be given a written notice of violation describing the violation and stating a time to cure the violation prior to a fine being levied.

(2) Time to Cure: All owners will be given a minimum of forty-eight (48) hours to cure a violation before a fine will be levied. The Committee in its discretion may grant a cure period exceeding forty-eight (48) hours if the Committee

determines that forty-eight (48) hours is an unreasonable time period to cure the violation in question.

(3) Hearing: If a fine is levied, the offending Owner shall have the right to request an informal hearing with the Management Committee to protest or dispute the fine. A request for hearing must be made in writing within thirty (30) days from the date the fine is levied. Notice shall be deemed to have been received three (3) days after mailing via USPS first-class mail, postage prepaid. If a request for hearing is not received by the Management Committee, or their designated agent, within thirty-three (33) days from the date the fine is levied, the fine shall be deemed to be uncontested and the Owner forfeits their right to hearing. A request for hearing shall be delivered to The Village on 12th Condominiums HOA, 998 North 1200 West Orem, Utah 84057 or at such address as the Management Committee specifies. The hearing shall be conducted in accordance with the procedures adopted by the Management Committee.

(4) Collection of Fines: Pursuant to Utah Code Ann. §57-8-37, fines shall be collected in the same manner as past due assessments.

c) That the following procedures shall govern an informal hearing of the Management Committee:

(1) Scheduling a Hearing/Continuances/Failure to Appear: The hearing shall, within reason, be conducted at the next regularly scheduled Committee meeting. The Committee shall give notice of the date, time, and location of the hearing to the requesting Owner. Notice of the hearing shall be delivered to the requesting Owner by USPS first-class mail, postage prepaid, or by hand delivery. No other Owners or parties shall be entitled to notice of the hearing. If the hearing date is unacceptable to the requesting Owner, they shall be entitled to one (1) continuance of the hearing date. To receive a continuance, the requesting Owner shall deliver a written request for continuance to the Association. The request must be received by the Association prior to the original hearing date. The continued hearing shall, within reason, take place at the second Committee meeting after the receipt of the original request for hearing. Failure by a requesting Owner to appear at a hearing or continued hearing shall result in a waiver of the requesting Owner's right to hearing and the fine shall be deemed uncontested.

(2) Hearing Procedures/Decision: The hearing shall be conducted by a minimum of three (3) Committee members. The requesting Owner shall be given fifteen (15) minutes to dispute the fine. The requesting Owner may present documentation or witnesses to dispute the fine. The Committee may question the requesting Owner or witnesses during the hearing. After hearing the requesting Owner's position and evidence, the Committee may either render its decision at the hearing or take the evidence and argument under advisement. If the Committee takes the evidence under advisement, they shall render a final decision within seven (7) days of the hearing. Once a decision is rendered, the Committee shall give written notice of their decision to the requesting owner. As part of the decision, the Committee shall state that payment of the fine is due within one hundred eighty (180) days or interest and late fees will accrue.

44. Termination of Utilities and Right to Use Amenities for Non-Payment of Assessments.

a) If an owner fails or refuses to pay any assessment when due, the management committee may (1) terminate the owner's right to receive utility services paid as a common expense; and (2) terminate the owner's right of access and use of recreational facilities, after giving notice and an opportunity to be heard.

b) Before terminating utility services right of access and use of recreational facilities, the manager or management committee shall give written notice to the owner in the manner provided in the declaration, bylaws, or association rules. The notice shall state:

(1) Utility services or right of access and use of recreational facilities will be terminated if payment of the assessment is not received within the time provided in the declaration, bylaws, or association rules, which time shall be stated and be at least 48 hours;

(2) the amount of the assessment due, including any interest or late payment fee; and

(3) the right to request a hearing.

c) An owner who is given such notice may request an informal hearing to dispute the assessment by submitting a written request to the management committee within 14 days from the date the notice is received. A notice shall be considered received on the date (a) it is hand delivered, (b) it is delivered, by certified mail, return receipt requested, or (c) five (5) days after it is deposited in the U.S. mail, postage prepaid, addressed to the owner's last known address on the books and records of the Association

d) The hearing shall be conducted in accordance with the standards provided in the declaration, bylaws, or association rules.

e) If a hearing is requested, utility services or right of access and use of recreational facilities may not be terminated until after the hearing has been conducted and a final decision has been entered.

f) Upon payment of the assessment due, including any interest or late payment fee, the manager or management committee shall immediately take action to reinstate the terminated utility services to the unit and right to use of recreational facilities.

