

Amended Restrictive Covenants Page 1 of 47
Gary Christensen Washington County Recorder
12/22/2022 11:17:07 AM Fee \$40.00 By SNOW
JENSEN & REECE

WHEN RECORDED RETURN TO:
TAVA Land, LLC
5485 Tappan Falls Dr.
Idaho Falls, ID 83046

**THIRD AMENDED AND RESTATED
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
TAVA HOMEOWNERS' ASSOCIATION, INC.**

A PLANNED COMMUNITY DEVELOPMENT

Table of Contents

RECITALS	7
DECLARATION	8
ARTICLE I	9
DEFINITIONS	9
A. Architectural Review Board.....	9
B. Assessment.....	9
C. Association.....	9
D. Board of Trustees, Trustees or Board.....	9
E. Builder.....	9
F. Bylaws.....	9
G. Common Areas.....	9
H. Common Expenses.....	9
I. Community.....	9
J. Community Association Act.....	10
K. Community Standards	10
L. Declarant	10
M. Declarant Rights.....	10
N. Declaration	10
O. Design Guidelines	10
P. Developed Lot.....	10
Q. Dwelling.....	10
R. Fractional Ownership	10
S. Limited Common Area.....	10
T. Lot	11
U. Master Association.....	11
V. Master Declaration	11
W. Master Association Documents.....	11

X. Occupant.....	11
Y. Owner.....	11
Z. Party Wall.....	11
AA. Period of Declarant Control	11
BB. Plat.....	11
CC. Project or Property	11
DD. Rules and Regulations.....	11
EE. Unit.....	12
ARTICLE II.....	12
USE RESTRICTION AND NATURE OF LOTS	12
A. Residential Purposes.	12
B. Master Declaration Controls.	12
C. Title to Common Areas.....	12
D. Structure	13
E. Leasing of Units.	13
F. Fractional Ownership Prohibited	13
G. Owners' Easements of Enjoyment	13
H. Use of the Common Areas.	13
I. Association's Right to Use of Common Areas.	14
J. Easement for Encroachments.....	14
K. Utility Easements.	14
L. Architectural Control.....	14
ARTICLE III.....	15
MAINTENANCE OBLIGATIONS.....	15
A. Nuisances; Offensive or Unlawful Activities.....	15
B. Unsightly Articles.	15
C. Signs.....	15
D. Parking or Storage of Vehicles.....	15

E. Parking Enforcement.....	16
F. Garages.....	16
G. Trash.....	16
H. Lot, Living Unit, Limited Common Area and Party Wall Maintenance.....	16
I. Windows.....	17
J. Repair of Improvements.....	17
K. Animal Restrictions.....	17
L. Antennas and Satellite Dishes.....	18
M. Diseases and Insects.....	18
N. Fire Hazards.....	18
O. Hunting and Firearms.....	18
P. Fences/Gates/Privacy Walls.....	18
Q. Machinery and Equipment.....	18
R. Landscaping.....	19
S. Vacant Lot Appearance.....	19
T. Certain Lot Owners' Obligations to Rebuild After Damage or Destruction.....	19
U. Maintenance Violations and Association's Right to Correct Maintenance Violation..	20
V. Association's Right of Entry for Repair, Maintenance and Emergencies.....	21
W. No Waiver.....	22
X. Restriction on Further Subdivision.....	22
Y. Declarant's Exemption.....	22
Z. Utilities Easement and Right-of-Way.....	22
ARTICLE IV.....	23
ARCHITECTURAL CONTROL; DEVELOPMENT STANDARDS.....	23
A. Architectural Review Board.....	23
B. Master Association Architectural Controls.....	23
C. Design Review Fees.....	23
D. Commencement of Construction.....	23

E. Construction.....	23
F. Deadline for Completion of Landscaping and Automatic Sprinkling System.....	24
G. Authority to Change Design Guidelines.....	24
H. ARC Approval.....	24
I. Interpretation.....	24
J. Liability Limitation.....	24
K. Violations.....	24
L. Intent.....	25
M. Framework.....	25
N. Availability.....	25
O. Authority.....	25
P. Views.....	25
ARTICLE V.....	25
THE ASSOCIATION.....	25
A. Association.....	25
B. Membership.....	26
C. Members' Rights and Duties.....	26
D. Transfer of Membership.....	26
E. Voting.....	26
F. Board.....	27
G. Officers and Agents of the Association.....	28
H. Board Meetings.....	29
I. Status and General Authority of Board.....	29
J. Amendments.....	31
ARTICLE VI.....	32
ASSESSMENTS.....	32
A. Reinvestment Fee.....	32
B. Common Income, Expenses and Voting Rights.....	32

