

Amended Restrictive Covenants Page 1 of 48
Gary Christensen Washington County Recorder
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REEVE, PLLC

After Recording, Mail to:
Ruesch & Reeve, PLLC
Attn: Ben Ruesch, Esq.
86 N. 3400 W. Bldg C, Ste 101
Hurricane, UT 84737

**FIRST AMENDED AND RESTATED
DECLARATION
FOR
MARLA AT ELIM VALLEY, PHASE 1**

THIS IS THE FIRST AMENDED AND RESTATED DECLARATION of covenants, conditions, restrictions, and easements that establishes a master planned community known as Marla at Elim Valley, Phase 1. This First Amended And Restated Declaration, made this 8th day of February, 2022, amends, restates, and supersedes, in its entirety the Declaration for Marla at Elim Valley, Phase 1, recorded on August 18, 2021 as Doc ID 20210055143 with the Washington County Recorder's Office.

RECITALS

Declarant is the owner of certain real property located in Washington County, State of Utah, which is more particularly described below. Declarant is desirous of subjecting this real property, along with all improvements constructed or to be constructed thereon, to the Utah Condominium Ownership Act, Title 57, Chapter 8 of the Utah Code and Utah Community Association Act and/or Title 57, Chapter 8a of the Utah Code (collectively referred to as the "Act") dividing, selling and conveying the same to various purchasers subject to the covenants, conditions, easements, and restrictions contained in this Declaration and the provisions of the Act.

PURPOSE AND INTENT

Declarant desires and intends to protect the value and desirability of the Property as a harmonious and attractive residential and resort community. Therefore, Declarant has conveyed and will convey the Property subject to the covenants, conditions, restrictions, and easements, which, along with the Governing Documents, provides for a governance structure and a system of standards and procedures for the development, expansion, maintenance, and preservation of the Property as a master planned residential and resort community. The Property may also encompass recreational areas, open space, and other areas deemed by Declarant.

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

DECLARATION

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

ARTICLE I

DEFINITIONS AND CONCEPTS

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

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

1.2. "Additional Property" means and refers to any real property which is adjacent or contiguous to, or otherwise within the vicinity of the Property, whether or not so described herein or on the Subdivision Plat. When Additional Property is annexed to this Declaration, it shall become part of the Property.

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

1.4. "Bylaws" means and refers to the Bylaws of the Aerie Resorts Association. The purpose of the Bylaws is to govern the Association's internal affairs, such as (for purposes of example but not limitation) voting, elections, and meetings. A true and complete copy of the Bylaws in effect as of the date hereof are attached hereto as Exhibit B.

1.5. "City" means and refers to the City of Hurricane, a Utah municipal corporation.

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

1.7. "Common Expenses" means the actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of the Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents. Common Expenses shall not include any

expenses incurred by the Declarant during the Declarant Control Period for initial development or other original construction costs unless a majority of the Class A Members approve.

1.8. "Community-Wide Standard" shall mean the highest of: (a) the standard of use, conduct, architecture, land scaping, or aesthetic matters generally prevailing in the Property; or (b) the minimum standards described in this Declaration, the Design Code, and Board resolutions. The Community-Wide Standard may contain objective elements, such as specific maintenance requirements, and subjective elements, such as matters subject to the discretion of the Board or the ACC (as defined in Article 6) discretion. The Community-Wide Standard may or may not be set out in writing.

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

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

1.11. "Declarant" means Western Mortgage & Realty Company, a Washington corporation, and its successors or assigns.

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

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

1.14. "Marla at Elim Valley, Phase 1" means and generally refers to the Property and all improvements thereon and, where the context requires, includes the Resort Facilities.

1.15. "Entire Membership" means all Members, regardless of class of membership.

1.16. "Governing Documents" means, collectively, this Declaration, the Articles, the Bylaws, the Design Code, and any amendments or supplements thereto, and includes any rules and regulations established pursuant to the Declaration, Articles, Bylaws, or Design Code. Where the context requires, the term Governing Documents shall include any other documents relevant to those Governing Documents heretofore described.

1.17. "Limited Common Area" means and refers to a portion of the Common Area which has been designated for the primary or exclusive use of a particular Owner or Owners.

1.18. "Lot" means and refers to: (a) a separately numbered and individually

described plot of land shown on any Subdivision Plat designated as a Lot for private ownership (and where the context requires includes and refers to the dwelling structure located on a Lot), but specifically excludes the Common Area; and (b) a condominium unit established under the Utah Condominium Ownership Act, Title 57, Chapter 8 of the Utah Code.

1.19. "Association" means the Aerie Resorts Association, a Utah non-profit corporation, its successors and assigns.

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

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

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

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

1.24. "Owner" means the entity person, or group of persons owning fee simple title to any Lot within the Property. Regardless of the number of parties participating in ownership of each Lot, the group of those parties shall be treated as one "Owner." The term "Owner" includes contract purchasers but does not include persons or entities who hold an interest merely as security for the performance of an obligation (such as a Mortgagee) unless and until title is acquired by foreclosure or similar proceedings.

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

1.26. "Resort Facilities" means and refers to those facilities which are located within, adjacent to, or within the vicinity of the Property but are owned by Association not designated as Common Area.

1.27. "Subdivision Plat" means any subdivision plat, survey, or plan that describes any portion of the Property or phase thereof and has been approved by the City and recorded in the office of the Washington County Recorder, and includes any replacements thereof, or supplements, alterations, amendments, or additions thereto. For purposes of this Declaration, the term "Subdivision Plat" includes a condominium plat as defined by the Utah Condominium Ownership Act.

1.28. "Short-term Rental" means a Lot used by any person or entity for resort or other transient lodging uses where the term of occupancy, possession, or tenancy of the Lot is for 29 consecutive calendar days or less, for direct or indirect remuneration.

1.29. "Voting Member" means the representative selected by the Class A Members.

ARTICLE 2

LAND USE DESIGNATIONS AND CLASSIFICATIONS, RULES

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

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

2.3. Common Area.

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

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

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

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

(iii) enter into agreements or leases which provide for use of the

Common Areas by a similar association in consideration for use of the common areas and facilities of the other association for cash consideration, or by third parties for cash consideration;

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

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

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

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

2.6. Limited Common Area

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

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

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

2.7. Delegation of Use. An Owner or one having a right of use of Common Area facilities may delegate any right of enjoyment to the Common Area to an Owner's guests or tenants, subject to any rules and regulations established by the Board, including but not

limited to the Board's right to require, as it determines necessary and as it establishes by rule, an Owner to forfeit the Owner's right of use for so long as the Owner has delegated such right to the Owner's guest or tenant. Notwithstanding the foregoing, the Association may, by rule impose limits on the number of individuals who may use the Common Areas and facilities where such individuals are guests or tenants as part of a Short-term rental. Additionally, in the event the Association requires that Owners forfeit their right of use of the Common Areas and facilities during the period of leasing or renting their Lots, it may, by rule, allow Owners to retain the right to use those Common Areas and facilities subject to paying a rental fee to the Association for such use. No Owner shall have the right to delegate use of any Resort Facilities, or any privileges related thereto that such Owner may have and any such delegation, whether expressed orally or in any lease or rental agreement, shall be and hereby is declared null and void unless otherwise agreed in writing by the owner of the other Resort Facilities.

