

Sharla Cook  
296 E. 900 S. # 12  
St. George, UT 84770

DOC # 20160005137

Amended Restrictive Covenants Page 1 of 21  
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By COOK SHARLA



Snow Haven Townhomes Owners Association

We, the undersigned, Directors of the Snow Haven Townhomes Owners Association (the Association), 296 E 900 S, St George, UT 84770, attest and affirm that the changes to the Declaration of Covenants, Conditions, and Restrictions of the Association were approved by more than 67% of the Owners by their expressed vote on 13 February 2016. This amended and restated Declaration of Covenants, Conditions, and Restrictions of the Association replaces and supersedes the original recorded Declaration of February 17, 1998 in its entirety, including all phases and amendments thereto.

Sharla J. Cook  
Sharla J. Cook  
Director

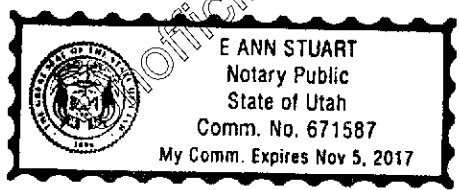
Marion Q. Rudman  
Marion Q. Rudman  
Director

Diana L. Sinclair  
Diana L. Sinclair  
Director

STATE OF UTAH )  
 )ss.  
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this 17 day of February 2016 by Sharla Cook, Marion Rudman, and Diana Sinclair, the Directors of Snow Haven Townhomes Owners Association.

E Ann Stuart



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**AMENDED AND RESTATED DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS OF SNOW HAVEN TOWNHOMES OWNERS ASSOCIATION**

THIS IS A DECLARATION of Covenants, Conditions and Restrictions which establishes a planned unit development known as Snow Haven Townhomes Association. This Declaration was originally made and executed on the 17th day of February, 1998 by Harold Stafford Snow, Declarant.

**RECITALS**

This Amended and Restated Declaration of Covenants, Conditions and Restrictions of Snow Haven Townhomes Owners Association [hereafter "Declaration" replaces and supersedes the original Declaration in its entirety, including all Phases and any amendments thereto originally recorded as "DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF SNOW HAVEN TOWNHOMES OWNERS ASSOCIATION.

Pursuant to Article 11.4 of the Declaration, owners representing not less than sixty-seven percent (67%) of the voting rights have approved this Amendment. Notice was given to all Homeowners in accordance with Article 11.4 and 11.5. Specifically, notice of intention to amend was delivered, under the provisions of this Declaration, to the homes of owners known to occupy them. Notice of intention to amend was also sent electronically to Homeowners who do not occupy their townhomes during the entire year. Homeowners were advised that copies of the amended and restated Declaration of Covenants, Conditions, and Restrictions were available at the Board of Trustees President's home for viewing a full 30 days before any action would be taken. Further, a copy was posted at an Internet location set up to display governing documents of the Association (URL: myaopc.com – HOA Web pages – Snow Haven). That copy was posted a full 30 days before any action was taken to amend existing CC&Rs, amended the 20<sup>th</sup> day of June, 2007.

This Declaration and the Map shall be construed as covenants of equitable servitude; shall run with the properties and be binding on all parties having any right, title or interest in the properties or any part thereof, their heirs, successors and assigns; and shall inure to the benefit of each owner thereof.

The Properties are located in St. George, Washington County, Utah and are described as.

A PORTION OF LOTS 2 & 3, BLOCK 2, ERASTUS SNOW'S ENTRY LOCATION IN SECTION 31, TOWNSHIP 42 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBES AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 3, BLOCK 2, ERASTUS SNOW'S ENTRY LOCATED NORTH 0038'15" WEST ALONG THE CENTER SECTION LINE 1298.32 FEET FROM THE CENTER QUARTER CORNER OF SECTION 31, TOWNSHIP 42 SOUTH, RANGE 15 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 88052'30" EAST ALONG THE SOUTH LINE OF 900 SOUTH STREET 174.95 FEET; THENCE SOUTH 00039'17" EAST 616.77 FEET; THENCE SOUTH 89020'43" WEST 175.13 FEET TO A POINT ON SAID CENTER SECTION LINE; THENCE NORTH 0038'15" WEST ALONG THE CENTER SECTION LINE 615.33 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH ALL IMPROVEMENTS & APPURTENANCES THEREUNTO BELONGING.

NOW THEREFORE:

The Association declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions restrictions, easements, charges and liens hereinafter set forth.

#### ARTICLE 1 -- DEFINITIONS

The following definitions control in this Declaration. These terms, though defined, are generally not capitalized in the Declaration.

Section 1.1. Declaration means this instrument, and any amendments.

Section 1.2. Plat or Map means the subdivision plat recorded herewith entitled "Snow Haven Townhomes Association". Plat may be viewed at the Washington County Recorder's office or through an internet connection to the office.

Section 1.3. Property or Properties means that certain real property hereinafter described, in Exhibit "A" and such additions thereto as may hereafter be subjected to this Declaration.

Section 1.4. Common Area means that portion of property owned by the Association, shown on the plat as dedicated to the common use and enjoyment of the owners.

Section 1.5. Limited Common Area means that portion of property owned by the Association, shown on the plat as dedicated to the exclusive use and enjoyment of the owner of the lot to which such limited common area is adjacent and/or appurtenant. Limited Common Area is subject to rights of the Association set forth in this Declaration.

Section 1.6. Lot means a separately numbered and individually described plot of land shown on the plat designated as a lot for private ownership, but specifically excludes the common and limited common areas. Each lot is owned in fee simple by the owner.

Section 1.7. Living Unit means a single family dwelling, with or without walls or roofs in common with other single family dwelling lots. When the term "Living Unit" is used it includes fee title to the real property lying directly beneath the single family dwelling, within lot boundary lines. This however, is not all the lot in some instances as there may be lot boundary outside the living unit walls. The term "single family dwelling" when used in this Declaration shall mean A. an individual, or two (2) or more persons within the immediate family related by blood, marriage, adoption or legal guardianship, living together as a single housekeeping unit in a dwelling unit and/or with not more than one additional unrelated person living with them as a single housekeeping unit in a dwelling unit; or B. A group of not more than four (4) persons, who need not be related by blood, marriage or adoption, living together as a single housekeeping unit in a dwelling unit; or C. Two (2) unrelated persons and any children related to either of them living together as a single housekeeping unit. In no event shall a single family dwelling exceed six (6) individuals. Exceptions to the above may be authorized by the Trustees following a written request and approval. A medically required, state licensed care giver need not meet the family qualifications stated herein.

