

When recorded return to:
The Ranches at Stone Creek
Homeowner's Association
P.O. Box 622
West Jordan, Utah 84084

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GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
RANCHES AT STONE CREEK HOMEOWN
PO BOX 622
WEST JORDAN UT 84084
BY: LTP, DEPUTY - WI 23 P.

**AMENDED DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS FOR
THE RANCHES NO. 1 AND NO. 2 SUBDIVISIONS**

A PLANNED UNIT DEVELOPMENT

This Amended Declaration of Covenants, Conditions and Restrictions (the "Declaration") is made this 2nd day of February, 2015, by Ranches at Stone Creek, L.L.C., a Utah limited liability company (the "Declarant").

The HOA Declaration of Covenants, Conditions and Restrictions creates a legal framework for the rights, responsibilities, restrictions and operations of the HOA.

RECITALS

A. The Declarant is the owner of certain land in Salt Lake County, Utah, shown on the plats entitled "The Ranches No. 1 Subdivision" and "The Ranches No. 2 Subdivision" to be recorded in the Salt Lake County Recorder's Office (the "Recorder's Office") in Salt Lake County, Utah in Plat Book 1993, Folio 141, and in Plat Book 2003, Folio 199. The consenting lot owner who also signs this Declaration is the owner of lot 106 in the Ranches No. 1 Subdivision, and said owner intends by signing this Declaration to have Lot 106 become subject to and governed by all of the provisions of this declaration.

B. It is the intention of the Declaration to develop the land as a residential community in the form of a planned unit development, and to insure therefore a uniform plan and scheme of development, and unto that end the Declarant has adopted, imposed and subjected the property hereinafter described to certain covenants, conditions, restrictions, easements, charges, and liens (collectively the "Covenants"), as set forth herein for the following purposes:

(1) To insure uniformity in the development of the Lots (as hereinafter defined) in the Community (as hereinafter defined).

(2) To facilitate the sale by the Declarant, its successors and assigns, of the land in the Community by reason of its ability to assure purchasers of such uniformity.

(3) To make certain that the Covenants shall apply uniformly to all Lots for the mutual advantage of the Declarant, the Owners and any Mortgagees (as such capitalized terms are defined herein) and to all those who may in the future; claim title through any of the above.

(4) To provide for the benefit of the Owners, the preservation of the value and amenities in the Community, and the maintenance of certain reserved open spaces and common areas, including but not limited to easements, charges and liens, as set forth below, and for the creation of an association to be delegated. and assigned the powers of maintaining and administering the yard and sprinkler maintenance (as hereinafter described), and enforcing the Covenants, and collecting and disbursing the assessments and charges hereinafter created; which association shall be incorporated under the laws of the state of Utah, as a nonprofit corporation, for the purpose of exercising the functions as aforesaid.

COVENANTS, CONDITIONS AND RESTRICTIONS

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

That the Declarant does hereby establish and impose upon the Property (as hereinafter defined), the Covenants for the benefit of and to be observed and enforced by the Declarant, its successors and assigns, the Association (as hereinafter defined), and the Owners (as hereinafter defined).

ARTICLE I **DEFINITIONS**

The following words, when used in this Declaration (unless the context otherwise requires) shall have the following meanings:

1.1 "Association" shall mean and refer to The Ranches at Stone Creek Homeowners Association, Inc.

1.2 "Builder" shall mean any person or entity other than the Declarant, which shall, in the ordinary course of such person's business, construct a dwelling on a Lot and sell or lease it to another person to occupy as such person's residence.

1.3 "Community" shall mean and refer to all of the land hereby made subject to this Declaration by an instrument in writing, duly executed and recorded in the Recorder's Office, and any Additional Property (as such term is hereinafter defined) that may hereafter expressly be made subject to this Declaration by an instrument in writing, duly executed and recorded in the Recorder's Office.

1.4 "Declarant" shall mean and refer to Ranches at Stone Creek, L.L.C., and any successor or assign thereof to whom it shall expressly (a) convey or otherwise transfer all of its right, title and interest in the Property as an entirety, without reservation of any kind; or (b) transfer, set over and assign all of its right, title and interest under this Declaration, or any amendment or modification thereof.

1.5 "Development Period" shall mean the time between the date of recordation of this Declaration in the Recorder's Office and the date on which the Class B membership in the Association converts to Class A memberships as described in Article IV.

1.6 "Lot" and/or "Lots" shall mean and refer to those portions of the Property that are subdivided parcels of land shown and defined as lots or plots of ground and designated by numerals on the Plat, on which a dwelling is proposed to be constricted.

1.7 "Mortgage" shall mean any mortgage or deed of trust encumbering any Lot, and any other security interest existing by virtue of any other form of security instrument or arrangement, provided that such mortgage, deed of trust or other form of security instrument has been recorded in the Recorder's Office.

1.8 "Mortgagee" shall mean the person secured by a Mortgage.

1.9 "Plat" shall mean and refer to the plats entitled The Ranches No. 1 Subdivision" and "The Ranches" to be recorded in the Recorder's Office, and any plats recorded in substitution or amendment thereof, plus any plats hereafter recorded of any Additional Property that may hereafter expressly be made subject to this Declaration by an instrument in writing, duly executed, and recorded in the Recorder's Office.

1.10 "Property" shall mean and refer to all of the real property described in Exhibit "A" attached hereto and incorporated herein by reference, and any additional land at such time as it is hereafter expressly made subject to this Declaration by an instrument in writing, duly executed and recorded in the Recorder's Office.

1.11 "Owner" shall mean, refer to and include the person, firm, corporation, trustee, or legal entity, or the combination thereof, including contract sellers, holding the fee simple record title to a Lot, as said Lot is now or may from time to time hereafter be created or established, either in his, her, or its own name, as joint tenants, tenants in coation, tenants by the entirety, partnership or otherwise, if the Lot is held in such real property tenancy, partnership or other relationship. If more than (1) person, firm, corporation, trustee, or other legal entity, or any combination thereof, hold the record title to any one (1) Lot, whether it is in a real property tenancy, or partnership relationship, or otherwise, all of same, as a unit, shall be deemed a single Owner and shall be ore become a single member of the Association by virtue of ownership of such Lot. The term "Owner," however, shall not mean, refer to or include any contract purchaser, nor shall it include a mortgagee.