C. Declarant	32
D. Purpose of Common Expenses.....	32
E. Budget	32
F. Procedure for Establishing Annual Assessments.....	33
G. Method of Payment of Assessments.....	33
H. Personal Obligation of Owner.....	33
I. Equitable Changes.....	33
J. Reserve Account.....	33
K. Statement of Common Area Assessments Due.....	34
L. Superiority of Common Area Assessments.....	34
M. Suspension of right to Vote for Non-Payment.....	34
N. Special Assessments.....	34
O. Fines and Individual Assessments.....	34
P. Collections.....	34
Q. Late Fees and Accruing Interest.....	35
R. Foreclosure of Lien and/or Personal Judgment.....	35
S. No Waiver.....	35
T. Duty to Pay Independent.....	35
U. Foreclosure of Lien as Mortgage.....	35
ARTICLE VII	36
INSURANCE	36
A. Required Coverages.....	36
B. Policy Requirements	37
C. Restoring Damaged Improvements.....	39
D. Waiver of Claims.....	40
ARTICLE VIII.....	40
MORTGAGEE PROVISIONS	40
A. Notices of Action.....	40

B. Failure of Mortgagee to Respond.....	40
C. HUD/VA Approval.	40
ARTICLE IX	41
SPECIAL DECLARANT RIGHTS	41
A. Special Declarant Rights.	41
B. Assignment.....	41
C. Transfer of Special Declarant Rights.	41
D. Models, Sales Offices and Management Offices.	41
E. Expandable Project.....	41
F. Improvement Limitation by Association.....	41
ARTICLE X.....	42
MISC. PROVISIONS, DISCLOSURES, DISCLAIMERS AND RELEASES.....	42
A. Covenants to Run with the Land.	42
B. Enforcement and Right to Recover Attorney's Fees.....	42
C. Limitation of Liability.....	42
D. Amendments.....	42
E. Duration.....	43
F. Interpretation.	43
G. Construction Disclosures and Releases.....	43
H. Business of Declarant.....	44
EXHIBIT A.....	46
TAVA LEGAL DESCRIPTION.....	46

**THIRD AMENDED AND RESTATED
DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
TAVA HOMEOWNERS' ASSOCIATION
A PLANNED COMMUNITY DEVELOPMENT**

THIS THIRD AMENDED DECLARATION (the Declaration) is adopted this 22nd day of December, 2022, by TAVA LAND, LLC, an Idaho limited liability company (the Declarant).

RECITALS

- A. The Declarant is the owner of certain real property (the Property) located in Washington County, Utah, described on Exhibit A attached hereto.
- B. The Declarant desires to create an association of homeowners which entity shall possess the power to maintain and administer the common areas, collect and disburse assessments and charges and administer and enforce the provisions of this Declaration.
- C. This Declaration supersedes and replaces in its entirety the previously recorded Declaration ("Original Declaration") recorded October 24, 2019 as Document No. 20190044087, the Amended Declaration and Restated Declaration ("Amended Declaration") recorded on December 16, 2019 as Document No. 20190052471, , and the Second Amended and Restated Declaration ("Second Amended Declaration") recorded on August 31, 2022 as Document No. 20200046996, all recorded in the Washington County Recorder's Office.
- D. The Declarant declares that all of the property described in Exhibit A and any additional property subjected to this Declaration by Supplemental Declaration shall be held, sold, and conveyed subject to the following covenants and conditions. This declaration shall be binding upon all parties having any right, title, or interest in any portion of the properties.
- E. Declarant explicitly reserves for itself the option to expand the project.

F. Declarant reserves the right to enter into contracts with individuals which are not property owners within TAVA Homeowner's Association, for a fee payable to the Association, to utilize the amenities of TAVA Homeowners Association without being members of the Association nor subject to the governing documents other than rules and regulations specifically relating to use of the amenities. Any agreement entered into must reduce monthly amenity costs to members of the Association.