2.8 Promulgation of Rules.

(a) **Rulemaking Authority.** The Board may, from time to time, subject to the provisions of the Governing Documents, adopt, amend, and repeal rules and regulations governing, among other things, use of any Common Area, parking restrictions and limitations, limitations upon vehicular travel within the Property, and restrictions on other activities or improvements on the Property which, in the opinion of the Board, create a hazard, nuisance, unsightly appearance, excessive noise, offensive smell, or are otherwise necessary to protect, enhance, or preserve the Property or to address any other matter for which the Governing Documents or Community Association Act expressly or impliedly give the Board the right to regulate.

(a) **Rulemaking Procedure.** The adoption, amendment, or repeal of any rules shall be performed in compliance with the provisions and requirements of the Community Act, Utah Code § 57-8a-217.

(b) **Declarant's Exemption: Right to Promulgate Rules.** The Declarant hereby reserves for itself, during the Declarant Control Period, an exemption from the Association rules and the rulemaking procedure set forth in the Community Association Act. Consistent with that exemption, the Declarant reserves for itself, during the Declarant Control Period, the right to adopt, amend, and repeal rules and regulations governing the Property, including any matter described in Section 2.8(a), any architectural or design matters (Article 6), any matter for which the Declarant has retained control during the Declarant Control Period or which the Declarant otherwise deems necessary and appropriate in the exercise of its special development rights. Upon adoption, the Declarant will mail or otherwise deliver such rules to the Lot Owners. Unless otherwise required by law, these rules may, but need not be, recorded. Upon such mailing or other delivery, said rules and regulations shall have the same force and effect as if they were set forth in and were a part of this Declaration. In addition to or in lieu of providing notice by mail, the Declarant may (either directly or through the Board) provide notice by electronic means such as electronic mail (e-mail) to Lot Owners and may require that Lot

Owners, in addition to keeping the Board informed as to their current mailing address, maintain a current e-mail address with the Board for such purpose.

2.9. Management Agreement; Property Manager. The Board may engage for the Association the services of one or more property managers to perform such duties and services as the Board shall authorize. The Board may delegate to and otherwise authorize the property manager to perform those services to which the Board itself may perform under the Governing Documents or the Utah Community Association Act, and those services to which the Utah Community Association Act otherwise authorizes a manager to perform. Fees, costs, and other charges of the property manager shall be Common Expenses. The property manager may also provide services to individual Lot Owners, such as leasing individual Lots as may be determined between the property manager and the Lot Owner; provided however, that services performed for individual Lot Owners which are not performed for the Association shall not be Common Expenses but shall be charged to such Lot Owners separately as the Lot Owners and the property manager may determine.

2.10. Provisions for Other Services. The Association may provide services and/or facilities for the Owners and their Lots, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, or their successors and/or assigns as their interests may appear, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities, or may include the costs thereof in the Association's budget as a Common Expense and assess it as part of the annual assessment if provided to all Lots. By way of example, such services and facilities might include landscape maintenance, pest control service, cable television service, security, caretaker, transportation, utilities, and similar services and facilities. Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board shall be permitted to modify or cancel existing contract; for services in its discretion, unless the provision of such services is otherwise required by the Governing Documents. Non-use of services provided to Owners or Lots as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

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

2.12. Resort Facilities.

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

(b) Access to and use of any Resort Facility is strictly subject to the rules and procedures of the Association.

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

(d) Rights to use the Resort Facilities will be granted only to such persons, and on such terms and conditions, as approved by the Board.

ARTICLE 3 MEMBERSHIP AND VOTING RIGHTS

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

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

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

(b) Class B. The Class B Member is the Declarant and shall be entitled to two (2) votes for each Lot owned. Declarant's Class B membership will cease only upon the earlier of (i) December 31, 2040; or (ii) Declarant's express surrender of Class B membership status, which surrender must be in a written instrument signed by Declarant and recorded in the office of the Washington County Recorder. If the instrument of surrender does not specify the date of surrender of Class B membership, the surrender date shall be the date of recording of the instrument. If the Declarant surrenders its Class B membership status while owning Lots within the Property, Declarant's membership status in such Lots shall be converted to Class A.

3.3. Declarant's Voting Rights in Expansion Area. In the case of expansion (as

provided under this Declaration), the class of voting membership appurtenant to Lots owned by Declarant in the expansion area shall be Class B.

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

3.5 Voting Members.

(a) Until such time as the Board designates the matters for which the Voting Members will vote, Class A Members who are eligible to vote shall be entitled personally to cast the votes attributable to their respective Lots on any issue on which the Governing Documents requires a vote of Class A Members.

ARTICLE 4 ASSOCIATION FINANCES

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

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

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

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

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

4.5 Annual Assessments: Budgeting.

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

(b) Notice of Budget and Assessment. The Board shall send a copy of the final budget, together with notice of the amount of the annual assessment to be levied pursuant to such budget, to each Owner at least thirty (30) days prior to the effective date of such budget. The budget shall automatically become effective unless disapproved by Members representing at least sixty-seven percent (67%) of the Entire Membership. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for

special meetings pursuant to the Bylaws. Any such petition must be presented to the Board within fourteen (14) days after delivery of the final budget and notice of the amount of the annual assessment.

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

(d) Automatic Budget Approval. Notwithstanding the foregoing, if the budget proposed by the Board will increase the annual assessment by no more than 3% of the previous annual assessment, then such budget and corresponding annual assessment shall be automatically approved and effective upon thirty days' notice and the Members shall not have the opportunity to disapprove of the budget and annual assessment.

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

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

4.7. Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Lot as follows:

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

(b) To cover costs incurred in bringing any Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or

occupants of the Lot, their agents, contractors, employees, Licensees, invitees, or guests, provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing, in accordance with the Bylaws, before levying any specific assessment under this subsection.

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

4.10. Declarant's Option to Fund Budget Deficits. During the Declarant Control Period, Declarant may but is not obligated to fund any budget deficit of the Association, including, without limitation, funding any initial capital or operational reserve fund. In the event Declarant funds any budget deficit, it shall not establish any obligation by Declarant to continue to fund any future deficits.

4.11. Payment; Due Dates.

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

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

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

(d) Payment of assessments shall be applied first to any accrued interest,

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

4.12. Effect of Non-Payment of Assessment; Remedies of the Association. Any assessment or installment thereof not paid within thirty (30) days after the due date therefor shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such lesser rate as the Directors shall determine appropriate) until paid. In addition, the Directors may assess a late fee for each delinquent installment that shall not exceed ten percent (10%) of the installment.