1.12 "Structure" shall mean anything or device the placement of which upon the Property (or any part thereof) may affect the appearance of the Property (or any part thereof) including, by way of illustration and not limitation, any building, trailer, garage, porch, shed, greenhouse, bathhouse, coop or cage, covered or uncovered patio, clothesline, radio, television or other antenna or "dish." Fence, sign curbing, paving wall, roadway, walkway, exterior light, landscape, hedge, trees, shrubbery, planting, signboard or any temporary or permanent living quarters (including any house trailer), or any other temporary or permanent improvement made to the Property or any part thereof. "Structure" shall also mean (i) any excavation, fill, ditch, diversion, dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across the Property, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across the Property, and (ii) any change in the grade of the Property (or any part thereof) of more than

six (6) inches from that existing at the time of first ownership by an Owner hereunder other than the Declarant.

ARTICLE II **COVENANTS, CONDITIONS AND RESTRICTIONS**

2.1 **ADMINISTRATION; ARCHITECTURAL REVIEW COMMITTEE.** The Architectural Review Committee, which shall be appointed by the Declarant during the Development Period and thereafter by the board of Directors of the Association (the "Architectural Review Committee") shall have all the rights, powers and duties granted to it pursuant to this Declaration. The initial members of the Architectural Review Committee are Justin Peterson, Ryan Peterson and Barrett Peterson. The Architectural Review Committee may be comprised of a single member, or up to three (3) members, which shall be under direct oversight of the Board. At any time, from time to time, during the Development Period, the initial members of the Architectural Review Committee may be replaced for any reason (including death or resignation). All questions shall be decided by a majority of the members of the Architectural Review Committee, and such majority shall be necessary and sufficient to act in each instance and on all matters. Each member of the Architectural review Committee, now or hereafter appointed, shall act without compensation for services performed pursuant to this Declaration. The Declarant hereby grants to the Architectural Review Committee, its successors and assigns, the right to establish architectural design criteria for the Community (the "Design Guidelines") which shall be made available to all members, and to waive such portion of portions of the Covenants numbered 2.3 through 2.23 of this Article II as the Architectural Review Committee, in its sole discretion may deem advisable and in the best interests of the community.

2.2 **ARCHITECTURAL REVIEW.**

(a) No Structure shall be constructed on any Lot, nor shall any addition (including awnings and screens, change, or alteration therein or thereto) (including any retreatment by painting or otherwise of any exterior part thereof unless the original color and material are used) (collectively, "Alterations") be made to the exterior of any Structure and/or contour of any Lot, nor shall any work be commenced or performed which may result in a change of the exterior appearance of any Structure until the plans and specifications, in duplicate, showing the nature, kind, shape, dimensions, material, floor plans, color scheme, location, proposed topographical changes, together with the estimated costs of said Alterations or construction, the proposed construction schedule, and a designation of the party or parties to perform the work, have been submitted to and approved in writing by the Architectural Review Committee, its successor and assigns, and until all necessary permits and any other governmental or quasi-governmental approvals have been obtained. The approval of the Architectural Review Committee or any Structure or Alterations shall in no way be deemed to relieve the Owner of any Lot from its obligation to obtain any and all permits and approvals necessary for such Structure or Alterations.

(b) The Architectural Review Committee shall consider applications for approval of plans, specifications, etc. upon the basis of conformity with this Declaration, applicable law and the Design Guidelines, if any, and shall be guided by the extent to which such proposal will insure conformity and harmony in exterior design and appearance, based upon, among other things, the following factors: the quality of workmanship; nature and durability of materials; harmony of external design with existing structures; choice of colors;

changes in topography, grade elevations and/or drainage; the ability of the party or parties designated by the Owner to complete the Structure or Alterations proposed in accordance with this Declaration, including, without limiting the foregoing, such factors as background, experience, skill, quality of workmanship, financial ability; factors of public health and safety; the effect of the proposed Structure or Alterations on the use, enjoyment and value of other neighboring properties, and/or on the outlook or view from adjacent or neighboring properties; and the suitability of the proposed Structure or Alterations with the general aesthetic appearance of the surrounding area.

(c) The Architectural Review Committee shall have the right to refuse to approve any such plans or specifications, including grading and location plans, which are not suitable or desirable in its opinion, for aesthetic or other considerations. Written requests for approval, accompanied by the foregoing described plans and specifications or other specifications and information as may be required by the Architectural Review Committee from time to time shall be submitted to the Architectural Review Committee by registered or certified mail or in person. In the event the Architectural Review Committee fails to approve or disapprove any plans within sixty (60) days of receipt thereof; such plans shall be deemed approved. Approval of any particular plans and specifications or design shall not be construed as a waiver of the right of the Architectural Review Committee to disapprove such plans and specifications, or any elements or features thereof, in the event such plans and specifications are subsequently submitted for use in any other instance. The Architectural Review Committee shall have the right to charge a processing fee, not in excess of \$50.00 for such requests, which shall be retained by the Association and not the Architectural Review Committee.

(d) Construction of Alterations in accordance with plans and specifications approved by the Architectural Review Committee pursuant to the provisions of this Article shall be commenced within six (6) months following the date of approval and completed within twelve (12) months of commencement of the Alterations, or within such other period as the Architectural Review Committee shall specify in its approval. In the event construction is not commenced within the period aforesaid, then approval of the plans and specifications by the Architectural Review Committee shall be conclusively deemed to have lapsed and compliance with the provisions of this Article shall again be required. After construction, all Structures and Alterations shall be maintained continuously in strict conformity with the plans and specifications so approved and all applicable laws.

(e) If any Structure is altered, erected, placed or maintained on any Lot other than in accordance with approved plans and specifications therefor and applicable law, such action shall be deemed to be a violation of the provisions of this Declaration and, promptly after the Association gives written notice thereof to its Owner, such Structure shall be removed or restored to its condition prior to such action, and such use shall cease, so as to terminate such violation. If within thirty (30) days after having been given such notice, such Owner has not taken reasonable steps to terminate such violation, any agent of the Association may enter upon such Lot and take such steps as are reasonably necessary to terminate such violation. Such Owner shall be personally liable to the Association for the cost thereof, to the same extent as he is liable for an Assessment against such Lot, and, upon the failure of the Owner to pay such cost within ten (10) days after such Owner's receipt of written demand therefor from the Association, the Association may establish a lien therefor upon such Lot in accordance with and subject to the provisions of the Declaration applicable to an assessment

(f) Any Member of the Architectural Review Committee, upon the occurrence of a violation of the provisions of the Declaration, and after the Association or the Architectural Review Committee give written notice thereof to the Owner of the applicable Lot, at any reasonable time, may enter upon and inspect any Lot and the exterior of any Structure thereon to ascertain whether the maintenance, construction or alteration of such Structure or Alteration are in accordance with the provisions hereof.