45. Assignment of Rents.

a) If: the owner of a unit who is leasing the unit fails to pay any assessment for a period of more than 60 days after it is due and payable, the management committee may demand the tenant to pay to the association all future lease payments due the owner, commencing with the next monthly or other periodic payment, until the amount due to the Association is paid; provided, however, the manager or Management Committee must give the owner written notice, in accordance with the declaration, bylaws, or association rules, of its intent to demand full payment from the tenant. This notice shall:

(1) provide notice to the tenant that full payment of remaining lease payments will commence with the next monthly or other periodic payment unless the assessment is received within the time period provided in the declaration, bylaws, or

association rules;

(2) state the amount of the assessment due, including any interest or late payment fee;

(3) state that any costs of collection, not to exceed \$150, and other assessments that become due may be added to the total amount due; and

(4) provide the requirements and rights described herein.

b) If the owner fails to pay the amount of the assessment due by the date specified in the notice, the manager or Management Committee may deliver written notice to the tenant, in accordance with the declaration, bylaws, or association rules, that demands future payments due to the owner be paid to the Association pursuant hereto. A copy of the notice must be mailed to the owner at his last known address as shown on the books and records of the Association. The notice provided to the tenant must state:

(1) that due to the owner's failure to pay the assessment within the time period allowed, the owner has been notified of the Management Committee's intent to collect all lease payments due to the Association pursuant hereto.

(2) that until notification by the association that the assessment due, including any interest or late payment fee, has been paid, all future lease payments due to the owner are to be paid to the association; and

(3) payment by the tenant to the association in compliance herewith will not constitute a default under the terms of the lease agreement. If payment is in compliance with this Subsection (6) suit or other action may not be initiated by the owner against the tenant for failure to pay.

c) All funds paid to the Association pursuant hereto shall be deposited in a separate account and disbursed to the association until the assessment due, together with any cost of administration which may not exceed \$25, is paid in full. Any remaining balance must be paid to the owner within five business days of payment in full to the Association.

d) Within five business days of payment in full of the assessment, including any interest or late payment fee, the manager or Management Committee must notify the tenant in writing that future lease payments are no longer due to the association. A copy of this notification must be mailed to the Owner.

e) As used in this section, the terms "lease" or "leasing" shall mean and refer to regular, exclusive occupancy of a unit by any person or persons, other than the owner, for which the owner receives any consideration or benefit, including a fee, service, gratuity, or emolument.

46. Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Condominium Plat shall take effect upon its being filed for record in the office of the County Recorder of Wasatch County, Utah,

Dated this 12 day of August, 2022.

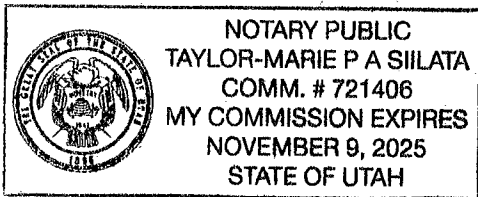
Village on 12th Association of Condo Owners
A Utah non-profit entity

Benjamin Powell
Signature:

By: Benjamin K. Powell
Director, Village on 12th Association

STATE OF UTAH)
 : ss.
COUNTY OF UTAH)

On the 12th day of AUGUST, 2022, personally appeared before me Benjamin K. Powell, who by me being duly sworn, did say that he is a director of the Village on 12th Owners' Association, and that the within and foregoing instrument was signed in behalf of said Association by authority of its Certificate of Organization or a resolution of its Members, and said Benjamin K. Powell duly acknowledged to me that said Association executed the same.