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

- (i) Bring an action at law against the Owner personally obligated to pay any such delinquent assessment without waiving the Association's lien for the assessment;
- (ii) foreclose the lien against the Lot in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law;
- (iii) restrict, limit, or totally terminate any or all services performed by the Association on behalf of the delinquent Owner;
- (iv) terminate, in accordance with the Utah Community Association Act, Utah Code Ann. § 57-5a-204, the Owner's right to receive utility services paid as a Common Expense and/or terminate the Owner's right of access and use of any recreational facilities, including any Resort Facilities;
- (v) if the Owner is leasing or renting his Lot, the Board may, in accordance with the Utah Community Association Act, Utah Code Ann. § 57-8a-205, demand that the Owner's tenant pay to the Association all future lease payments due from the Owner, beginning with the next monthly or other periodic payment, until the amount due to the Association is paid;
- (vi) suspend the voting rights of the Owner for any period during which any assessment or portion thereof against the Owner's Lot remains unpaid; and/or
- (vii) accelerate all assessment installments that will become due within the subsequent twelve (12) months so that all such assessments for that period become due and payable at once. This acceleration provision may only be invoked against an Owner who has been delinquent in paying any assessment or installment two (2) or more times within a twelve (12) month period.

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

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

(d) Condominium Units. The remedies for nonpayment of assessments for condominium units within the Property shall be made with reference to and in compliance with condominium declarations applicable to such condominium units and the Utah Condominium Ownership Act, Title 57, Chapter 8 of the Utah Code.

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

4.14. [Intentionally omitted].

4.15. Reinvestment Fee.

(a) Upon sale and transfer of record title to any Lot, the transferee, other than a transferee of the Declarant (unless the Declarant otherwise waives this exemption), shall pay a reinvestment fee (the "Reinvestment Fee") to the Association in an amount set by resolution of the Board, which may be a flat rate from year to year or, if so determined by the Board, may be a percentage of the value or sales price of the Lot. The Reinvestment Fee shall be in addition to, not in lieu of, the annual assessment, and shall not be considered an advance payment of such assessment. The Reinvestment Fee shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association.

(b) The Association will use the Reinvestment Fee for (a) common planning, facilities, and infrastructure; (b) obligations arising from an environmental covenant; (c) community programming; (d) resort facilities; (e) open space; (f) recreation amenities; (g) charitable purposes; or (h) any other expenses authorized by Utah Code § 57-1-46.

(c) The following transfers are exempt from the Reinvestment Fee: (a) an involuntary transfer; (b) a transfer that results from a court order; (c) a bona fide

transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity; (d) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or (e) the transfer by a financial institution.

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

4.17. Books, Records, and Audit.

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

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

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

ARTICLE 5
INSURANCE

5.1. Casualty Insurance on Insurable Common Area. The Board shall keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof

shall be payable to the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses which shall be included in the regular annual assessments made by the Association. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage.

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

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

5.4. Liability Insurance. The Board shall obtain a comprehensive policy of public liability insurance covering all of the Common Area for at least \$1,000,000.00 per occurrence for personal or bodily injury and property damage that results from the operation, maintenance or use of the Common Areas. Liability insurance policies obtained by the Association shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

5.5. Fidelity Insurance. The Board may elect to obtain fidelity coverage against dishonest acts on the part of managers, Directors, officers, employees, volunteers, management agents or others responsible for handling funds held and collected for the benefit of the Owners or Members. In procuring fidelity insurance the Directors shall seek a policy which shall (1) name the Association as obligee or beneficiary, (2) be written in an amount not less than the sum of (i) three months' operating expenses and (ii) the maximum reserves of the Association which may be on deposit at any time, and (3) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee."

5.6. Annual Review of Policies. The Board shall review all insurance policies at

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

5.7. Individual Lots. The Association shall have no obligation to obtain insurance for individual Lots or any structures thereon.

ARTICLE 6

ARCHITECTURAL CONTROLS AND BUILDING STANDARDS

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

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

6.3. New Construction; Modifications. Except as other expressly provided for in this Article or in the Design Code, the provisions of this Article and the Design Code are applicable to all new construction as well as any modifications, remodeling, or rebuilding of any existing, destroyed, or damaged structures within the Property.

6.4. Design Code. The ACC shall establish a Design Code which shall govern and contain, among other things, (i) permissible architectural designs; (ii) approved building materials and exterior color schemes; (iii) the rules, regulations, standards, guidelines, and procedures for the submission, review, and approval of any architectural, building, landscape, and other plans submitted to the ACC for review; (iv) the rules and regulations for construction and building activities within the Property; (v) the rules, regulations, standards, and guidelines with respect to any external apparatus, sign, or thing within the Property; and (vi) any other matters concerning the overall aesthetics of the Property. The Design Code will include the following:

- the design and approval process
- required submission forms
- the architectural code
- the landscape code
- home wiring and conduit specifications
- construction and building requirements and agreements
- pre-approved architects and builders
- schedule of required fees and deposits

Because it is impossible to cover every contingency and because there are some aspects of architectural design that do not lend themselves to being easily articulated, the ACC shall have broad authority and discretion in establishing regulations, standards, and guidelines

- and in reviewing and approving plans submitted to it for review, which authority includes, but is not limited to: designating area within each Lot as permissible building and landscape area; establishing timetables for submission of applications and commencement and completion of construction and landscaping; and establishing architectural and landscape guidelines as to any particular Lot within the Property. The ACC shall have the right to amend the Design Code as it deems necessary and appropriate from time to time. Amendments to the Design Code by the ACC shall have prior approval of a majority of the Board. The Design Code shall be made available to any Lot Owner upon request by that Lot Owner. The ACC may charge a reasonable fee for copies of the Design Code.

6.5. Sight Obstructions; View Impairment. The ACC may establish guidelines in its Design Code for the construction of improvements and landscaping so as to maximize views. Notwithstanding the foregoing, neither the ACC, the Declarant, or the Association represents or guarantees that any views from Lots will be preserved without impairment.

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

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

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

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

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

6.11. Implied Rights; ACC Authority. The ACC may exercise any right or privilege given to it expressly by this Declaration or in the Design Code, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. A majority of the number of persons serving on the ACC shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the ACC present at a duly held meeting at which a quorum is present shall be regarded as the act of the ACC, unless a greater number is required by law, or the Governing Documents.

6.12. Time Frame for Construction. The construction of any building on any Lot within the Property shall be continuously and diligently pursued, once construction has commenced.