(g) All structures on a Lot shall be made, constructed and maintained, and all activities on a Lot shall be undertaken, in conformance with all laws and ordinances of the City of West Jordan, Salt Lake County and State of Utah which may apply, including without limiting, the generality of the foregoing, all zoning and land use ordinances.

2.3 LAND USE. The Lots, except as hereinafter provided, shall be used for private and residential purposes only and no dwelling of any kind whatsoever shall be erected, altered or maintained thereon except a private dwelling house for the sole and exclusive use of the Owner or occupant of the Lot. None of the Lots shall at any time be used for apartments or other types of multiple housing units; it being the intention of the Declarant that each and every one of the Lots be used solely for one (1) single family dwelling, and no other purposes as may be specifically reserved in the succeeding sections of this Declaration. No industry, business, trade or profession of any kind, whether or not for profit, shall be conducted, maintained or permitted on any part of the Property, except that any part of any Structure now or hereafter erected on any Lot may be used as an office or studio, provided that (i) the person using such office or studio actually resides in the Structure in which such office or studio is located, (ii) such office or studio is operated in full compliance with all applicable zoning and other laws, (iii) the operation of such office or studio does not involve employment of more than one (1) nonresident employee, (iv) the person owning such Lot has obtained the prior written approval of the Architectural Review Committee, and (v) such office or studio does not occupy more than twenty-five percent (25%) of the total floor area of such Structure.

2.4 SWIMMING POOLS. No swimming pools, whether "in ground," "above ground" or other type, shall be permitted on any Lot. A single exterior hot tub with a total surface area of the tub and surrounding deck of not more than 12 feet by 12 feet shall be allowed in the rear yard of a residence.

2.5 DRIVEWAYS. No driveways or parking areas shall be permitted on any Lot in the Community, excluding, however, those Lots which have driveways to garages that have been constructed by the Declarant or Builder.

2.6 EXTERIOR MATERIALS AND AIR CONDITIONING UNITS. All primary exterior materials of any Structure constructed on a Lot shall be in material approved by the Architectural Review Committee. Exterior materials of residences shall be constructed of either stucco, stone, cultured stone, board and batten, cement board, Hardi-Plank or Cem-Plank on the front, side and rear faces of the buildings. Swamp coolers and window air conditioners are prohibited, unless approved in writing by The Architectural Review Committee for a special temporary purpose or need.

2.7 TEMPORARY STRUCTURES. No Structure of a temporary character, trailer, easement, tent, shack, garage, or other outbuildings shall be used on any Lot at any time as a residence, either temporarily or permanently. Nothing in the Declaration, shall be deemed to

prohibit an Owner from placing upon its Lot reasonably sized garden sheds, greenhouses or other similar accessory structures approved in advance by the Architectural Review Committee.

2.8 REAL ESTATE SALES OR CONSTRUCTION OFFICE. Notwithstanding anything contained herein to the contrary, a real estate sales or construction office or a trailer and/or model home and related signs, may be erected, maintained and operated on any Lot, or in any Structure now or hereafter located thereon, provided such office or trailer, and signs, are used and operated only in connection with the development and/or initial sale of any Lot or Lots, and/or the initial construction of improvements on any Lot now or hereafter laid out or created in the Community. Nothing herein, however, shall be construed to permit any real estate sales or construction office, trailer or sign after such initial development, sales and/or construction is completed. Except as expressly permitted herein above, neither any part of any Lot, nor any improvement now or, hereafter erected on any Lot, shall be used for any real estate sales or construction office or trailer, nor shall any sign used in conjunction with such uses be erected.

2.9 CLOTHES LINE. No exterior clothes line, clothes dryer, clothes pole or similar equipment shall be erected, installed or maintained on any Lot, nor shall articles of clothing, bedding, etc. be hung outside.

2.10 TRAFFIC VIEW. No Structure, landscaping, shrubbery or any other obstruction shall be placed on any Lot so as to block the clear view of traffic on any streets, nor shall any planting be done on any corner Lots closer than twenty feet from either street line that will exceed three (3) feet in height (except shade trees which shall be trimmed to that a clear view may be maintained to the height of eight (8) feet).

2.11 FRONT LAWN AND LANDSCAPING. The area within the front of a dwelling shall be kept only as a lawn for ornamental or decorative planting of grass, trees and shrubbery. All front and side yards must be landscaped within one (1) year after the dwelling is occupied. Rear yards shall be landscaped within two (2) years of occupancy of the dwelling. Landscaping for the Lots

2.12 FENCES AND WALLS. No fence, wall or other similar enclosure may be built on the front or side yard of any Lot, except a rear yard fence. A rear yard fence shall be built along rear yard property lines unless otherwise approved by the Architectural Review Committee. In the event the rear portion of a Lot is fenced by an Owner, such Owner shall maintain such area in accordance with the provisions of Section 2.13. The height restriction of all enclosures of rear yards, patios and open gardens, privacy screens and work area screens shall not exceed six (6) feet in height. No fences, walls or hedges shall be erected or placed nearer to any street Lot line than the locations indicated on the fencing map attached hereto as Exhibit "B" and incorporated herein by reference. All gates must open inward onto a Lot and shall not open onto another Lot or the Common Area. All fences and walls must receive the prior written approval of the Architectural Review Committee. Any such fence or wall shall be decorative in character (rail, picket, etc.) and not of chain link or chicken wire. The foregoing restriction shall not be construed to prohibit the growth of an ornamental hedge fence, which shall be kept neatly trimmed, and shall be trimmed to a hedge of not more than three (3) feet in the front yard of any Lot and the side yard of corner Lots.

2.13. NEAT APPEARANCE. Owners shall, at all times maintain their Lot and all appurtenances thereto in good repair and in a state of neat appearance, including, but not limited to, the seeding, watering and mowing of all lawns, yards, keeping all sidewalks, if any, neat, clean and in good repair, and free of ice and snow, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all Structures on the Lot, all in a manner and with such frequency as is consistent with good property management and maintenance; provided, however, that the Association shall perform maintenance of all grassy areas surrounding the front, rear (provided the same is not fenced in) of each Lot in accordance with Section 6.4. If an Owner fences in their rear yard, then such Owner shall be solely responsible for the relocation of the sprinkler heads and maintenance of landscaping located thereon. If, in the opinion of the Architectural Review Committee, any Owner fails to perform the duties imposed hereunder, the Association, on affirmative action of a majority of the Board of directors, after fifteen (15) days' written notice to such Owner to remedy the condition in question, and upon failure of the Owner to remedy the condition, shall have the right, but not the obligation, through its agents and employees, to enter upon the Lot in question and to repair, maintain, repaint and restore the Lot and the improvements on the Structures thereon, and the cost thereof shall be a binding, personal obligation of such Owner, as an additional assessment on the Lot. Upon failure of the Owner to pay such cost within ten (10) days after such Owner's receipt of written demand therefor from the Association, the Association may establish a lien therefor upon such Lot in accordance with and subject to the provisions of the Declaration applicable to assessment lien.