Section 1.8. Owner means the entity, person, or group of persons owning fee simple title to any lot which is within the properties. Regardless of the number of parties participating in ownership of each lot, the group of those parties shall be treated as one "owner."

Section 1.9. Association means Snow Haven Townhomes Owners Association, a Utah nonprofit Corporation, its successors and assigns.

Section 1.10. Member means every person or entity that holds membership in the Association. Every member is an owner, and every owner is a member.

Section 1.11. Trustees mean the governing body of the Association.

Section 1.12. Mortgage includes "deed of trust" and mortgagee includes "trust deed beneficiary"

Section 1.13 Fines means a punitive monetary amount levied against an Owner and Lot for violations of this Amended and Restated Declaration, the Bylaws, the Rules and Regulations of the Association and applicable Architectural Guidelines. Said Fines shall be collectable as assessments pursuant to Article 4 herein.

Section 1.14 Residence "Residence" shall hereinafter mean and refer to single family home or other similar single family residential unit constructed upon a Lot for the permanent occupancy of an Owner and his or her family. Note: See Section 1.7 "Living Unit".

Section 1.15. Community Standards shall mean and refer to the plan, scheme, appearance, standard of conduct, maintenance, or other activity generally prevailing in the Snow Haven Townhomes Association. This Community Standard may be more specifically defined by the Trustees from time to time and shall serve as a standard against which behavioral, architectural and landscaping restrictions and infractions are determined.

Section 1.16. Utah Community Association Act The act to which the property is subject to: The Utah Community Association Act, Utah Code, Title 57, Chapter 8a, as the same shall be amended from time to time.

## ARTICLE 2 -- PROPERTY RIGHTS

Section 2.1. Title to the Common Area The Declarant has conveyed fee simple title to the common area and limited common area to the Association, free and clear of all encumbrances and liens, prior to the conveyance of the first lot but subject to this Declaration, and easements and rights-of-way of record. In accepting the deed, the Association will covenant to fulfill all the terms of this Declaration, to maintain the common area in good repair and condition at all times and to operate the common area at its own expense in accordance with high standards.

Section 2.2. Owners' Easements of Enjoyment Every owner has a right and easement of use and enjoyment in and to the common area. This easement is appurtenant to and passes with the title to every lot, subject to:

[a] The right of the Association to limit the number of guests of members using the common area.

[b] The right of the Association to suspend the voting rights and/or common utility service of a member for any period during which any assessment or portion thereof against his lot remains unpaid; and for a period of not to exceed sixty (60) days for any infraction of its published rules and regulations.

[c] The right of the Association to enter into agreements or leases which provide for use of the common areas and facilities by a similar Association in consideration for use of the common areas and facilities of the other Association, or for cash consideration;

[d] The right of the Association to grant easements for public utilities or other public purposes consistent with the intended use of the common area by the Association.

[e] The right of the Association to take such steps as are reasonably necessary or desirable to protect the common area against foreclosure.

[f] The terms and conditions of this Declaration.

[g] The right of the Association, through its Trustees, to adopt rules and regulations concerning use of the common area.

Section 2.3. Limited Common Area A lot owner is entitled to the exclusive use of the limited common area adjacent and appurtenant thereto, if any, and to exclusive use of the parking area, if any, designated with his lot number on the plat. The Association, through its Trustees,

may adopt rules and regulations concerning use of the limited common area. Limited common area is subject to the rights of the Association set forth in this Declaration.

**Section 2.4. Delegation of Use** An owner is deemed to delegate his right of enjoyment to the common area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property. No one who is non-resident shall have any such delegable right of enjoyment.

**Section 2.5. Rules.** The Board of Trustees shall have the authority to promulgate rules and regulations and further shall have the authority to levy fines and access penalties for the governance of the Properties and persons within the Properties. These rules of the Association shall be compiled and copies shall be made available for inspection and copying by the Trustees or the property management company. The Board of Trustees shall have both the rule making obligations and privileges as set forth in Utah Code Ann. §57-8a-213 (guidelines for enforcement) and §57-8a-217 as it applies to both design criteria and general rule making.

**Section 2.6 Community Standards.** Community Standards of Snow Haven Townhomes Association may be enacted and be amended from time to time. They may be referred to additionally as Rules and Regulations and must be approved by the Board of Trustees. In case of a conflict between the Community Standards and This Declaration the Declaration takes precedence concerning any area of conflict.

### **ARTICLE 3 -- MEMBERSHIP AND VOTING RIGHTS**

**Section 3.1. Membership** Every owner is a member of the Association. The term "owner" includes contract purchasers but does not include persons who hold an interest merely as security for the performance of an obligation unless and until title is acquired by foreclosure or similar proceedings. Membership is appurtenant to and may not be separated from lot ownership. Membership in the Association automatically transfers upon transfer of title by the record owner to another person or entity.

**Section 3.2. Voting Rights** The Association has one class of voting membership: All 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.

### **ARTICLE 4 -- FINANCES AND OPERATIONS**

**Section 4.1. Creation of the Lien and Personal Obligation of Assessments.** Each subsequent owner of any lot, by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided; (3) any other amount or assessment levied or charged by the Association or Board of Trustees pursuant to this Declaration, and (4) interest, costs of collection and a reasonable attorney's fee, as hereinafter provided whether or not a lawsuit for collections is initiated. All such amounts shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment or amount is charged. Such assessments and other amounts shall be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. Successors in title shall not be personally liable for assessments delinquent at the time they took title unless that obligation is expressly assumed by them.