6.13. Prohibited Structures. Notwithstanding anything in the Design Code, the following structures shall be prohibited within any part or portion of the Property: dome structures; log homes; pre-manufactured homes; re-located homes; and Earth or Berm homes of any type. No structure of a temporary nature, including but not limited to a trailer, bus, basement only residence, motor home, tiny home, outhouse, tent, shack,

garage, shed, or other outbuilding shall be used at any time as a residence either temporarily or permanently, nor shall any such structures be erected or placed on the Property at any time. No old or second-hand structures shall be moved onto any of the Lots. The ACC may, by rule, make this provision more restrictive or comprehensive.

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

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

6.16. Water Conservancy; Landscape Plan. No more than 5,000 square feet of irrigated landscaping is allowed on any Lot. Each Owner will be responsible to comply with any and all provisions for water conservancy as set forth by the Washington County Water Conservancy District. The ACC may establish additional requirements for landscaping in its Design Code.

ARTICLE 7 PARTY WALLS

7.1. General Rules of Law to Apply. Each wall, fence, driveway, or similar structure built which is built as a part of the original construction upon the Property and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent

not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

7.2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

7.3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, then, to the extent said destruction or damage is not covered by insurance and repaired out of the proceeds of the same, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

7.4. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator within ten (10) days of their selection, and the decision shall be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within ten (10) days after written request to do so, the Board shall select an arbitrator for the refusing party.

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

ARTICLE 8 MAINTENANCE

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

8.2. Association's Responsibility. The Association shall be responsible for maintaining the Common Area, the Limited Common Area which is not adjacent to any Lot, and the area of any Lot outside the walls of the structures thereon which is of the same character as surrounding Common Area. The cost of such maintenance shall be a Common

Expense.

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

8.5. Alteration of Certain Maintenance Duties by Rule. The duty of maintenance for the area outside the walls of any structure located upon a Lot, and the Limited Common Areas adjacent and appurtenant to such Lots may be altered by rule of the Association.

ARTICLE 9 SPECIAL DEVELOPMENT RIGHTS

9.1. Intent and Purpose of Special Development Rights. In addition to any other rights granted or reserved to the Declarant in this Declaration and the other Governing Documents, and notwithstanding any covenants, conditions, restrictions, or other provisions of limitation within this Declaration, the Declarant, as the developer of the Property, is granted special development rights. These combinations of rights maximize the flexibility of the Declarant to adjust the size and mix of the Property to the demands of the marketplace, both before and after creation of the Marina at Elim Valley, Phase 1.

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

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

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

9.3. Withdrawal of Property. So long as it has the right to expand the Property, Declarant shall have the right to remove any portion of the Property which has not yet been improved with structures from the coverage of this Declaration. The procedure for such withdrawal shall follow the procedure for expansion as provided in this Article.

9.4. No Obligation to Expand or Develop. Declarant has no obligation to annex

any additional land to the Property or to develop or preserve any portion of additional land in any particular way or according to any particular time schedule.

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

9.6. Declarant Business, Marketing, and Sales. Notwithstanding any provisions to the contrary contained in this Declaration or any other Governing Documents, it shall be expressly permissible for Declarant, or its written designee, to maintain such facilities and conduct such activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction of buildings and sale of Lots during the Declarant Control Period, and upon such portion of the Property including lots or Common Area, if any, as Declarant deems necessary, including but not limited to: a business office, storage areas, construction yard, signs, model units and sales offices. As part of the overall program of development of Marla at Elim Valley, Phase 1 and to encourage the marketing thereof, the Declarant shall have the right of use of any Lots or any Common Area and facilities thereon, including any Common Area, community buildings, without charge during the sales and construction period to aid in its marketing activities.

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

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

9.9. Exclusive Rights to Use Name of Development. No person or entity shall use the name "Marla at Elim Valley, Phase 1" or any derivative of such name or the corresponding logo in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "Marla at Elim Valley, Phase 1" in printed or promotional material where such term is used solely to specify that particular property is located within the Property. The Association shall be entitled to use the words "Marla at Elim Valley, Phase 1" in its name.

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

ARTICLE 10
[INTENTIONALLY OMITTED]

ARTICLE 11
TELECOMMUNICATIONS AND OTHER SERVICES AND AMENITIES

11.1. General Services and Amenities. The Association may contract with one or more third-parties ("Service Providers") to provide services, amenities and benefits to Owners for a monthly fee, which fee may be established by the Association and levied against Owners as part of the annual assessments. Such fee may be billed and collected directly by the Service Providers from the Owner. No Owner may opt out of paying for or otherwise refuse to pay for such services by not using the same, nor may an Owner be relieved of his obligation to pay for such services by using or contracting for services provided by other parties other than the Service Providers. Without limiting the generality of the foregoing, services for which the Association may contract include telecommunications services, including internet, multi-channel video services, local phone service, and other like services.

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

ARTICLE 12
USE AND CONDUCT

The following use and other restrictions shall apply to the Property. These restrictions are in addition to those established by federal, state, or local law and ordinance and those which may be set forth elsewhere in the Governing Documents, the Subdivision Plat, and any Cost Sharing Covenants.

12.1. General Use Restrictions. The use restrictions and requirements set forth in

this Article 12 apply to the Property. These restrictions and requirements are in addition to those provided in the provisions of the other Governing Documents, any plat notes, and applicable governmental laws and ordinances.

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

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

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

12.5. Leases.

(a) Short-term Rental Use; No further Subdivision. Each Lot may be used for short-term rental purposes. No Lot shall be reduced in size by further subdivision.

(b) Rental Restrictions. Except as provided in Section 12.5(c) below or otherwise in this Section 12.5(b), Owners may only lease or rent their Lots under the following conditions: (a) the tenant under such lease enters into a written lease or rental agreement that provides that the terms of the lease shall be subject in all respects to the provisions of the Governing Documents and that any failure by the tenant to comply with the terms of such Governing Documents shall be a default under the lease; and (b) the Owner who enters into such a lease or rental agreement provides to the Board a copy of the lease or rental agreement, if requested (the Board may require that Owners use lease forms approved by the Board). The Board (or, for clarification, the Declarant acting pursuant to Section 2.8(c)) may establish by rule fines or other remedies for violations of this Section 12.5(b).