2.14 NUISANCES. No noxious or of trade or activity shall be carried on upon any Lot, nor shall anything be done or placed thereon which may become an annoyance or nuisance to the neighborhood or any adjoining property owners. Without limited the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such properly maintained and operated devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any dwelling or upon the exterior of any other. Structure constructed upon any Lot. No snowmobiles, go-carts, motor bikes, trail bikes, other loud-engine recreational vehicles or skateboard ramps shall be run or operated upon any Lot or upon any roadways serving the Property.

2.15 ANIMALS. No animals, livestock, or poultry of any kind, including pigeons, shall be raised, bred or kept on any Lot, except that dogs, cats or any household pets, may be kept, provided that they are not kept, bred or maintained for any commercial purpose, and provided that they are kept so as to avoid becoming a nuisance to the neighborhood or to any adjoining property owners, and do not roam unattended on the Property. Household pets shall not include miniature pigs, horses or other hybrid livestock or farm animals. Pets shall be registered, licensed and inoculated as required by Law. Owners shall be responsible for the immediate clean up and removal of their pets' waste from any other Lot and the Common Area.

2.16 VEHICLES.

(a) Other than private passenger vehicles, vans, trucks or permitted commercial vehicles in regular operation, no other motor vehicles or inoperable, unlicensed, unregistered, junk or junked cars or other similar machinery or equipment of any kind or nature (except for such equipment and machinery as may be reasonable, customary and usual in connection with the use and maintenance of any Lot) shall be kept on the Property or

repaired on any portions of the Property except in emergencies. RV's, boats, personal water craft and recreational trailers shall not be parked, stored, maintained or repaired on any Lot or parked upon any streets or Common Areas except they may be kept inside the garages (such that the door on the garage can close and block the entire view of such vehicle). For the purposes hereof, a vehicle shall be deemed inoperable unless it is licensed, contains all parts and equipment, including properly inflated tires, and is in such good condition and repair as may be necessary for any person to drive the same on a public highway.

(b) No commercial vehicles over 3/4 ton rated capacity ("Commercial Vehicles") shall be left parked on Any part of the Property, including, without limitation, any street or Lot, longer than is necessary to perform the business function of such vehicle in the area; it being the express intention of this restriction to prevent the parking of Commercial Vehicles upon the Property, including, without limitation, the streets or Lots in the Community, for a time greater than that which is necessary to accomplish the aforesaid business purpose.

(c) Trailers, buses, tractors or any type of recreational vehicle shall not be parked, stored, maintained or repaired on any Lot or parked upon any streets or Common Areas.

(d) Notwithstanding the above, during construction of dwellings, he Declarant and any Builder may maintain Commercial Vehicles and trailers on the Property for the purposes of construction and for use as a field or sales office.

2.17 LIGHTING AND WIRING. The exterior lighting on Lots shall be directed downward and shall not be directed outward from, or extend beyond, the boundaries of any Lot. All wiring on any Lot shall be underground.

2.18 ANTENNAE. No radio aerial, antenna or satellite or other signal receiving dish, or other aerial or antenna for reception or transmission, shall be placed or kept on a Lot outside of a dwelling, except on the following terms:

(a) An Owner may install, maintain and use on its Lot one (or, if approved, more than one) a satellite television receiving dish (attached to the residence, no more than four feet in diameter, and no more than three feet above the surface on which it is attached - no ground based, large dish satellite dishes are allowed), a Small Antenna (as hereinafter defined) in the rear yard of a dwelling on the Lot, as such location, and screened from view from adjacent dwellings in such a manner and using such trees, landscaping or other screening material, as are approved by the Architectural Review Committee, in accordance with Article II. Notwithstanding the foregoing terms of this subsection, (i) if the requirement that a Small Antenna installed on a Lot be placed in the rear yard of a dwelling would impair such Small Antenna's installation, maintenance or use, then it may be installed, maintained and used at another approved location on such Lot where such installation, maintenance or use would not be impaired; (ii) if and to the extent that the requirement that such Small Antenna be screened would result in any such impairment, such approval shall be on terms not requiring such screening; and (iii) if the prohibition against installing, maintaining and using more than one (1) Small Antenna on a Lot would result in any such impairment, then such Owner may install on such Lot additional Small Antennae as are needed to prevent such impairment (but such installation shall otherwise be made in accordance with this subsection).

(b) In determining whether to grant any approval pursuant to this Section, neither Declarant, the Architectural Review Committee nor the Board of Directors shall withhold such approval, or grant it subject to any condition, if and to the extent that doing so would result in an impairment; provided, however, that any Small Antenna shall be placed in the rear of each dwelling, notwithstanding any other provision in this Section 2.18.

(c) As used herein, (1) "impair" has the meaning given it in 47 Code of Federal Regulations Part I., Section 1.4000, as hereafter amended; and (ii) "Small Antenna" means any antenna (and accompanying mast, if any) of a type, the impairment or the installation, maintenance or use of which is the subject of such regulation. Such antennae are currently defined thereunder as, generally, being one (1) meter or, less in diameter or diagonal measurement and designed to receive certain types of broadcast or other distribution services or programming.

2.19. SUBDIVISION. No Lot shall be divided or subdivided and no portion of any Lot (other than the entire Lot) shall be transferred or conveyed for any purpose; provided, however, this shall not prohibit transfers of part of Lots between adjoining Lot owners where the transfer is not for the purpose of creating a new building Lot. The provisions hereof shall not be construed to prohibit the granting of an easement or right-of-way to any person for any purpose.

2.20 SIGNAGE. Except for entrance signs, direction signs, signs for traffic control or safety, community "theme areas" or "For Sale" signs (not larger than 2 feet by 3 feet), and except as provided in Section 2.8 of this Article II, no signs or advertising devices of any character shall be erected, posted or displayed upon, in or about any Lot or Structure.