**Section 4.2. Purpose of Assessments** The assessments levied by the Association shall be used (a) for the purpose of promoting the recreation, health, safety, and welfare of the residents of the properties and (b) for the improvement and maintenance of properties, services, and facilities devoted to this purpose. The assessments must provide for but are not limited to, the payment of taxes on Association property and insurance maintained by the Association; the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the common and limited common areas; the payment of administrative expenses of the Association; insurance deductible amounts; the establishment of a reserve account for repair, maintenance and replacement of those common and limited common areas which must be replaced on a periodic basis; and other amounts required by this Declaration or that the Trustees shall determine to be necessary to meet the primary purposes of the Association. The Trustees shall conduct a Reserve Fund Analysis as required by Utah Community Association Act, Utah Code, Title 57, Chapter 8a, 211 as the same shall be amended from time to time.

**Section 4.3. Reserve Analysis and Reserve Fund** "Reserve analysis" means an analysis to determine (a) the need for a reserve fund to accumulate reserve funds; and (b) the appropriate amount of any reserve fund. "Reserve fund line item" means the line item in the association's annual budget that identifies the amount to be placed into a reserve fund. "Reserve funds" means money to cover the cost of repairing, replacing, or restoring common areas and facilities that have a useful life of three years or more and a remaining useful life of less than 30 years, if the cost cannot reasonably be funded from the general budget or other funds of the association. The board will cause a reserve analysis to be conducted no less frequently than every six years; and review and, if necessary, update a previously conducted reserve analysis no less frequently than every three years.

The board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the board, to conduct the reserve analysis. The reserve fund analysis shall include: (a) a list of the components identified in the reserve analysis that will reasonably require reserve funds; (b) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis; (c) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis; (d) an estimate of the total annual contribution to a reserve fund necessary to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component's useful life and at the end of the component's useful life; and (e) a reserve funding plan that recommends how the association may fund the annual contribution.

The board shall (a) annually provide lot owners a summary of the most recent reserve analysis or update; and provide (b) a copy of the complete reserve analysis or update to a lot owner who requests a copy.

In formulating the annual budget, the board shall include a reserve fund line item in an amount the board determines, based on the reserve analysis, to be prudent.

Within 45 days after the day on which the association adopts its annual budget, the lot owners may veto the reserve fund line item by a 51% vote of the allocated voting interests in the association at a special meeting called by the lot owners for the purpose of voting whether to veto a reserve fund line item.

The Board may not use money in the reserve fund: (a) for daily maintenance expenses, unless a majority of association members vote to approve the use of reserve fund money for that purpose; or (b) for any purpose other than the purpose for which the reserve fund was established.

The board shall maintain a reserve fund separate from other association funds.



**Section 4.4. Maximum Annual Assessment.**

[a] The maximum annual assessment may be increased each year up to five percent (5%) above the assessment for the previous year, without a vote of the membership.

[b] The Association may change the basis and maximum of the assessments fixed by this Section prospectively for any annual period provided that any such change shall have the assent of sixty percent (60%) of the votes of the members, voting in person or by proxy, at a meeting duly called for this purpose.

The actual general assessment need not increase annually. Any year in which the maximum annual assessment [five percent [5%] was not applied may not be revisited in order to provide an increase to the current or future year's assessments. The Board shall set the actual general annual assessment on an annual basis. Notice shall be given to each owner as provided in Section 4.6 and 11.5. The Board may set the actual general assessment to be an amount at or less than the Maximum Annual Assessment.

**Section 4.5. Special Assessments for Capital Improvements** In addition to the annual assessments, the Association may levy in any assessment year a special assessment, applicable to that year only. The Board shall have the authority to spend up to Five Thousand Dollars [\$5000.00] for capital improvements without a vote of the membership. Special assessments may only be levied to defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of common or limited common area structures, fixtures and personal property related thereto. Special assessments exceeding the \$5000 limit must have the assent of sixty percent (60%) of the votes of the members authorized to vote, in person or by proxy, at a meeting duly called for this purpose.

**4.5 [a]. Capital Improvement.** A Capital Improvement is defined as the addition of a permanent structural improvement or the restoration of some aspect of a property that will either enhance the property's overall value or increase its useful life. Further, a capital improvement is any [i] substantial discretionary addition to the common areas, [ii] voluntary significant upgrade to common area materials, or [iii] discretionary material alterations to the appearance of the development. Most common area properties requiring periodic funding considerations either for replacement or maintenance are normally shown in a reserve study.

**Section 4.6. Additional Assessments** In addition to the annual assessments and special assessments for capital improvements authorized herein, the Association shall levy such additional assessments as may be necessary from time to time for the purpose of repairing and restoring the damage or disruption resulting to streets or other common or limited common areas from the activities of the City of St. George in maintaining, repairing or replacing the City's utility lines and facilities thereon. It is acknowledged that the ownership of said utility lines, underground or otherwise is in the City up to and including the meters for individual units, if any, and that they are installed and shall be maintained to City specifications.

**Section 4.7. Individual Unit Maintenance Assessments** Each Unit Owner shall be solely responsible for maintenance to glass, doors and screens on his/her lot or townhome, and for any maintenance on his/her lot or townhome required due to willful or negligent acts. In the event an owner shall fail to perform this maintenance in a manner satisfactory to the Trustees, as determined by a 2/3 vote majority of the Board, they shall have the right to have such maintenance performed. The cost of such maintenance shall be added to and become part of the assessment to which lot is subject.

**Section 4.8. Notice and Quorum for Any Action Authorized Under Sections 3 and 4.** Written notice of any meeting of members called for the purpose of taking any action authorized under Section 4 shall be sent to all members at least thirty (30) days in advance of said meeting. At the first meeting called, the presence at the meeting of members, or of proxies, entitled to cast sixty percent (60%) of all the votes of the membership shall constitute a quorum. If the quorum requirement is not met at such a meeting, another meeting may be called, on at least thirty (30)

days advance written notice, and the required quorum at any such subsequent meeting shall be one-half of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**Section 4.9. Uniform Rate of Assessment: Periodic Assessment.** Both annual and special assessments must be fixed at a uniform rate for all lots...Annual, special and additional assessments may be collected on a monthly or quarterly basis, as the Trustees determine.