G. Governing Documents of the Community consist of:

- Official Plats
- This Declaration and any Supplemental Declarations
- Association's Articles of Incorporation
- Association's Bylaws
- Design Guidelines and Community Wide Standards
- Rules and Regulations
- Resolutions of the Association's Board or Board
- Master Declaration
- Master Association Documents

DECLARATION

Now, therefore, Declarant hereby declares that the Property is and shall be held, conveyed, encumbered, leased, used, occupied, improved, and otherwise affected in any manner subject to the covenants, conditions, restrictions, easements and other provisions of the Declaration, all of which are hereby declared to be in furtherance of a general plan for the development, improvement, and sale of the Property, and are further declared to be for the purpose of enhancing, maintaining, and protecting the value and attractiveness of the Property. All provisions hereof shall be deemed to run with the land as covenants running with the land or as equitable servitudes, as the case may be, and shall constitute benefits and burdens to Association and its assigns and to all persons hereafter acquiring or owning any interest in the Property, however such interest may be obtained.

COVENANTS, CONDITIONS AND RESTRICTIONS

NOW, THEREFORE, for the reasons recited above, the undersigned covenant, agree and declare that the Property shall be subject to the following covenants, conditions, and restrictions:

ARTICLE I

DEFINITIONS

As used in this Declaration, each of the following terms shall have the indicated meaning:

- A. Architectural Review Board means the Board the Declarant may create at such time as it shall determine in its discretion to review new construction and administer and enforce the architectural controls.
- B. Assessment means an Owner's portion of the Common Expenses or any other amount charged by the Association including but not limited to annual assessments, special assessments, individual assessments, late fees, interest and fines as provided in this Declaration.
- C. Association means the TAVA Homeowners Association, a nonprofit corporation whose members shall be the owners of the Lots in the Project.
- D. Board of Trustees, Trustees or Board means the body responsible for administration of the Association, selected as provided in the Bylaws.
- E. Builder means any person which purchases one or more lots for the purpose of constructing improvements for later sale to consumers or further subdivision, development or resale in the ordinary course of such Person's business. Builder shall not be construed to be the Declarant.
- F. Bylaws refer to the Bylaws of the Association which may be amended from time to time.
- G. Common Areas means all real and personal property which the Association owns, leases or holds possession or use rights in for the common use and enjoyment of the owners. Common areas may include recreational facilities, parks, entry features, signage, landscaped medians, and parking areas.
- H. Common Expenses means all sums lawfully assessed against the Owners. Expenses of administration, maintenance, repair and replacement of the Common Areas. Expenses agreed on as Common Expenses by the Board. Expenses levied against the Association by a Master Association for its allocated portion of the Master Association's common expenses if any. Actual and estimated expenses including any reasonable reserve as the Board may find necessary and appropriate pursuant to the governing documents.
- I. Community means and refers to the residential planned unit development known as "TAVA".

- J. Community Association Act means the Utah Community Association Act, Utah Code Annotated §§ 57-8a-101 *et seq.*, as may be amended from time to time.
- K. Community Standards means the standards of conduct, maintenance, or other activity generally prevailing throughout the Community. Such standards shall or may be established initially by Declarant and may be more specifically defined in the Design Guidelines, the Rules and Regulations (if any), and Board resolutions. Any subsequent amendments to the standards shall meet or exceed the standards set by the Declarant during the Declarant Control Period. Such standards may contain both objective and subjective elements. The Community Standards may evolve as development progresses and demands of the Community change.
- L. Declarant Tava Land, LLC or any successor or assign who takes title to any portion of the property described in Exhibit A for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant.
- M. Declarant Rights means and refers to all rights reserved by Declarant for itself under this Declaration which are personal to Declarant and may be exercised only by Declarant.
- N. Declaration means and refers to this instrument entitled "Third Amended and Restated Declaration of Covenants, Conditions, and Restrictions for TAVA Homeowner's Association, Inc." and any and all amendments thereto.
- O. Design Guidelines means the architectural, design and construction guidelines and application and review procedures applicable to the Community as stated in Article IV.
- P. Developed Lot means a Lot on which a Dwelling has been legally approved for occupancy by Hurricane City.
- Q. Dwelling means any building or structure situated on a Lot and which is intended for use and occupancy as an attached single-family residence.
- R. Fractional Ownership means a Lot (and a Dwelling when such is constructed upon a Lot) that is owned by multiple persons or business entities who each own an interval or fraction of the fee title instead of the entire fee title in joint tenancy or as tenants in common. This ownership type is sometimes also referred to by the names "Private Residence Club," "Destination Club," or "Vacation Club." This ownership type may be an "equity" or "non-equity" interest. Fractional Ownership also means "timeshare" or any other interest in real property in which the property is shared based on intervals of time.
- S. Limited Common Area means Common area designated for exclusive use by the owner of a particular Lot. Limited Common Areas include driveways, walkways from the driveway to the front porch, front porches, patios or any other common area feature designed to be used by one or more lots but not all the lots.