2.21. LEASE AGREEMENTS. All lease agreements with respect to any Lot or any Structure located thereon shall be in writing. The minimum term of all lease agreements shall be one (1) year, and shall state that the least agreement shall be subject to this Declaration. Lease agreements shall be submitted, at least thirty (30) days in advance of execution, to the Board of Directors for review for compliance with this Section. Owners who do not reside on their Lot must provide current addresses and phone numbers to the Association. Owners shall provide written notice to the Board of Directors within ten (10) days of the initiation or renewal of any lease agreement. Such notice shall include the term of the lease agreement and contact information for the lessors.

ARTICLE III **COMPLIANCE**

3.1 FINES. The Board of the Association may assess a fine against an Owner for a violation of the Association's governing documents.

(1) Before assessing a fine the Board shall:

(a) notify the lot owner of the violation; and

(b) inform the owner that a fine will be imposed if the violation is not remedied within the time provided in the Association's governing documents, which shall be at least 48 hours.

(2) (a) A fine assessed shall:

(i) be made only for a violation of a rule, covenant, condition, or restriction that is specifically listed in the Association's governing documents;

(ii) be in the amount specifically provided for in the Association's governing documents for that specific type of violation or in an amount commensurate with the nature of the violation; and

(iii) accrue interest and late fees as provided in the Association's governing documents.

(b) Unpaid fines may be collected as an unpaid Assessment as set forth in the Association's governing documents. Fines, Assessments and Fees unpaid and their interest, late and collection fees constitute a continuing Lien against the subject Living Unit and Lot.

(3) (a) An Owner who is assessed a fine may request an informal hearing to protest or dispute the fine within 14 days from the date the fine is assessed, by notifying the Board Secretary in writing.

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

(c) No interest or late fees may accrue until after the hearing, if requested, has been conducted and a final decision has been rendered.

(d) Failure by a requesting Owner to respond to Notice or appear at a hearing shall result in a waiver of the requesting Owner's right to a hearing and the fine shall be deemed uncontested.

(4) List of Violations. Any violation of the Declaration, Rules and Regulations, and Bylaws shall be subject to a fine.

(5) Compliance period. The compliance table, below, defines the number of days provided to correct a Violation, from the date specified in the Notice of violation.

| Violation | Compliance Period |
|---|---------------------------------|
| Building Materials, Debris, Trash, etc. | 3 Days |
| RV Parking | 3 Days |
| Nuisance | 2 Days |
| Landscaping | 15 Days; or, as shown in Notice |
| Fireworks | 2 Days |
| Late HOA Dues | 5 Days |
| HOPA | 15 Days |
| Miscellaneous | 2 Days; or as shown in Notice |

(6) Fine Schedule. The table below defines the fines for different types of Violations. The same act may constitute more than one Violation, if the act is ongoing or continuous. Therefore, each failure to remedy a Violation within the appropriate compliance period, listed above, constitutes a violation and each subsequent failure to remedy a violation within a compliance period constitutes an additional violation. If a remedied Violation is repeated within 60 days of the first Violation, the repeat shall be considered a second (or third) occurrence and is subject to the corresponding fine.

| Violation | 1st Occurrence | 2nd Occurrence | 3rd/Additional Occurrence |
|---|----------------------------------|----------------------------------|---|
| Building Materials, Debris, Trash, etc. | \$25.00 | \$100.00 | \$200.00 |
| RV Parking | \$25.00 | \$100.00 | \$200.00 |
| Nuisance | \$50.00 | \$100.00 | \$200.00 |
| Landscaping | \$25.00 | \$100.00 | \$200.00 |
| Fireworks | \$50.00 | \$100.00 | \$200.00 |
| Late HOA Dues | \$10.00 | \$20.00 | \$50.00 |
| HOPA | \$100.00/day continuing | | |
| Miscellaneous | \$50.00 | \$100.00 | \$200.00 |

(7) Enforcement remedies are cumulative; accordingly, the Board reserves its right to pursue any enforcement action authorized by law or the Declaration, at any time during the fining process.

ARTICLE IV
MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

4.1 MEMBERSHIP. Every Owner of a Lot that is subject to assessment shall become and be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment.

4.2 CLASSES OF MEMBERSHIP.

(a) The Association shall have two classes (2) of voting membership:

(i) Class A. The Class A Member shall be all Owners holding title to one (1) or more Lots; provided, however, that any Mortgagee or any other person or entity who hold such interest solely as security for performance of an obligation shall not be a Class A member solely on account of such interest. Each Class A member shall be entitled to one (1) vote per Lot, for each Lot owned by it, in all proceedings in which action shall be taken by members of the Association.

(ii) Class B. The Class B member shall be the Declarant. The Class B member shall be entitled to three (3) votes per Lot of each Lot owned by it, in all proceedings in which actions shall be taken by members of the association.

ARTICLE V **YARD MAINTENANCE BY THE ASSOCIATION**

The Association shall contract for the maintenance of snow removal and the grassed areas surrounding the front, side and rear yards of the Lots and sprinkler systems located thereon (subject, however, to the provisions of Section 2.13), and any area dedicated to a public or governmental entity if such entity fails to properly maintain such area, as from time to time improved, together with any items of personal property placed or installed thereon, all at its own cost and expense, and shall levy against each member of the Association a proportionate share of the aggregate cost and expense required for the care maintenance and improvement of the Common Area, share shall be determined based on the ratio which the number of Lots owned by the member bears to the total number of Lots then laid out or established on the Property.

ARTICLE VI **ENCROACHMENTS**

Any structure or any part thereof, now or at any time hereafter, encroaches upon an adjoining Lot, whether such encroachment is attributable to construction, settlement or shifting of the Structure or any other reason whatsoever beyond the control of the Owner, there shall forthwith arise, without the necessity of any further or additional act or instrument, a good and valid easement for the maintenance of such encroachment, for the benefit of the Owner, its heirs, personal, personal representatives and assigns, to provide for the encroachment and non-disturbance of the Structure. Such easement shall remain in full force and effect so long as the encroachment shall continue. The conveyance or other disposition of a Lot shall be deemed to include and convey, or be subject to, any easements arising under the provisions of this Article without specific or particular reference to such easement.