**Section 4.10. Date of Commencement of Annual Assessments: Due Dates.** The annual assessment provided for herein shall commence to accrue on the first day of the month following conveyance of the common area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year.

At least thirty (30) days prior to the commencement of each new assessment period, the Trustees shall send or cause to be sent a written notice of the annual assessment to each owner subject thereto. This notice shall not be a pre-requisite to validity of the assessment.

In the absence of a determination by the Trustees as to the amount of said assessment, the annual assessment shall be an amount equal to 90% of the maximum annual assessment determined as provided above. The assessment due dates shall be established by the Trustees. The Trustees may provide for the payment of annual and special assessments in equal installments throughout the assessment year.

The Trustees shall prepare a roster of the properties 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.

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.

**Section 4.11. Effect of Non-Payment of Assessment - Remedies of the Association** Any assessment or installment thereof not paid within thirty (30) days after the due date therefore 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 Trustees shall determine appropriate) until paid. In addition, the Trustees may assess a late fee of \$25.00 for each delinquent installment. Other remedies the Trustees may impose include but are not limited to: 1. On rental properties, the Association may have payments by tenant paid directly to the Association. 2. The Trustees may suspend the delinquent homeowner's right to vote, declare them ineligible to serve on board, and, if currently serving on the Board, they may be subject to automatic dismissal from board for non-payment.

The Trustees may, in the name of the Association, (a) bring an action at law against the owner personally obligated to pay any such delinquent assessment without waiving the lien of assessment, or (b) may foreclose the lien against the property 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 and/or (c) may restrict, limit, or totally terminate any or all services performed by the Association in behalf of the delinquent member.

There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and a reasonable attorney's fee, together with 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. Utah Code 57-8a-204 and

205, as may be amended from time to time is hereby incorporated into this Declaration in order to facilitate the collections of assessments.

The Association and each Owner of a Lot hereby conveys and warrants pursuant to U.C.A. § 57-1-20 and 57-8a-402 to the attorney of the Association, with power of sale, each Lot and all improvements to each Lot for the purpose of securing payment of assessments under the terms of the Declaration. Under the power of sale the lot of an owner may be sold 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.

No owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the common area or by abandonment of his lot. Assessments imposed, as well as late charges, attorney fees, etc. are the personal obligation of the owner holding title at time the assessment was levied. Also, the duty to pay is independent of any performance by the Association or the board.

Section 4.12. Subordination of the 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 or insured by the Federal Housing Administration or the Veterans Administration 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 personal liability for assessments coming due after he takes title or from the lien of such later assessments.

Section 4.13. Books, Records and Audit 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 lot 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. A lot 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. These documents shall be maintained and stored as required by law and/or is common practice for documents of these types.

#### ARTICLE 5 – INSURANCE

Introduction: The following governing provisions apply and control with respect to the Association and individual owner's insurance requirements. However, to the extent these provisions are in conflict with Utah Code Ann., 57-8a-401 et seq., as may be amended from time to time, the statute shall control.

Section 5.1. Casualty Insurance on Insurable Common Area The Trustees shall keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire for the full [100%] 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 insurance carried by the Association are common expenses which shall be included in the regular annual assessments made by the Association.

**Section 5.1 (a) Casualty and Property Insurance on Townhomes.** In addition to casualty insurance on the Common Area, the Trustees shall obtain and continue in effect, on behalf of all owners, adequate blanket casualty, property and fire insurance in such form as the Trustees deem appropriate in an amount equal to the full replacement value, without deduction for depreciation or coinsurance, of all of the town homes including the structural portions and fixtures, improvement, or betterment installed by a lot owner to an attached dwelling or to a limited common area appurtenant to a dwelling on a lot, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window and any other item permanently part of or affixed to an attached dwelling or to a limited common area.

Insurance premiums from any such blanket insurance coverage, and any other insurance premiums paid by the Association shall be a common expense of the Association to be included in the regular annual assessments as levied by the Association. The insurance coverage with respect to the town homes shall be written in the name of and the proceeds thereof shall be payable to the Association as trustee for the owners.

**Section 5.2. Replacement or Repair of Property.** If a portion of the covered property for which insurance is required by this Article is damaged or destroyed, the Association shall repair or replace the portion within a reasonable amount of time unless: [1] the project is terminated; [2] repair or replacement would be illegal under a state statute or local ordinance governing health or safety; [3] at least seventy-five percent [75%] of the allocated voting interests of the lot owners in the Association vote not to rebuild and each owner of a dwelling on a lot and the limited common area appurtenant to that lot will not be rebuilt if the lot owner votes not to rebuild. If a portion of the Association is not repaired or replaced because the project is terminated, the termination provisions of applicable law and these governing documents shall apply. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense.

In the event of damage or destruction by fire or other casualty to any portion of the development covered by insurance written in the name of the Association, the Trustees are empowered to and shall represent the members in any proceedings, negotiations, settlements or agreements. The Association is appointed attorney-in-fact of each owner for this purpose.

**Section 5.3. Liability Insurance.** The Trustees shall obtain a comprehensive policy of public liability insurance covering all of the common and limited common property for at least \$1,000,000.00 per occurrence [or in any greater amounts as determined by the Trustees] 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. Each lot owner is an insured person under a liability insurance policy that the Association obtains that insures against liability arising from the lot owner's interest in the common areas or from membership in the Association.

**Section 5.4. Fidelity Insurance.** The Trustees may elect to obtain fidelity coverage against dishonest acts on the part of managers, Trustees, 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 Trustees shall seek a policy which shall [1] name the Association as obligee or beneficiary, plus [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 persons who serve without compensation from any definition of "employee."

**Section 5.5. Other Policies Obtained by Association.** The Trustees may elect, in their sole discretion, to purchase other types of insurance not specifically described in this Article, in amounts and pursuant to terms that it deems in the best interests of the Association. Any "optional" insurance obtained pursuant to this Section which is not expressly provided for above, shall be disclosed at each annual meeting. The Trustees shall obtain and keep current Directors

and Officers Insurance providing indemnification for Trustees in the event they are sued for their actions as a Trustee. Without this protection for their volunteer service they could incur substantial liability.