(c) Short-term Rental Rules. The following restrictions and requirements for Short-term Rentals are established to ensure a successful, fair, and well organized Short-term Rental program beneficial to each Owner desiring to rent a Lot on a Short-term Rental basis; to protect the rights of each Owner that does not rent a Lot on a Short-term Rental basis; to protect the name and reputation of Marla at Elim

Valley, Phase I by ensuring consistency in experience for those staying in any Lot on a short-term basis; and to ensure that the Owners renting their Lots on a Short-term Rental basis act in a cooperative fashion through a Short-term Rental management company approved by the Association that ensures that the Owners and their Short-term Rental guests comply with rules designed to protect the peace and harmony of the community as a whole and comply with laws and local ordinances, and that Owners renting their Units on a Short-term Rental basis maintain uniform quality standards with the objective of enhancing the reputation and livability of Marla at Elim Valley, Phase I. Therefore, Owners may manage their own property, but if an Owner does not manage their own property, then they are required to use the services of a property management company that is licensed to the extent required by state law and local ordinances ("Approved Property Management Company"). Notwithstanding the foregoing, an Owner must obtain all necessary approvals as required by local or state ordinances or statutes to manage their own property. In addition, the Board may in its discretion by rule:

(i) Establish procedures and rules governing the qualifications for any property management company to apply to the Association to become an Approved Property Management Company to administer to Short-term rentals;

(ii) require that each Owner, as a pre-condition of renting or offering to rent their Lot on a Short-term Rental basis, provide a copy to the Association of such Owners' contract with the Approved Property Management Company;

(iii) require that each Owner, as a pre-condition of renting or offering to rent their Lot on a Short-term Rental basis, charge and collect from the Short-term Rental tenant a facility use fee ("Resort Fee") (which fee the Owner will immediately remit to, or direct its tenant to pay directly to, the Association, and which the Owner will be required to pay directly if the Owner fails to collect such Resort Fee from its Short-term Rental tenant) in an amount established by rule from time to time based on the estimated costs that may be incurred, which may include additional costs related to amenities and privileges that may be made available by the Association as well as the additional costs to the Association resulting from the Short-term Rental of such Lot, including the additional burden and costs for security, enforcement of Governing Documents, and cleaning and maintaining the Common Areas and amenities that may result from such Short-term Rental;

(iv) charge a fee to inspect a Lot pursuant to inspection requirements applicable to all Lots prior to being rented on a Short-term Rental basis that may be adopted by rule, in the amount established by rule from time to time based on the estimate of the costs to conduct such inspections;

(v) establish the procedures, rules, and regulations applicable to the Short-term Rental of all Lots, which may relate to, without limitation,

applications and inspections of Lots, check-in procedures, marketing and advertising methods, rights to access Common Area amenities and facilities, compliance with laws, and any other matter applicable to Short-term Rental of Lots that the Board determines necessary or prudent to continue to allow Short-term Rentals within Marla at Elim Valley, Phase while at the same time protecting the value and desirability of the Property as a harmonious and attractive residential and resort community; and

(vi) establish fines or other remedies or consequences for violations of the procedures, rules and regulations set forth in or established under this Section 12.5(d).

Rules adopted as authorized in this Section 12.5(c) (the "Short-term Rental Rules") shall be deemed to constitute and be a part of the Declaration as of the date recorded with the Washington County, Utah Recorder's Office. Any amendments, additions or changes to the Short-term Rental Rules that are hereafter adopted shall be recorded with the Washington County, Utah Recorder's Office and upon recording shall be deemed to be an amendment to and part of the Declaration. The Board (or Declarant acting pursuant to Section 2.8(c) and Section 15.2) is authorized to amend the Declaration as necessary to reflect and incorporate herein the then effective Short-term Rental Rules. Notwithstanding the foregoing, the recording of the Short-term Rental Rules shall not be a pre-requisite for such rules to be effective.

(d) Compliance with Governing Documents: Collection of Fines. Each Owner shall at all times such Owner's Lot is rented ensure compliance with the Governing Documents. The Board may enforce collection of fines established under Section 12.5(b) or set forth in the Short-term Rental Rules in the same manner provided for in this Declaration for the collection of assessments.

12.6. Timesharing. No Lot or any dwelling structure located on a Lot shall be used for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Lot or dwelling structure rotates among participants in the program on a fixed or floating time schedule, unless such program is established by the Declarant in writing.

12.7. Delegation of Use. Any Lot Owner may delegate his or her right of enjoyment of the Common Area to the members of his family, his tenants, guests, licensees and invitees, but only in accordance with the applicable rules and regulations of the Association and other Governing Documents. Damage caused to the Common Area and facilities, including personal property owned by the Association, by an Owner, or by a person who has been delegated the right to use and enjoy such Common Area and facilities by an Owner, shall create a debt to the Association. Debts owed to the Association as a result of damage to the Common Area and facilities shall be a specific assessment charged to the Owner and against the Owner's Lot.

12.8. Transfer of Title. Any Owner desiring to sell or otherwise transfer title to his

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

12.9. Clotheslines. No portion of any Lot shall be used as a drying or hanging area for laundry of any kind.

12.10. Garbage Removal. All rubbish, trash and garbage shall be regularly removed from the Lots and shall not be allowed to accumulate thereon. Garbage shall be placed in proper containers. Garbage containers shall be kept in an area so that such containers are not visible from the Lot front yard area or street.

12.11. Pets and Animals.

(a) Restrictions. The Board has the right to regulate and restrict, by rule, the keeping and harboring of pets and animals within the Property, including the keeping and harboring of pets and animals within the Lots. This right includes the right to restrict the type, breed, or species of animal, the number of animals which may be kept, the areas in which the animals may be kept or taken, and to completely eliminate the keeping and harboring of pets. Until such time as the Board adopts a policy expressly authorizing the keeping of pets and animals, the same shall be prohibited within the Property. The Board may establish procedural rules and regulations to implement its rules which should include provisions for notice and hearing. Commercial breeding of pets and animals is prohibited within the Property and may not be allowed or authorized by Association rule or resolution.

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

12.12. Parking.

(a) No motor vehicle which is inoperable shall be allowed within the Property. No motor vehicle shall be parked long-term on any street. The Board may adopt additional rules defining long-term, for purposes of this Declaration. Any

motor vehicle in violation of these restrictions shall be subject to removal by the Association at the vehicle owner's expense. Upon demand, the owner of the vehicle shall pay any expense incurred by the Association in connection with the removal of that owner's vehicle. If the vehicle is owned by a Lot Owner, any amounts payable to the Association shall be secured by the Lot and the Association may enforce collection of said amounts in the same manner provided for in this Declaration for the collection of assessments.

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

(c) No boats, trailers, buses, motor homes, campers, recreational vehicles, or other such vehicles shall be parked or stored upon any Lot or portion of the Property except within an enclosed garage. No such vehicles shall be parked overnight on any street located within the Property.

12.13. Pest Control. No Owner or occupant shall permit any thing or condition to exist within or upon the Lot which would induce, breed, or harbor infectious plant diseases or noxious insects. In addition to such pest control services as may be provided by the Association, each Owner shall perform such pest control activities within and upon the Lot as may be necessary to prevent insects, rodents, and other pests from being present on the Lot.

12.14. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the Property. No derrick, lift, shaft or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the Property.

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

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

12.17. Slope and Drainage Control. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope ratios create erosion or sliding problems, or which may change the direction of flow of drainage channels. The slope control areas of each Lot and all improvements in them shall be maintained continuously by the Owner, except for those improvements for which a public authority or utility company is responsible. Owners are responsible to see that no nuisance or damage is created by drainage location or flow to any adjacent property.