- T. Lot or Lots means the subdivided and recorded lot or lots within Property and, where the context so requires, any Dwelling constructed thereon with the exception of the common areas.
- U. Master Association means the Sand Hollow Resort Master Owners Association, a Utah non-profit corporation, its successors, and assigns.
- V. Master Declaration means the First Amended and Restated Master Declaration for Sand Hollow Resort, which was recorded in the Office of the Washington County Recorder on November 13, 2017 as Document Number 20170045927, as such may be amended and/or restated from time to time.
- W. Master Association Documents mean collectively the Master Declaration, articles of incorporation for the Master Association, the bylaws of the Master Association, the Design Code (as defined in the Master Declaration), and any amendments and supplements thereto, and includes any rules and regulations established pursuant to any of the foregoing.
- X. Occupant shall mean and refer to any person, other than an owner living, dwelling or staying in a unit.
- Y. Owner or Owners means the record owner or owners, whether one or more persons, of fee simple title to any Lot, excluding those having such interest merely as security for the performance of an obligation.
- Z. Party Wall Shall mean and refer to a wall, including without limitation a foundation wall that forms part of a living unit and is located on or adjacent to a boundary line between two or more adjoining units owned by more than one owner and is used or intended to be used by the owners of the benefited living units.
- AA. Period of Declarant Control refers to a period of time commencing on the date this Declaration is recorded and terminating on the occurrence of the earliest of the following events: 1) the date on which all the of living units have been conveyed to purchasers, or 2) the Declarant executes and records a written waiver of its right to control.
- BB. Plat means the plat for the Project, recorded in the Official Records.
- CC. Project or Property means the TAVA Subdivision, a Planned Community Development.
- DD. Rules and Regulations means and refers to such rules and regulations as the Board from time to time may adopt pursuant to the terms of this Declaration concerning the use of the

Community or any part thereof.

EE. Unit means each portion of a Dwelling that is separated by a party wall. Most Lots within the Project are improved with one Dwelling consisting of two attached, duplex-style Units.

ARTICLE II

USE RESTRICTION AND NATURE OF LOTS

The Lots are subject to the following use restrictions which shall govern both the architecture of the Dwellings and the activities on and around the Lots:

- A. Residential Purposes. No Lot shall be used except for residential purposes and any Dwelling and structure thereon shall be maintained in good repair and in a clean and attractive appearance, compatible with surrounding Lots and Dwellings. Gainful occupational, professional, trade or other nonresidential use (such as a model home) may be conducted on a Lot only if permitted by Hurricane City and approved by the Board. No person shall engage in such uses without the prior review and approval by the Board and the appropriate officials of Hurricane City. All land use and buildings shall follow all zoning and land use ordinances as well as all regulations of the applicable municipalities and agencies governing land use and buildings. The limitations described shall not preclude any of the above-described activities which are conducted without external evidence thereof provided that all of the following conditions are fulfilled: (i) the patrons or clientele of such activities do not routinely or in significant numbers visit the Lot or park automobiles or other vehicles within the Property; (ii) the existence or operation of such activities is not apparent or detectable by sight, sound or smell from outside the boundaries of the residence of such Lot; (iii) no such activity increases the liability or casualty insurance obligation or premium of the Association; and (iv) such activities are consistent with the residential character of the Property and otherwise conform with the provisions of this Declaration.
- B. Master Declaration Controls. The Project constitutes a Neighborhood (as defined in the Master Declaration) within the Sand Hollow Resort (as defined in the Master Declaration). In addition to being subject to this Declaration, the Project is also subject to the Master Declaration. The Association constitutes a Neighborhood Association pursuant to and as defined in the Master Declaration and is subject to and participates in the Master Association in the manner and to the extent described in the Master Declaration. Owners shall pay assessments levied by the Master Association. Owners and occupants may or may not (depending on terms and conditions of the Master Association Documents in effect from time to time) have access to Master Association common areas and amenities. In the event of any conflict or disparity between the terms of this Declaration and the Master Declaration, the terms of the Master Declaration shall control.
- C. Title to Common Areas. The Declarant may convey title for the common areas to the Association.