**Section 5.6. Other Policies Obtained by Owners.** Nothing herein shall prohibit an Owner from purchasing and maintaining any insurance they so desire. Owners shall insure their contents and the Association has no obligation to cover town home contents or personal property therein. It is suggested, however, that owners obtain insurance in the amount of the Association's deductible in the event that they are deemed liable for said deductible as further required below.

**Section 5.7. Association's Policies are Primary.** In the event of a covered property or casualty loss and that loss is covered by a property insurance policy in the name of the Association and another policy in the name of an Owner, the Association's policy shall be primary except as provided hereafter.

**Section 5.8. Instances Where Owner's Policy is Primary.** A lot owner who owns a lot that has suffered lot damage as part of a covered loss on the Association's policy is responsible for the Association's policy deductible as calculated by applying the "lot damage percentage formula" set forth in Utah Code Ann. 57-8a-401, et seq., as may be amended from time to time. As required in Section 5.7 above, Owners shall insure themselves to cover the deductible of the Association. In the event that an Owner is responsible for the deductible, the Owner's policy shall be deemed primary. The deductible required to be paid pursuant to this Section shall be collectible as a regular assessment against that Owner only and is due and owing regardless of whether the Owner has insurance coverage for the deductible or not.

**Section 5.9. Failure of Owner to Pay Deductible or Other Amounts Owed.** If a lot owner does not pay the amount required herein within 30 days after substantial completion of the repairs to, as applicable, the lot, a dwelling on the lot, or the limited common area appurtenant to the lot, an association may levy an assessment against a lot owner for that amount.

**Section 5.10. Notice to Owners.** The Association shall provide notice in accordance with Section 57-8a-215, Community Association Act, to each lot owner of the lot owner's obligation stated herein for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide such notice, the Association is responsible for the amount of the deductible that the Association could have assessed to a lot owner pursuant to this Article and Utah law.

**Section 5.11. Notice to Board or Management Co.** Owners should provide notice to Association Board and/or Management Co. a certificate of Insurance otherwise known in this document as a Certificate of Compliance prepared by their insurance Agent showing the amount of the deductible listed under Coverage A on their HOA policy or in the case of a Rented Unit a Business Owners Policy showing liability coverage for the amount of the deductible. Each Unit Owner should acquire Loss Assessment Endorsement on their own unit policy. Renters should provide to the Owner and the Owner subsequently to the Board a certificate showing proof of liability of coverage for the unit.

**Section 5.12. Board's Exercise of Business Judgment.** If, in the exercise of the business judgment rule, the board determines that a claim is likely not to exceed the Association property insurance policy deductible then, the lot owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible and a lot owner who does not have a policy to cover the Association's property insurance policy deductible is responsible for the loss to the amount of the Association's policy deductible. In such cases, the Association need not tender the claim to the Association's insurer.

**Section 5.13. Annual Review of Policies.** All insurance policies shall be reviewed at least annually by the Trustees 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.

#### ARTICLE 6 -- ARCHITECTURAL CONTROL COMMITTEE

An Architectural Control Committee may be appointed by the Trustees. If such a committee is in existence, it shall be composed of three [3] or more representatives appointed by the Trustees for a term of twelve [12] months. This committee is an advisory committee to the Trustees. The responsibilities of this committee include:

- a. Recommending approval or disapproval of any owner requests for changes to their lot, limited common area, or common area.
- b. Recommending changes to the Community Standards.

Unless explicitly authorized in the Community Standards, prior approval must be obtained before changing, erecting, or maintaining any of the following;

Structures, buildings, fences, walls, additions, extensions or expansions to or maintenance of the common and limited common areas, including walls, fences, driveways, walkways, lawns and plantings.

Such approval shall be requested by submitting in writing to the Architectural Control Committee, or in the absence of such a committee, to the Trustees, plans and specifications showing the nature, kind, shape, height materials, colors, location, cost, and time frame for completion.

The Trustees may approve changes without a vote of the homeowners when, after due diligence, it is determined to be required by law, for example, relating to safety or discrimination.

Any change whose fair market value cost exceeds five thousand dollars [\$5,000], as determined by the Trustees, and as further defined in the Community Standards, shall require prior written approval of sixty percent [60%] of the Owners.

The Architectural Control Committee and the Trustees shall ensure the community standards are maintained and complied with as indicated more specifically in the By-Laws and/or Rules and Regulations of Snow Haven Townhomes Association and the Community Standards. See Sections 1.15 and 2.6. The Trustees may adopt rules and regulations binding upon all owners to administer the terms of this article.

Neither the Architectural Control Committee nor the Trustees shall be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to requests made pursuant to this article.

#### ARTICLE 7 -- EXTERIOR MAINTENANCE

Section 7.1. Operation and Maintenance by Association. The Association shall provide for such maintenance and operation of the Common Areas as may be necessary or desirable to make them appropriately usable in conjunction with the Lots and to keep them clean, functional, attractive, and generally in good condition and repair. The Association shall also provide for maintenance and upkeep of any portion of a Lot which lies between the extremities of the Living Unit situated thereon and the boundaries of the Lot including concrete driveways and walkways as may exist appurtenant to any Lot. Driveways and walkways which have been altered in size, shape or cosmetically from their original construction condition are the responsibility of the unit owner. Further, the maintenance, repair, or replacement of concrete patio slabs is the responsibility of the unit owner.

[a] The Association shall provide for the maintenance and repair of the exterior of Living Units, including the replacement of roof tiles as required. The Association shall require materials of the same kind and quality and colors as those which were used in the connection with original construction of the items concerned unless directed otherwise by Rule.

Unit owners are responsible for the upkeep, painting and general maintenance of the unit's heating and air conditioning equipment. See Section 7.3.

[b] Each Unit Owner shall be solely responsible for maintenance to glass, doors and screens on his/her lot or townhome, and for any maintenance on his/her lot or townhome required due to willful or negligent acts. In the event an owner shall fail to perform this maintenance in a manner satisfactory to the Trustees, as determined by a 2/3 vote, they shall have the right to have such maintenance performed. The cost of such maintenance shall be added to and become part of the assessment to which lot is subject.