ARTICLE VII **COVENANT FOR ASSESSMENT**

7.1 COVENANT FOR ASSESSMENT. Each Owner, by acceptance of a deed hereafter conveying any such Lot to it, whether or not so expressed in such deed or other

conveyance, shall be deemed to have covenanted and agreed to pay the Association (a) in advance, an annual assessment (the "Annual Assessment") equal to the member's proportionate share of the sum required by the Association, as estimated by the Board of Directors, for Annual Assessments or charges, and (b) Special Assessments (as hereinafter defined) or charges, for capital improvements, such annual and special assessments and charges to be established and collected as hereinafter provided. The Annual and Special Assessments or charges shall be a charge and continuing lien upon each of the Lots against which the assessment is made in accordance with the terms and provisions of this Article VII and shall be construed a a real covenant running with the land. Such assessments or charges, together with interest at a rate of eighteen percent (18%) per annum, subject to waiver or reduction by the Board of Directors, and costs and reasonable attorneys' fees incurred or expended by the Association in the collection thereof;

7.2 USE OF ASSESSMENTS. The assessments and charges levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare Of the residents of the Community, and in particular for (a) the cost of performing and the lawn and sprinkler maintenance required by Article VT and obtaining approved liability. insurance for the maintenance operation, if the Board of Directors determines such insurance is appropriate; (b) the cost of obtaining, planting and thereafter maintaining street trees throughout the Community if required by West Jordan City, (c) the costs of utilities and other- services which may be provided by the Association for the Community as maybe approved from time to time by a majority of the members of the Association; (d) the cost of labor, equipment, insurance, materials, management and supervision incurred or expended in performing all of the foregoing; (e) the cost of funding all reserves established by the Association, including a general operating excess and a reserve for replacements.

7.3 MAXIMUM ANNUAL ASSESSMENT.

(a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner other than the Declarant or a Builder, the maximum Annual Assessment shall be the aggregate of One Thousand Eighty Dollars (\$1,080.00) for each Lot, payable at the rate of Ninety Dollars (\$90.00) per month.

(b) From and after such date, the maximum Annual Assessment may be increased each year by not more than ten percent (10%) of the maximum Annual Assessment for the previous year without a vote of the membership of the Association.

(c) From and after such date the maximum Annual Assessment may be increased above the ten percent (10%) limitation specified in the preceding sentence only by a vote of two-thirds (2/3) of the members of the Association, voting in person or by proxy, at a meeting duly called.

(d) The Board of Directors of the Association may fix the Annual Assessment or charges against each Lot at any amount not in excess of the maximum. Subject to the limitations set forth in this Section 8.3, and for the periods therein specified, the Association may change the maximum and the basis of the assessments fixed by Section 8.3 hereof prospectively for any period provided that any such change shall have the assent of two-thirds (2/3), of the members of the Association, voting in person or by proxy, at a meeting duly called for such purposes.

7.4 SPECIAL ASSESSMENTS. In addition to the Annual Assessments authorized above, the Association may levy in any assessment year, a special assessment ("Special Assessment"), applicable for that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement located on the Common Area, including fixtures and personal property related thereto, and/or to meet any other deficit of the Association or any emergency or unforeseen expenses of the Association. The Board of Directors shall have the authority to levy Special Assessment, not to exceed a total amount of Five Thousand Dollars (\$5,000.00). Assessment in an amount greater than Five Thousand Dollars (\$5,000.00) shall first be approved by two-thirds (2/3) of the votes of each class of members of the Association, voting in person or by proxy at a meeting duly called for such purpose.

7.5 NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 8.3 AND 8.4. Written notice of any meetings of members of the Association called for the purpose of taking any action, authorized under Sections 8.3 and 8.4 of this Article shall be sent to all members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence at the meeting of members or of proxies, entitled to cast sixty percent (60%) of members entitled to be cast at such a meeting shall be necessary and sufficient to constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at any subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting, provided that no such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

7.6 COMMENCEMENT DATE OF ANNUAL ASSESSMENTS.

(a) The Annual Assessments shall be due and payable on a monthly basis on the first (1st) calendar day of each month, and shall be a lien for any month after the fifteenth (15th) day of that month.

(b) The due date of any Special Assessment under Section 8.4 shall be fixed in the resolution authorizing such Special Assessment

7.7 DUTIES OF THE BOARD OF DIRECTORS

(a) The Board of Directors shall determine the amount of maintenance assessments annually, but may do so at more frequent intervals should circumstances so require. Upon resolution of the Board of Directors, installments of the Annual Assessments may be levied and collected on a quarterly, semi-annual or annual basis rather than on the monthly basis herein above provided for. Any member may prepay one or more installments of any maintenance assessment levied by the Association, without premium or penalty.

(b) The Board of Directors shall prepare, or cause the preparation of an annual operating budget for the Association, which shall provide, without limitation, for the yard and sprinkler maintenance required by Article VI. Consistent with Utah Code 57-8a-211, as revised and amended from time to time, the Board of Directors shall prepare or commission a reserve analysis at least every six (6) years and an update of the reserve analysis at least every three (3) years, and shall publish and make available copies of the analysis and/or update to the Members. The Board of Directors of the Association shall make reasonable efforts to fix the amount of the annual maintenance assessment against each Lot for each assessment period.

7.8 **ADDITIONAL ASSESSMENTS.** Additional assessments may be fixed against any Lot only as provided for in this Declaration. Any such assessments shall be due as provided by the Board of Directors hi making any such assessment.

7.9 **NONPAYMENT OF ASSESSMENT.** Any Assessment or portion thereof not paid within thirty (30) days after the due date thereof shall be delinquent and shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum, and shall be subject to a late charge of Fifteen Dollars (\$15.00) per month until paid, or ten percent (10%) of the assessment, whichever is greater, to be paid within fifteen (15) days, and the Board of Directors shall have the right to declare the entire balance of the assessment and accrued interest thereon to be immediately due and payable.

7.10 **SUBORDINATION OF LIEN TO MORTGAGE.** The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage(s) or deed(s) of trust now or hereafter placed upon the Lot subject to assessment; provided, however, that the sale or transfer of any Lot pursuant to mortgage or deed. of trust foreclosure, or any proceeding in lieu thereof; shall extinguish the lien of such assessments as to payments which became due prior to such sale of transfer. Such sale or transfer shall not relieve such Lot from liability for any assessments thereafter becoming due, nor from the lien of any such future assessment.

7.11 **ENFORCEMENT OF LIEN.** The Association may establish and enforce the lien for any assessment, annual, special, or otherwise, pursuant to the provisions of this Declaration. The lien is imposed upon the Lot against which such assessment is made. The lien may be established and enforced for damages, interest, costs of collection, late charges permitted by law, and attorneys' fees provided for herein or awarded by a court for breach of any of the covenants herein.

7.12 **EXEMPT PROPERTY.** The Common Area and all Lots owned by the Association or dedicated to and accepted by a public authority and all property owned by a charitable or non-profit organization exempt from taxation by the Laws of the State of Utah shall be exempt from the assessments created herein.