Taylor Marie P A Siilata
NOTARY PUBLIC
Residing At
Commission Expires:

LEGAL DESCRIPTION OF TRACT

EXHIBIT A

THE VILLAGE ON 12th CONDOMINIUMS

BEGINNING AT A SET REBAR WITH CAP MARKED PLS 6854112, SAID POINT BEING LOCATED SOUTH 89°50'38" WEST ALONG THE SECTION LINE 1324.39 FEET AND NORTH 16.53 FEET FROM THE SOUTHEAST CORNER OF SECTION 5, TOWNSHIP 4 SOUTH, RANGE 5 EAST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 89°50'43" WEST 651.93 FEET TO A PK NAIL IN THE ASPHALT; THENCE NORTH 00°23'24" WEST 698.52 FEET TO A FOUND REBAR WITH CAP MARKED SUMMIT ENGINEERING; THENCE NORTH 89°51'13" EAST 650.54 FEET ALONG A FIELD FENCE TO A FOUND REBAR WITH CAP MARKED PLS 178851; THENCE SOUTH 89°36'05" EAST 4.55 FEET ALONG THE SOUTH LINE OF THE SWIFT CREEK SUBDIVISION PHASE 2 TO A SET NAIL; THENCE SOUTH 00°07'51" EAST 698.38 FEET ALONG THE WEST LINE OF THE MAJESTIC MOUNTAIN SUBDIVISION AND AN EXISTING FIELD FENCE LINE TO THE POINT OF BEGINNING.

AREA = 10.48 ACRES

PHASE DEVELOPMENT

EXHIBIT B

The Project is expandable and consists of five phases of development. The expandable areas are described and noted in the Plat.

When all phases are completed, there will be a total of 120 Units. Each phase of development will result in the building of 24 Units. The following details the buildings and corresponding Units that will be developed in each phase:

- | | |
|----------|--|
| Phase 1: | Building 9: Units 9101, 9102, 9103, 9104, 9201, 9202, 9203, 9204, 9301, 9302, 9303, 9304 The Village on 12th Condos |
| | Building 10: Units 10101, 10102, 10103, 10104, 10201, 10202, 10203, 10204, 10301, 10302, 10303, 10304 The Village on 12th Condos |
| Phase 2: | Building 7: Units 7101, 7102, 7103, 7104, 7201, 7202, 7203, 7204, 7301, 7302, 7303, 7304 The Village on 12th Condos |
| | Building 8: Units 8101, 8102, 8103, 8104, 8201, 8202, 8203, 8204, 8301, 8302, 8303, 8304 The Village on 12th Condos |
| Phase 3: | Building 1: Units 1101, 1102, 1103, 1104, 1201, 1202, 1203, 1204, 1301, 1302, 1303, 1304 The Village on 12th Condos |
| | Building 2: Units 2101, 2102, 2103, 2104, 2201, 2202, 2203, 2204, 2301, 2302, 2303, 2304 The Village on 12th Condos |
| Phase 4: | Building 3: Units 3101, 3102, 3103, 3104, 3201, 3202, 3203, 3204, 3301, 3302, 3303, 3304 The Village on 12th Condos |
| | Building 4: Units 4101, 4102, 4103, 4104, 4201, 4202, 4203, 4204, 4301, 4302, 4303, 4304 The Village on 12th Condos |
| Phase 5: | Building 5: Units 5101, 5102, 5103, 5104, 5201, 5202, 5203, 5204, 5301, 5302, 5303, 5304 The Village on 12th Condos |
| | Building 6: Units 6101, 6102, 6103, 6104, 6201, 6202, 6203, 6204, 6301, 6302, 6303, 6304 The Village on 12th Condos |

Each Unit shall represent an equal ownership interest. Upon completion of the Project, each Unit shall constitute a 0.8333 percent ownership interest in the whole. As additional Units are added in each phase of development, the ownership interest represented by each Unit will be adjusted as follows:

- | | |
|----------|---------|
| Phase 1: | 8.3333% |
| Phase 2: | 4.1666% |
| Phase 3: | 2.7777% |

Phase 4: 2.0833%

Phase 5: 1.6666%

PHASING MAP

EXHIBIT C