[c] Walls. Snow Haven Townhomes Association has on the property various types, sizes, materials, construction and uses of walls. Types of walls include Party Walls, Retaining Walls, and Perimeter Walls. The Association shall be responsible for the maintenance, repair, and or replacement of Perimeter and Retaining walls. However, Party Walls dividing lots are the responsibility of lot owners. Any wall, fence, gate or other barrier or dividing type of separation between units or located on common or limited common area constructed by a unit Owner shall be the Owners responsibility to provide maintenance, repair and or replacement as may be necessary over time. No owner shall attach, paint, modify or otherwise change any wall which is the responsibility of the Association without first gaining written permission from the Trustees. Any damage or modification of Association's Walls caused by Owner, lessee or guest will be the responsibility of the Owner to remove, repair or replace said damage or other similar condition at Owner's expense. Additionally: 1. The general rules of law regarding party walls and liability for damage due to negligence or willful acts or omissions shall apply. 2. The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners in proportion to their ownership. 3. If destroyed or damaged by fire or other casualty, any Owner thereof may restore it, and the other Owners thereof shall contribute to the cost of restoration thereof. 4. Binding arbitration of party wall disputes; and 5. Right to contribution runs with the land.

[d] The provisions of Article 6 [Architectural Control Committee] shall not apply to any maintenance or repair of Living Unit exteriors which is accomplished by the Association.

Section 7.2. Access at Reasonable Hours For the purpose solely 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.

Section 7.3. Alteration of Certain Maintenance Duties by Rule. The duty of maintenance for the area of a lot outside the walls of the townhome, and the limited common areas adjacent and appurtenant to the townhomes may be altered by Rule of the Association.

#### ARTICLE 8 — USE RESTRICTIONS

Section 8.1. General Use Restrictions All of the properties which are subject to this declaration are hereby restricted to residential dwellings and buildings in connection therewith, including but not limited to community buildings on the common property. All buildings or structures erected in the properties shall be of new construction and no buildings or structures shall be removed from other locations to the properties. After the initial construction on a lot, no subsequent building or structure dissimilar to that initially constructed shall be built on that lot. No building or structure of a temporary character, trailer, basement, tent, camper, shack, garage, barn or other outbuilding shall be placed or used on any lot at any time.

No part of the Property shall be used for any commercial, manufacturing, mercantile, storing, vending, repairing, painting or reconstructing any vehicles, recreational or otherwise and other such non-residential purposes unless special exception is provided by the Trustees. Garage conversions are explicitly denied unless permission from the Trustees is obtained as well as required building permits and St. George City codes are complied with.

Section 8.2. Signs and Commercial Activity. Except for one "For Rent" or "For Sale" sign of not more than four [4] square feet, no advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed, or permitted to remain on any lot or any portion of the properties. Signs other than those noted above, such as security advisory signs, may be placed on the property only as described in the Community Standards. No commercial activities of any kind whatever shall be conducted in any building or on any portion of the properties without specific Board approval. Allowable positioning of signs shall be by Rule.

Section 8.3. Quiet Enjoyment No noxious or offensive activity shall be carried on upon any part of the properties nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, 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.

Section 8.4. Animals No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said lots, except one dog, and/or one cat or other household pets, two or less in total number, may be kept provided that they are not kept, bred or maintained for any commercial purpose. Dogs certified as "service dogs" (helping with sight-impaired homeowners for example) are not included in the limitation of two pets. Homeowners owning a service animal, must provide written documentation to the Board regarding the animals service capabilities and the requirement for the service. Notwithstanding the foregoing, no animals or fowl may be kept on the property which result in an annoyance or are obnoxious, by noise, smell or otherwise, to lot owners. If any animal or breed which could be perceived to adversely affect the ability of Snow Haven Homeowner Association to maintain and /or procure reasonable liability insurance the home owner, the homeowner shall be directed by the Board of Trustees to remove the animal from the community. All pets must be kept in the lots or on a hand held leash when in the common areas. The Board of Directors shall have the express authority and right to promulgate rules, beyond those stated herein, restricting the keeping of pets.

Section 8.5. Use of Common Area Except for the rights of ingress and egress, owners are hereby prohibited and restricted from using any of said common area, other than as permitted in this declaration of covenants or as may be allowed by the Trustees. It is expressly acknowledged and agreed by all parties concerned that this restriction is for the mutual benefit of all owners of lots in the properties and is necessary for the protection of the interests of all said owners in and to the common area. Exceptions to this section may be modified by Rule.

Section 8.6. Parking. No motor vehicle which is inoperable shall be allowed within the Properties, and any motor vehicle which remains parked in the street over 72 hours shall be subject to removal by the Association, unless the Board specifically approves an exemption. The offending vehicle may be towed and the cost assessed to the owner as any other assessment under this declaration. Parking spaces within the Properties shall be used for parking of motor vehicles actually used by the owner or his immediate family or guests for personal use and not for commercial use. Parking of vehicles on Unit Owner driveways is allowed. No unlicensed, improperly licensed, or uninsured vehicles are allowed on the Association's property at any time.

Recreational vehicles, including boats, travel trailers, ATVs, or similar property owned by the homeowners or guests of Snow Haven are allowed to be parked within the area provided at the southern end of the private road. A monthly rental charge will be assessed by the Board to cover upkeep and maintenance of the RV storage area. Owners or guests may not occupy a parked RV or trailer stored in this area. RVs and trailers are denied the use of electric generators at all times. Vendor vehicles shall be required to comply with the same parking restrictions as Unit Owners.



**Section 8.7. Planting and Gardening.** Planting or gardening may be done in the rear limited common area of each Lot. However, no existing lawn areas may be removed in order to facilitate such planting or gardening. Existing flower or shrub areas may be used as well as 'grow boxes'. Grow boxes used for vegetable gardening may only be used in the rear areas of the Lot. Grow boxes for flowers or shrubs may be used in the front of the Lots as well as the rear areas. Further, no fences, hedges or walls shall be erected or maintained upon any property except as installed in accordance with the initial construction of the buildings located thereon or as approved by the Trustees.