12.18. Lateral and Subjacent Support and Drainage. Lot Owners shall be responsible for damages which are proximately caused by an Owner's activities which affect the lateral or subjacent support, of adjacent Lot Owners. Lot Owners shall be responsible for all damage proximately caused by drainage from their Lot(s) to adjacent Lot Owners as a result of an Owner's excavation or disturbance to the Lot which alters the preexisting drainage; provided, however, that Lot Owners shall not be responsible for damages proximately caused by naturally occurring drainage.

12.19. Interior Utilities. All utilities, fixtures and equipment installed within any structure, commencing at a point where the utility lines, pipes, wires, conduits or systems enter boundaries of a structure, shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act or any work that will impair any easement or hereditament nor do any act nor allow any condition to exist which will adversely affect the other structures or Owners.

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

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

ARTICLE 13 EASEMENTS

13.1. Encroachments. Each Lot and the Property included in the Common Area and Limited Common Area, if any, shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Declarant. A valid easement for said encroachments and for the maintenance of same so long as it stands, shall and does exist. In the event the structure containing private units or dwellings is partially or totally destroyed, and then rebuilt, the Owners of the same so

affected agree that minor encroachments of parts of the adjacent Lots or Common Area and Limited Common Area, if any, due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

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

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

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

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

13.6. Easement to Inspect and Right to Correct. Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement or condition which may exist on any portion of the Property, including the Lots, and a perpetual, nonexclusive easement of access throughout the

Property to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the consent of the Owner. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

13.7. Easements for Lake and Pond Maintenance and Flood Water.

(a) Declarant reserves for itself, the Association, and any owner of a Resort Facility, and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the Common Area to (a) install, operate, maintain, and replace pumps to supply irrigation water to the Common Area; (b) construct, improve, maintain, and repair structures and equipment used for retaining or draining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. Declarant, the Association, a Resort Facility owner and their successors, assigns and designees shall have an access easement over and across any of the Property abutting or containing bodies of water or wetlands to the extent reasonably necessary to exercise their rights under this Section.

(b) Declarant further reserves for itself, the Association, any Resort Facility owner, and their successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Lots (but not the dwellings thereon) adjacent to or within 50 feet of bodies of water and wetlands within the Property, in order to (a) temporarily flood and back water upon and maintain water over such portions of Property; (b) alter in any manner and generally maintain the bodies of water and wetlands within the Common Area; and

(c) maintain and landscape the slopes and banks pertaining to such areas. All persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other person liable for damage resulting from flooding due to heavy rainfall or other natural occurrences.

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

13.9. Easements: Private Amenities. The Declarant may create and grant such

additional easements in the Property to and for the benefit of the Resort Facilities as it deems necessary. Declarant may also enter into and burden the Property with a declaration of easements and covenant to share costs relating (Cost Sharing Covenants) to the Resort Facilities as it deems necessary in its sole discretion.

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

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

13.12. No Dedication. This Declaration does not dedicate the easements herein declared for the benefit of any person not herein expressly made a beneficiary hereof. Declarant expressly disclaims the creation of any right in or for the benefit of the general public.

ARTICLE 14 CONDEMNATION; PARTITION

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

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

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

14.2. No Partition. Except as otherwise permitted in this Declaration, the Common Area shall remain undivided and no person or entity shall bring any action for the partition of any portion of the Common Area without the written consent of all

Owners and Mortgagees. This section shall not be construed to prohibit the Board from acquiring and disposing of title to real property which may or may not be subject to this Declaration.

ARTICLE 15
AMENDMENT

15.1. By Class A Members. Except as otherwise specifically provided herein, this Declaration may be amended, modified, extended, or revoked, in whole or in part, by the affirmative vote or written consent, obtained by written ballot or otherwise, or any combination thereof, of Owners representing at least sixty-seven percent (67%) of the total votes in the Association. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

15.2. By Declarant. Declarant has the right, upon approval by the Board, to amend, modify, extend, or revoke this Declaration for any purpose during the Declarant Control Period, with or without notice to the Class A Members. Thereafter, Declarant may, upon approval by the Board, amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on any Lot; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans to make, purchase, insure, or guarantee mortgage loans on any Lot; (d) to satisfy the requirements of any local, state, or federal governmental agency; or (e) to correct any scrivener's error. Provided, however, any such amendment occurring after the Declarant Control Period shall not adversely affect the title to any Lot unless the Owner shall consent in writing. Declarant's right to amend shall be construed liberally and shall include, without limitation, the right to amend and/or restate this Declaration in part or in its entirety.

15.3. By Board. The Board has the right, after the Declarant Control Period, to unilaterally amend this Declaration if such amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination.

15.4. Validity. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

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

verified by the Declarant.

ARTICLE 16
ENFORCEMENT

16.1. **Violations Deemed a Nuisance.** Every violation of this Declaration or any rule or regulation established pursuant to the authority of this Declaration is deemed a nuisance and is subject to all the remedies provided for the abatement or correction of the violation provided for in this Declaration or by law or equity.

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

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

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

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

ARTICLE 17
LENDER PROTECTIONS

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

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

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

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

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

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

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

ARTICLE 18 GENERAL PROVISIONS

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

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

tenants and occupants that the Association, its Board and committees, and Declarant are not insurers or guarantors of security or safety and that each person within the Property assumes all risks of personal injury and loss or damage to property resulting from acts of others.

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

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

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

18.7. Interpretive Conflicts. In the event of any conflict between the provisions of any of the Governing Documents, the documents shall control in the following order of authority: (1) the Declaration; (2) the Articles; (3) the Bylaws; (4) the Design Code; and (5) any rule, regulation, or resolution passed pursuant to the authority of the foregoing documents. In the event of any conflict between the Declaration and any subsidiary declaration, the provisions of the Declaration shall control. Notwithstanding the above, in the event of any conflict between the provisions of the Declaration and any condominium declaration establishing a condominium regime of unit ownership under the Utah Condominium Ownership Act, the provisions of the condominium declaration shall control.

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

18.9. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall

in all cases be assumed as though in each case fully expressed.

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

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

ARTICLE 19
DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

19.1. Alternative Dispute Resolution Without Litigation.

(a) Bound Parties. The Declarant; the Association; the Owners; the officers, directors, committee members, managers, members, employees, representatives, agents, successors and assigns of any of the foregoing; any other person subject to this Declaration; and any other person not otherwise subject to this Declaration who agrees to submit to this Article 19, (collectively, "Bound Parties"), agree that it is in the best interest of all Bound Parties to encourage the amicable resolution of Claims without the emotional and financial costs of litigation or the toll or market taint such litigation can have on the value of the Property and/or the Units that may be involved or impacted. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 19.2 in a good faith effort to resolve such Claim.