7.13 **RESERVES FOR REPLACEMENTS.**

(a) The Association shall establish and maintain a reserve fund for repairs and replacements of the Common Area by the allocation and payment monthly, at least quarterly, to such reserve fund of an amount to be designated from time to time by the Board of Directors.

(b) The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of any member of the Association in any such reserves shall be considered an appurtenance of such Owner's Lot and shall not be separated from the Lot to which it appertains and shall be deemed to be transferred with such Lot.

7.14 **INITIAL CAPITAL CONTRIBUTION.** At settlement for each Lot, an amount equal to two (2) months of the current Assessment amount for that type of Lot shall be paid from each prospective member of the Association (other than the Declarant or a Builder), for the purpose of start-up expenses and operating contingencies. Such amount shall be in addition to any pro rata share of Assessments due and adjusted at settlement. Reinvestment Fee. As

consistent with Utah Code 57146, as from to time amended, new Owners are obligated to pay a one-time Reinvestment Fee for the purposes of:

- (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) Association expenses.

The Reinvestment Fee is due at the time of closing and shall constitute a continuing lien against the property, until satisfied. The Reinvestment Fee shall be equal to the amount of monthly HOA dues, at closing for the burdened property, times two (2). The Reinvestment Fee shall not apply to:

- (i) an involuntary transfer;
- (ii) a transfer that results from a court order;
- (iii) 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;
- (iv) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or
- (v) The transfer of burdened property by a financial institution, except to the extent that the reinvestment fee covenant requires the payment of a common interest association's costs directly related to the transfer of the burdened property, not to exceed Five Hundred \$500.00; and, as consistent with Utah Code 57-1-46, as from time-to-time amended.

Such a fee shall be in addition to any pro rata share of Assessments due and adjusted at settlement.

ARTICLE VIII **INSURANCE AND CASUALTY LOSSES**

8.1 TYPES OF INSURANCE MAINTAINED BY ASSOCIATION. During the Development Period, the Association may obtain the following types of insurance:

(a) a public liability umbrella type insurance policy covering the Association, its officers, directors and managing agents, having at least a One Million Dollar (\$1,000,000.00) limit per total claims that arise from the same occurrence, including but not limited to liability insurance for the recreational facilities located in the Community, or in an amount not less than the minimum amount required by applicable law, ordinance or regulation;

(b) workers' compensation insurance, if and to the extent required by law;
and

(c) fidelity bond or bonds covering all Directors, officers, employees and other persons handling or responsible for the funds of the Association, in such amounts as the Board of Directors deems appropriate.

Alter the conclusion of the Development Period, the Board of Directors shall have the authority to and shall obtain the insurance described above,

8.2 PREMIUMS FOR INSURANCE MAINTAINED BY ASSOCIATION.

Premiums for all insurance and bonds required to be carried under Section 9.1 hereof or otherwise obtained by the Association shall be an expense of the Association, and shall be included in the Annual Assessments. Premiums on any fidelity bond maintained by a third party manager shall not be an expense of the Association.

8.3 DAMAGE AND DESTRUCTION OF COMMON AREA.

(a) Immediately after any damage or destruction by fire or other casualty to all or any part of the insurable improvements on the Common Area., the Board of Directors, or its agent, shall proceed with the filing and adjustment of all claims arising under the fire and extended coverage insurance maintained by the Association, and obtain reliable estimates of the cost of repair or reconstruction of the damaged or destroyed improvements. Repair or reconstruction means repairing or restoring the improvements to substantially the same condition in which they existed prior to the fire or other casualty.

(b) Any damage or destruction to insurable improvements on the Common Area shall be repaired or, reconstructed unless at least seventy-five percent (75%) of the members present at a meeting of the membership held within ninety (90) days after the casualty shall decide not to repair or reconstruct.

(c) If, in accordance with subsection (b), the improvements are not to be repaired or reconstructed and no alternative improvements are authorized by the members, then and in that event the damaged Common Area shall be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Association in a neat and attractive condition. In such event, any excess insurance proceeds shall be paid over to the Association for the benefit of the Property, which proceeds may be used and/or distributed as determined by the Board of Directors, in its discretion, or as otherwise provided in the Articles of Incorporation and/or the Bylaws of the Association.

8.4 REPAIR AND RECONSTRUCTION OF COMMON AREA. If any improvements on the Common Area are damaged or destroyed, and the proceeds of insurance received by the Association are not sufficient to pay in full the cost of the repair and reconstruction of the improvements, the Board of Directors shall, without the necessity of a vote of the members, levy a Special Assessment against all Owners in order to cover the deficiency in the manner provided in Article VIII hereof. If the proceeds of insurance exceed the cost of repair, such excess shall be retained by the Association and used for such purposes as the Board of Directors shall determine.

8.5 HAZARD INSURANCE ON IMPROVED LOTS. Each Owner of an improved Lot at all times shall maintain fire and extended coverage insurance or other appropriate damage and physical loss insurance, in an amount equal to and not less than one hundred percent (100%) of the current replacement value of the improvements on the Lot. Owner shall provide proof to Board of Directors of such insurance within ten (10) days of written demand by the Board of Directors.

8.6 OBLIGATION OF LOT OWNER TO REPAIR AND RESTORE.

(a) In the event of any damage or destruction of the improvements on a Lot, the insurance proceeds from any insurance policy on an improved Lot, unless retained by a Mortgagee of a Lot, shall be applied first to the repair, restoration or replacement of the damaged or destroyed improvements, Any such repair, restoration or replacement shall be done in accordance will, the plans and specifications for, such improvements originally approved by the Declarant or the Architectural Review Committee; unless the Owner desires to construct improvements differing from those so approved, in which event the Owner shall submit plans and specifications for the improvements to the Architectural Review Committee and obtain its approval prior to commencing the repair, restoration or replacement.

(b) If any Owner of an improved Lot fails to maintain the insurance required by Section 95 of this Article, the Association may, but shall not be obligated to, obtain such insurance and pay any premiums required in connection with obtaining such insurance, Such Owner shall be personally liable to the Association for any for any costs incurred by the Association in obtaining such insurance, to the same extent as such Owner is liable for assessments levied against its Lot, and, upon the failure of the Owner to pay such costs within, ten (10) days after such Owner's receipt of a written demand therefore from the Association, the Association may establish a lieu therefor upon the Owner's Lot in accordance with and subject to the provisions of this Declaration applicable to an assessment lien.