**Section 8.8. External Apparatus** No lot 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 Trustees.

**Section 8.9. Exterior Television or Other Antennas** No exterior radio or other antennas, except one television antenna which shall not exceed four feet in height, per lot, shall be placed, allowed or maintained upon any lot or upon any structure or portion of the improvements situated and located upon the properties without prior written approval of the Trustees. Said approval to be in compliance with current Federal Communication Commission (FCC) standards.

**Section 8.10. Garbage Removal** All rubbish, trash and garbage shall be regularly removed from the lots and shall not be allowed to accumulate thereon. Garbage should be placed in proper containers. Garbage containers may be placed in front of the townhomes on scheduled garbage pickup days but must be removed from the front of homeowner lots by the end of that pickup day. Garbage containers may be kept in homeowner's garage, in the homeowner's back lot, or in the shared gravel area between homes. Garbage containers stored in the back lot may not obstruct the maintenance crews who maintain and mow the back lawns. Garbage containers stored between townhomes must be placed behind the air-conditioning equipment and/or the landscaping sprinkler system valves where they are out of view from the street.

**Section 8.11. 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 properties of any lot. 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 properties of any lot.

**Section 8.12. Interior Utilities** All utilities, fixtures and equipment installed within a lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter boundaries of a lot, shall be maintained and kept in repair by the owner thereof. However, the Association shall maintain, repair, or replace those lines or conduits providing water and sewer service to each unit to within twelve [12] inches of the footprint of such unit. An owner shall do no act nor 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 lots or owners.

The Association shall pay for all utility service furnished to each Lot except telephone and any other services which are separately billed or metered to individual Lots by the utility or other party furnishing such service.

**Section 8.13. Leases and Occupancy Requirements** Any lease or rental agreement shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, Bylaws and Rules and Regulations of the Association and that any failure by lessee to comply with the terms of such documents shall be a default under the lease. In the event the Owner fails to remedy the default under their lease agreement, the Association is hereby appointed agent of the Owner and may initiate eviction proceedings against Tenant.

The number of rental units in Snow Haven Townhomes Association shall not exceed two [2] units. Those units currently under lease prior to this amendment shall be granted a grandfather status until the unit is sold or title is otherwise transferred to a new owner of record except for ownership changes through current family trusts or spousal inheritance. As of the date of recording this amendment, any owner that is currently renting or leasing a unit may continue to do so until such time as the unit is sold or title is otherwise transferred as above. Future rental units shall be approved on a first-come basis. Those wanting to place a unit on the potential rental list will notify the Secretary or Board President and/or the property management agent (should the Association hire one in the future) of Snow Haven Townhomes Owners Association. Until each unit with grandfather status is sold, no further units will be allowed to be leased or rented, except for mitigating or hardship circumstances as follows: the Board of Trustees in its sole discretion shall be empowered to allow reasonable leasing/renting of units beyond the limitation set forth above, upon written application, to avoid undue hardship to the Owner. By way of illustration and not by limitations, examples of circumstances which would constitute undue hardship are those in which, [a] an Owner is placed in a hospital, nursing home, assisted living facility, or other similar facility, [b] an Owner must relocate his residence and cannot, within ninety [90] days from the date the unit was placed on the market, sell the unit while offering it at a reasonable price no greater than its current appraised market value; [c] the Owner takes leave of absence or temporarily relocates and intends to return to reside in the unit; such absence not to exceed two [2] years; [d] the unit is to be leased to a member of the Owner's immediate family, which shall be deemed to encompass children, grandchildren, grandparents, brothers, sisters, parents and spouses, Owners who have demonstrated that the inability to lease their unit would result in undue hardship and have obtained the requisite approval of the Trustees may lease/rent their units for such duration as the Trustees reasonably determine is necessary to prevent undue hardship. Any lease or rental agreement shall be in writing and must be presented to the Board of Trustees for approval prior to occupancy. All rental or lease agreements must be for a minimum period of twelve [12] months with any renewal also for a minimum period of twelve [12] months.

No dormitory type rentals are permitted. No unit shall be rented, leased, or utilized for transient hotel purposes, commercial, or vacation time-share. Further, no Owner shall lease or rent less than his or her entire living unit. The units may not be divided into a smaller rental space than the entire unit space. A renter or lessee may not sublet or allow a third party to occupy the unit. The association must be notified, thru its secretary and/or property management agent, forty eight [48] hours prior to any move-in or move-out. The terms of the lease shall be subject in all respects to the provisions of this Declaration, the Articles of Incorporation, By-Laws, Board Policy Letters and Rules and Regulations of the Association. Notwithstanding the above, prior to renting or leasing any townhome, the owner shall occupy their townhome for at least twelve [12] consecutive months before it qualifies as a permissible rental townhome. For the purposes of this Declaration "occupy" shall mean that a townhome shall be owned by the same owner[s] for a period of at least twelve [12] consecutive months, whether physically occupied by said owner[s] or not, prior to being made available for the rental or lease.

#### ARTICLE 9 - AUTHORITY OF TRUSTEES

Section 9.1 Resignation and Removal. Any officer may resign at any time by delivering a written resignation to the President of the Board of Trustees. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed by the Board of Trustees at any time, for or without cause and a successor may be elected at a special meeting of the Board called for such purpose.

Section 9.2. Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board of Trustees at any regular or special Board meeting.

**Section 9.3 Fines** The Board shall have the right to levy fines against Owners and Lots for violation of the provisions of this Declaration, the By-Laws, Supplementary Restrictions, or rules and regulations. The amount of the fines shall be determined by the Board and shall be published in a Schedule of Fines. The Board shall have the right to amend the Schedule of Fines from time to time as it sees fit. Fines shall be considered an assessment against the Lot and shall be collectible as an assessment pursuant to Article 4 herein. In order to provide a uniform enforcement policy the Association hereby adopts the Utah Community Association Act's fine provisions. See Utah Code 57-8a-208. Further, if an Owner is noticed properly of a particular violation and refuses corrective action within a reasonable time period the Association, following duly given notice, has the right to correct the violation itself and charge the cost to the Owner through an individual assessment.