(b) Claims. As used in this Article 19, the term "Claim" means any claim, grievance, or dispute arising out of or relating to:

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design, construction or maintenance of improvements on the Property, other than matters of aesthetic judgment to be determined by the Association or Architectural Committee under the Architectural Guidelines and other provisions of Article 6 hereof, which shall not be subject to review and shall not be subject to this chapter (or any similar provisions in any Sub-Declaration).

(c) Exclusion from Definition of Claims. The following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 19.2:

(i) any suit by the Association to enforce the provisions of this Declaration, including collection of assessments or other amounts due and foreclosure of liens;

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article 6 of this Declaration (relating to the Architectural Guidelines) and Article 12 of this Declaration (relating to restrictions on Use and Conduct);

(iii) any suit that does not include the Declarant, any affiliate of the Declarant, or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

(iv) any dispute that affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 19.2;

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 19.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend the Claim's statute of limitations to comply with this Article 19;

(vi) any suit or dispute between the Declarant or an affiliate of Declarant and a builder, developer, contractor(s), subcontractor(s), or any other party contracted by the Declarant or an affiliate of the Declarant in connection with the development of the Property; and

(vii) any suit or dispute involving a governmental entity as a party.

19.2. Dispute Resolution Procedures.

(a) Notice. The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") by mail or personal delivery to each Respondent and to the Board, stating plainly and concisely;

(i) the nature of the Claim, including the persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises)

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an individual or entity designated by the Association (if the Association is not a party to the Claim) or to an independent mediator providing dispute resolution services predominately in Utah. Each Bound Party shall present the mediator with a written summary of the Claim or will otherwise comply with the mediator's proscribed procedures and requirements for mediating claims.

(i) Waiver of Claim for Failure to Appear or Participate. If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

(ii) Termination of Mediation Proceedings. If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

(iii) Costs of Mediation. Each Bound Party shall bear its own costs of the mediation, including attorney fees, and each Party shall pay an equal share of the mediator's fees.

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate such proceedings as are necessary to enforce such agreement without the need to comply again with the procedures set forth in this Article. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorney fees and court costs.

19.3. Initiation of Litigation by Association. As provided in Section 57-8a-229 of the Act, after expiration of the Declarant Control Period the Association may not bring a legal action against a Declarant, a board of directors (or any person serving as a director), or an employee, an independent contractor, or an agent of the Declarant, or the previous board of directors (or any person previously serving as a director) related to the Declarant Control Period unless:

(a) the legal action is approved in advance at a meeting where owners of at least 51 % of the allocated voting interests of the Owners in the Association are:

(i) present; or

(ii) represented by a proxy specifically assigned for the purpose of voting to approve or deny the legal proposed legal action at the meeting.

(b) The legal action is approved by vote in person or by proxy of owners of the lesser of:

(i) more than 75% of the allocated voting interests of the Owners present at the meeting or represented by a proxy as described in subsection (a)(ii) above; or

(ii) more than 51% of the allocated voting interest of the Owners in the Association.

(c) the Association provides each Owner with the items described in Section 19.4(a) and (b), below;

(d) the Association establishes a trust account, described in Section 19.4(c) below; and

(e) the Association first goes through the procedure described in Section 19.1 above, giving notice and an opportunity to resolve the dispute that is the basis of the proposed legal action.

19.4. No approval is required for action or proceedings:

(a) initiated by the Declarant during the Declarant Control Period on behalf of the Association;

(b) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;

(c) initiated to challenge ad valorem taxation or condemnation

proceedings (including bringing an action for inverse condemnation);

(d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

(e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

Sections 19.3 and 19.4 shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

19.5. Informed Vote. Before the Owners, as Members of the Association may vote to approve any claim of legal action, the Association shall first provide each Owner with:

(a) A written notice that the Association is contemplating legal action; and

(b) After the Association consults with an attorney licensed to practice in Utah, a written assessment of:

(i) The likelihood that the legal action will succeed;

(ii) The likely amount in controversy in the legal action;

(iii) The likely cost of resolving the legal action to the Association's satisfaction; and

(iv) The likely effect the stigma of a legal action will have on value or on an Owner's ability to market for sale, or a prospective lot buyer's ability to obtain financing for a lot due to a pending legal action.

(c) Before the Association commences any legal action as authorized above, the Association shall:

(i) allocate an amount equal to 10% of the cost estimated to resolve the legal action not including attorney fees; and

(ii) place the 10% allocated funds in a trust account that the Association may only use to pay the costs to resolve the legal action.

19.6. Sections 19.3 and 19.4 do not apply to an Association that brings a legal action that has an amount in controversy of less than \$75,000.00. If any claims or actions falling within the scope of this Article 19 are filed without satisfying all of the requirements set forth above, such claims or actions shall be dismissed without prejudice and shall not be re-filed unless and until all such requirements have been satisfied. In any action to enforce the requirements of this Article 19, the prevailing party shall be entitled to an award of its

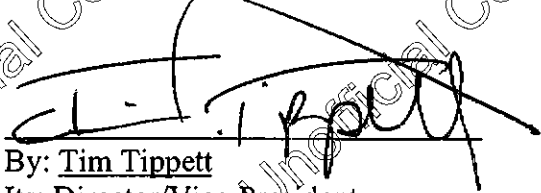
reasonable attorney fees and costs.

[Acknowledgement/Signature on Following Page]

IN WITNESS WHEREOF, the undersigned, as the Declarant herein, has hereunto set his hand this 8th day of February 2022.

DECLARANT:

Western Mortgage & Realty Company, a Washington corporation



By: Tim Tippett
Its: Director/Vice-President

STATE OF UTAH)

COUNTY OF WASHINGTON)

On the 8th day of February 2022, personally appeared before me Tim Tippett, who being duly sworn, says that he is a Director and Vice President of the profit corporation that executed the above and foregoing instrument and that said instrument was signed in behalf of said profit corporation by authority of its articles of incorporation, bylaws, or by authority of a resolution of its members, and said Tim Tippett acknowledged to me that said non-profit corporation executed the same.

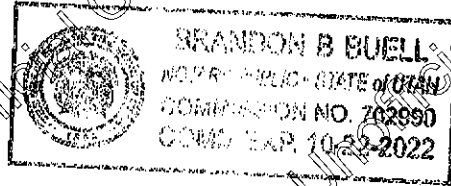

Notary Public

Exhibit A
[Legal Description]

All of Lots A through F, inclusive, of Marla at Elim Valley Phase 1, according to the official plat thereof on file and of record in the Office of the Recorder of Washington County, State of Utah.
Tax Parcel Nos. H-MARV-1-A through -F

All of Lots B1 through B12, inclusive, of Marla at Elim Valley Phase 1, according to the official plat thereof on file and of record in the Office of the Recorder of Washington County, State of Utah.

Tax Parcel Nos. H-MARV-1-B-1 through -12

All of Lots C1 through C10, inclusive, of Marla at Elim Valley Phase 1, according to the official plat thereof on file and of record in the Office of the Recorder of Washington County, State of Utah.