ARTICLE IX RIGHTS OF MORTGAGEES

9.1 GENERAL.

(a) Regardless of whether a Mortgagee in possession of a Lot is its Owner, (i) such Mortgagee in possession shall have all of the rights under the provisions of this Declaration, the Plat, the Articles of Incorporation, the By-Laws and applicable law, which would otherwise Be held by such Owner, subject to the operation and effect of anything to the contrary contained in its Mortgage, and (ii) the Association and each other Owner or person shall be entitled, in any matter arising under the provisions of this Declaration and involving the exercise of such rights, to deal with such Mortgagee in possession as if it were the Owner thereof.

(b) Any Mortgagee in possession of a Lot shall (subject to the operation and effect of the provisions of this Declaration, the Articles of Incorporation, the By-Laws and applicable law) bear all of the obligations under the provisions thereof which are borne by its Owner -provided, that nothing in the foregoing provisions of this Section shall be deemed in any way to relieve any Owner of any such obligation, or of any liability to such Mortgagee on account of any failure by such Owner to satisfy any of the same.

9.2 INSPECTION; STATEMENT AND NOTICE. A Mortgagee shall, upon delivery of a written request to the Association, be entitled to:

a) inspect the Associations books and records during normal business hours;

(b) receive an annual financial statement of the Association within ninety (90) days after the end of any fiscal year of the Association;

(c) be given timely written notice of all meetings of the Membership, and designate, a representative to attend all such meetings;

(d) be given timely written notice of the occurrence of any substantial damage to or destruction of the Common Area, or in the Common Area is made the subject of any condemnation or eminent domain proceeding or the acquisition thereof is otherwise sought by any condemning authority; and

(e) be given timely written, notice by the Association of failure to pay assessments by the Owner of such Mortgagee's Lot which is not cured within thirty (30) days after such default commences, but the failure to give such notice shall not affect the -validity of the lien for any assessments levied pursuant to this Declaration.

ARTICLE X **MISCELLANEOUS**

10.1 TERM. This Declaration shall run with the land and shall be binding for a period of seventy five (75) years from the date this Declaration is recorded, after which time this Declaration shall automatically be extended for successive periods of ten (10) years each unless and until an instrument has been recorded, by which this Declaration, in whole or in part, is amended, modified or revoked pursuant to the provisions of Section 9.9.

10.2 ENFORCEMENT.

(a) Enforcement of this Declaration shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain the violation or to recover damages, or both. In acquiring title to any Lot in the Community, the purchaser or purchasers violating or attempting to violate any covenant, agree to reimburse the Association and/or any Owners for all costs and expenses for which it or they may be put as a result of the said violation or attempted violation, including but not limited to, court costs and attorneys' fees.

(b) These Covenants shall inure to the benefit of and be enforceable by the Association or by the Owner(s) of any land included in the Community and their respective legal representatives, successors and assigns, and all persons claiming by, through or under them.

(c) Notwithstanding the foregoing, neither the Association nor any person acting or purporting to act on its behalf shall (a) file or otherwise commence, or prosecute, in any jurisdiction whatsoever, and (i) civil, criminal or administrative proceeding in or with any court or administrative body or officer, or (ii) appeal of or objection to any decision or other action made or taken by any court or administrative body or officer, in any judicial or administrative proceeding or (b) testify or submit evidence (except where required by law, subpoena or formal order of such court, administrative body or officer), or otherwise take a formal position on any issue under consideration, in any such proceeding or appeal, in all cases until such action is approved in writing, or by the vote of; members entitled to cast at least seventy-five percent (75%) of the votes held by all Owners. Nothing in this subsection shall apply to a civil or administrative proceeding which the Association commences or prosecutes with a court or administrative body or officer (a) to collect an Assessment, or enforce or foreclose a lien securing an Assessment, or (b) otherwise to enforce the Association's rights or

another person's obligations under the Declaration, By-Laws or Articles of Incorporation on account of a default.

10.3 NO WAIVER. The failure or forbearance by the Association to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

10.4 INCORPORATION BY REFERENCE ON RESALE. In the event any Owner sells or otherwise transfers any Lot, any deed purporting to effect such transfer shall be deemed to contain a provision incorporating by reference the covenants, restrictions, servitudes, easements, charges and liens set forth in this Declaration, whether or not the deed actually so states.

10.5 NOTICES. Any notice required to be sent to any member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when e-mailed or, upon the written request of a member or Owner, mailed, by ordinary mail, postage paid, to the last known address of the person who appears as member or Owner on the records of the Association at the time of such mailing.

10.6 NO DEDICATION TO PUBLIC USE Nothing herein contained shall be construed as a dedication to public use or as an acceptance of maintenance of any Common Area by any public or municipal agency, authority or utility and no public or municipal agency, authority or utility shall have any responsibility or liability for the maintenance or operation of any of the Common Area.

10.7 SEVERABILITY. Invalidation of any one of these covenants or restrictions by judgment, decree or order shall in no way affect any other provisions hereof, each of which shall remain in full force and effect.

10.8 CAPTIONS AND GENDERS. The captions contained in this declaration are for convenience only and are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration. Whenever the context so requires, the male shall include all genders and the singular shall include the plural.

10.9 AMENDMENT.

(a) For so long as there is a Class B. membership of the Association, this Declaration may be amended by an instrument in writing, signed and acknowledged by the President or Vice-President and Secretary or Assistant Secretary of the Association after approval of the amendment at a meeting of the Association duly called for such purpose. The vote (in person or by proxy) or written consent of (i) at least two-thirds (2/3) of the Class A members of the Association, if any, and (ii) the Declarant shall be required to add to, amend, revise or modify this Declaration. Following the lapse of the Class B membership in the Association, as provided in Article IV hereof, this Declaration may be amended by an instrument in writing, signed and acknowledged by the President or Vice-President and Secretary or Assistant Secretary of the Association with the approval, in the manner set forth above, of at least two-thirds (2/3) of the Class A members of the Association at a meeting of the Association duly called for such purpose.

(b) An amendment or modification shall be effective when executed by the President or Vice-President and Secretary or Assistant Secretary of the Association who shall

certify that the amendment or modification has been approved as herein above provided. The amendment shall be recorded in the Recorder's Office. Unless a later date is specified in any such instrument, any amendment to this Declaration shall become effective on the date of recording. For the purpose of recording such instrument, each Owner, other than the Declarant, hereby grants to the president or Vice-President and Secretary or Assistant Secretary of the Association an irrevocable power of attorney to act for and on behalf of each and every Owner in certifying, executing and recording said instrument.

(c) Nothing in this Section shall be construed in derogation of any requirement in this Declaration that all or a specified number of Mortgagees approve specified actions of the Association.