**Section 9.4 Notice and Hearing** In the event of a claimed violation of the Declaration, By-Laws or administrative rules and regulations as they may be adopted by the Trustees from time to time governing the Association an Owner or Resident shall be entitled to the following:

[a] **Notice.** Written notice specifying the nature of the alleged violation [providing any other appropriate information] and stating the time, date and place at which the Owner or Resident will have an opportunity to be heard. Notice shall be given at least fifteen [15] days prior to and no longer than thirty [30] days before the date set for the hearing. The notice may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered four [4] business days after it has been deposited with the U.S. Postal Service, regular mail, postage prepaid, addressed to the Owner or Resident at the address given by the member to the Trustees for the purpose of service of notice, or to the address of the Owner's or Resident's Unit if no other address has been provided. The address of an Owner or Resident for the purposes of notice may be changed from time to time by delivery of written notice to the Trustees.

[b] **Costs and Assessments.** If the violation, or the failure to correct or remedy a violation, results, The Board of Trustees may levy fines as indicated in Section 9.3.

[c] **Final Determination.** After the hearing has taken place, the Trustees shall determine whether a violation has occurred and, if so, the Trustees may: [1] levy an Assessment or impose conditions which shall become effective not less than five [5] days after the date of the hearing; [2] take such other action as it may deem appropriate. [3] The voting rights of Owner shall be suspended during any period of delinquency of assessments. The determination of the Trustees shall be final.

## ARTICLE 10 – EASEMENTS

**Section 10.1. Encroachments** Each lot and the property included in the common and limited common areas 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 lots is partially or totally destroyed, and then rebuilt, the owners of the lots so affected agree that minor encroachments of parts of the adjacent lots or common or limited common areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

**Section 10.2. Utilities** There is hereby created a blanket easement upon, across, over and under all of the properties for public utility purposes. By virtue of this easement, it shall be expressly permissible for all public utilities serving the properties to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the properties, provided that all such services shall be placed underground, except that said public utilities may affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under roofs and exterior walls. Notwithstanding anything to the contrary contained in this section, no sewers, electrical lines, water lines, or other utilities may be installed or

relocated on the properties in such a way as to unreasonably encroach upon or limit the use of the common area or limited common area or any structure thereon. In the initial exercise of easement rights under this Section, a utility shall make reasonable efforts to occupy and use the same physical location or lane as other utilities. After a utility service has initially exercised its easement rights under this Section, the utility shall make reasonable efforts to occupy and use the same physical location as its prior installations. Should any utility furnishing a service covered by the general easement herein provided, request a specific easement by separate recordable document Association shall have the right to grant such easement on said property without conflicting with the terms hereof.

**Section 10.3. 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 and limited common area in the performance of their duties.

**Section 10.4. Maintenance by Association** An easement is hereby granted to the Association, its officers, agents, employees and to any maintenance company selected by the Association to enter in or to cross over the common and limited common areas and any lot or unit to perform the duties of maintenance and repair including those procedures necessary to provide pest and/or **vermin** control. Upon reasonable notice to the unit owner or lessee that procedures as noted above are necessary, the unit owner or lessee shall provide keys or make other arrangements in order to facilitate such procedures.

**Section 10.5. Other Easements** The easements provided for in this Article shall in no way affect any other recorded easement.

#### ARTICLE 11 -- GENERAL PROVISIONS

**Section 11.1. Enforcement** The Association, or any owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration, or any rule of the Association, including but not limited to any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants. Failure of the Association or of any owner to enforce any covenant or restriction herein contained or any rule of the Association shall in no event be deemed a waiver of the right of the Association or any owner to do so thereafter.

The Association can enforce all restrictions, conditions, and covenants in multiple ways. The Association has the following rights: 1. To enter and cure. 2. To enjoin or abate violations through legal proceedings. 3. To levy fines for violations (and continuing or subsequent violations), which are collected as assessments. 4. To suspend rights to any common utilities or facilities. 5. To suspend right to vote. 6. To bring suit against owners on behalf of association or other owners, with proper attorney fee provision. 7. To record notice of noncompliance against properties in violation of covenants. 8. The right of owners to enforce covenants. 9. The right to seek injunctive relief.

The purchaser of a lot in violation of the covenants becomes liable for correcting such violations upon purchase of the home.

In the event action, with or without suit, is undertaken to enforce any provision hereof or any rule of the Association, the party against whom enforcement is sought shall pay to the Association or enforcing owner a reasonable attorney's fee. The Trustees may levy a fine or penalty, as shown in the Schedule of Fines, not to exceed 10% of the amount of the maximum annual assessment against any owner who fails to refrain from violation of these covenants or a rule of the Association, after three (3) days written notice, and opportunity for hearing.

Section 11.2. Severability All of said conditions, covenants and reservations contained in this Declaration shall be construed together, but if any one of said conditions, covenants, or reservations, or any part thereof, shall at any time be held invalid, or for any reason become unenforceable, no other condition, covenant, or reservation, or any part thereof, shall be thereby affected or impaired; and the 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.

Section 11.3. Duration The covenants and restrictions of this Declaration shall run with and bind the land, 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 five [5] years.

Section 11.4. Amendment The covenants, conditions and restrictions of this Declaration may be amended by vote of not less than sixty-seven percent (67%) of the members. Amendments to the Declaration shall be proposed by either a majority of the Trustees or by Owners holding thirty percent [30%] or more of the voting rights. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for approval or consent to the amendment. Any amendment must be properly recorded in the records of Washington County, Utah, to become effective.

Section 11.5. 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; made available at the Board of Trustees President's home for viewing a full 30 days before any action may be taken; or posted a full 30 days before any action may be taken at an Internet location at the following URL: myaopc.com – the HOA Webpages – Snow Haven HOA.

Section 11.6. 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.

Section 11.7. Waivers No provision contained in the 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.

Section 11.8. Topical Headings The topical headings contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Declaration.