Tax Parcel Nos. H-MARV-1-C-1 through -10

All of Lots D1 through D22, inclusive, of Marla at Elim Valley Phase 1, according to the official plat thereof on file and of record in the Office of the Recorder of Washington County, State of Utah.

Tax Parcel Nos. H-MARV-1-D-1 through -22

All of Lots E1 through E5, inclusive, of Marla at Elim Valley Phase 1, according to the official plat thereof on file and of record in the Office of the Recorder of Washington County, State of Utah.

Tax Parcel Nos. H-MARV-1-E-1 through -5

All of Lots F1 through F12, inclusive, of Marla at Elim Valley Phase 1, according to the official plat thereof on file and of record in the Office of the Recorder of Washington County, State of Utah.

Tax Parcel Nos. H-MARV-1-F-1 through -12

All of Lots G1 through G11, inclusive, of Marla at Elim Valley Phase 1, according to the official plat thereof on file and of record in the Office of the Recorder of Washington County, State of Utah.

Tax Parcel Nos. H-MARV-1-G-1 through -11

All of Lots H1 through H18, inclusive, of Marla at Elim Valley Phase 1, according to the official plat thereof on file and of record in the Office of the Recorder of Washington County, State of Utah.

Tax Parcel Nos. H-MARV-1-H-1 through -18

All of Lots J1 through J13, inclusive, of Marla at Elim Valley Phase 1, according to the official plat thereof on file and of record in the Office of the Recorder of Washington County, State of Utah.

Tax Parcel Nos. H-MARV-1-J-1 through -13

All of Lots K1 through K3, inclusive, of Marla at Elim Valley Phase 1, according to the official plat thereof on file and of record in the Office of the Recorder of Washington County, State of Utah.

Tax Parcel Nos. H-MARV-1-K-1 through -3

All of Lots N1 through N5, inclusive, of Marla at Elim Valley Phase 1, according to the official plat thereof on file and of record in the Office of the Recorder of Washington County, State of Utah.

Tax Parcel Nos. H-MARV-1-N-1 through -5

All of Lots P1 through P6, inclusive, of Marla at Elim Valley Phase 1, according to the official plat thereof on file and of record in the Office of the Recorder of Washington County, State of Utah.

Tax Parcel Nos. H-MARV-1-P-1 through -6

ALL COMMON AREA AND LIMITED COMMON AREA WITHIN MARLA AT ELIM VALLEY PHASE 1 ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE RECORDER OF WASHINGTON COUNTY, STATE OF UTAH, CONTAINED WITH THE FOLLOWING LEGAL DESCRIPTION:

BEGINNING AT A POINT SOUTH 00°01'19" EAST 1,501.08 FEET ALONG THE SECTION LINE AND WEST 93.19 FEET FROM THE NORTHEAST CORNER OF SECTION 11, TOWNSHIP 42 SOUTH, RANGE 14 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING; THENCE ALONG A CURVE TO THE LEFT, THE RADIUS POINT OF WHICH LIES SOUTH 70°36'03" EAST, A RADIAL DISTANCE OF 1,495.20 FEET; THENCE SOUTHERLY ALONG THE ARC, THROUGH A CENTRAL ANGLE OF 05°17'57", A DISTANCE OF 138.29 FEET; THENCE SOUTHERLY, A DISTANCE OF 484.61 FEET ALONG A COMPOUND CURVE TO THE LEFT HAVING A RADIUS OF 473.46 FEET AND A CENTRAL ANGLE OF 58°38'42"; THENCE SOUTH 44°32'42" EAST 388.85 FEET; THENCE SOUTHEASTERLY, 190.00 FEET ALONG AN ARC OF A 2,523.75 FOOT RADIUS CURVE TO THE RIGHT, (CENTER BEARS SOUTH 45°27'18" WEST), WITH A CENTRAL ANGLE OF 04°18'49"; THENCE SOUTH 40°13'53" EAST 48.33 FEET; THENCE SOUTH 50°13'38" WEST 305.03 FEET; THENCE SOUTH 68°36'57" WEST 31.70 FEET; THENCE SOUTH 50°13'38" WEST 100.00 FEET; THENCE SOUTH 36°10'07" WEST 54.53 FEET; THENCE SOUTH 46°46'22" WEST 100.14 FEET; THENCE SOUTH 47°15'30" WEST 26.02 FEET; THENCE SOUTH 46°46'22" WEST 95.63 FEET; THENCE SOUTH 25°08'27" WEST 70.42 FEET; THENCE SOUTH 49°46'07" WEST 125.96 FEET; THENCE SOUTH 04°13'17" WEST 128.88 FEET; THENCE NORTH 85°46'43" WEST 160.00 FEET; THENCE NORTH 04°13'17" EAST 30.51 FEET; THENCE NORTH 85°46'43" WEST 132.00 FEET; THENCE SOUTH 04°13'17" WEST 51.52 FEET; THENCE NORTH 85°46'43" WEST 31.43 FEET; THENCE NORTH 40°23'37" WEST 224.09 FEET; THENCE NORTH 83°33'30" WEST 36.68 FEET; THENCE NORTH 06°26'30" EAST 45.17 FEET; THENCE NORTH 83°33'30" WEST 391.27 FEET; THENCE NORTH 06°26'30" EAST 26.00 FEET; THENCE NORTH 83°33'30" WEST 186.17 FEET; THENCE NORTHERLY, 264.38 FEET ALONG AN ARC OF A 1,847.00 FOOT RADIUS CURVE TO THE RIGHT, CENTER BEARS SOUTH 85°51'32" EAST, WITH A CENTRAL ANGLE OF 08°12'05";

THENCE SOUTH 77°39'28" EAST 94.00 FEET; THENCE NORTHERLY, 616.17 FEET ALONG AN ARC OF A 1,753.00 FOOT RADIUS CURVE TO THE RIGHT, CENTER BEARS SOUTH 77°39'28" EAST, WITH A CENTRAL ANGLE OF 20°08'21"; THENCE NORTHERLY, A DISTANCE OF 806.63 FEET ALONG A REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 1,664.54 FEET AND A CENTRAL ANGLE OF 27°45'55"; THENCE NORTH 04°42'59" EAST 102.35 FEET; THENCE EASTERLY, 641.88 FEET ALONG AN ARC OF A 1,326.50 FOOT RADIUS CURVE TO THE RIGHT, CENTER BEARS SOUTH 05°02'54" WEST, WITH A CENTRAL ANGLE OF 27°43'29" TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THERE FROM:

ALL PUBLIC STREETS AS DESCRIBED IN MARLA AT ELIM VALLEY, PHASE I, ACCORDING TO THE OFFICIAL PLAT THEREOF, ON FILE IN THE OFFICE OF THE RECORDER OF WASHINGTON COUNTY, STATE OF UTAH.
H-MARY-1-COMMON AREA