- D. Structure. No structure such as a recreational vehicle, mobile home, shack, shed, tent, garage, barn or other out-building shall be occupied at any time for use as a dwelling.
- E. Leasing of Units. To avoid the communal ills including among other things, rules violations, abuse and destruction of community and private property, and the consequent increase in insurance premiums, it is the intent of the TAVA Homeowners Association to be an "owner occupied" community. The leasing, renting, or granting of occupancy of a unit is expressly prohibited. Each owner by acceptance of a deed or other document of conveyance acknowledges and agrees that the units may not be leased or rented. "Leasing or renting" of a Unit means the granting of a right to use or occupy a Unit for a specific term or indefinite term (with rent stated on a periodic basis), in exchange for the payment of rent (money, property or other goods or services of value).
- F. Fractional Ownership Prohibited. Fractional Ownership is prohibited in the Project. Each owner by acceptance of a deed or other document of conveyance acknowledges and agrees that the legal title of a Lot, Dwelling, or Unit will not be held in Fractional Ownership.
- G. Owners' Easements of Enjoyment. Except as otherwise expressly provided elsewhere in this Declaration, each Owner shall have, and the Association hereby grants to each Owner, a non-exclusive easement of use and enjoyment in, to, and throughout the Common Areas and for ingress, egress, and support over and through the Common areas. Each such easement shall be appurtenant to and pass with title to each Unit, subject to the following rights and restrictions:
- a. The Association shall have the right to adopt, amend, and enforce Rules and Regulations affecting use of the Common Areas; provided, however, that such Rules and Regulations shall not be in conflict with the provisions of this Declaration.
 - b. The Association shall have the right to limit the number of guests of an Owner utilizing the Common Areas.
 - c. The Association shall have the right to charge reasonable admission and other fee for the private use of any recreational facility situated upon the Common Areas.
 - d. The Association shall have the right to assign, rent, grant licenses, or otherwise designate and control the use of any parking or storage space within the Common Areas.
 - e. The Association shall have the right, acting through the Board, to mortgage or pledge any or all of its real or personal property as security for Association obligations.
- H. Use of the Common Areas. Any Owner may extend their rights of use and enjoyment in

the Common Areas, including any recreational facilities, to such Owner's family members, guests, and invitees, subject, however, to the provisions of this Declaration and the Rules and Regulations. All permitted rights of use and enjoyment of the Common Areas are subject to suspension as set forth below in this Declaration. Each Owner shall at all times be responsible for any and all activities of their guests and invitees using the Common Areas. No Improvements within the Common Areas shall be altered or removed, except at the express direction of the Association.

- I. Association's Right to Use of Common Areas. The Association shall have a non-exclusive easement to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Declaration, including the right to construct and maintain in the Common Areas maintenance and storage facilities for use by the Association.
- J. Easement for Encroachments. If any part of the Common Areas encroaches or shall hereinafter encroach upon a Unit, an easement for such encroachment and for the maintenance of the same does and shall exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Unit, an easement for such encroachment and for the maintenance of the same does and shall exist. Such encroachments shall not be considered to be encumbrances either on the Common Areas or the Units. Encroachments referred to herein include, but are not limited to, encroachments caused by initial construction, settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Community or any part thereof. Notwithstanding the foregoing, no such encroachment shall exist to the extent it is caused by the willful misconduct of the Owner of the encroaching Unit or the failure of such Unit's Owner to cause the Unit to be repaired or reconstructed after damage or destruction in accordance with approved plans and specifications.
- K. Utility Easements. There is reserved for the benefit of each Unit easements for utility services over, under, or through such portions of the Community and other Units, where such utilities are constructed when construction of the Community is completed. In addition, Association reserves, and the Association is granted, the right to establish and convey subsequent utility easements; and each Owner in accepting a deed to a Unit, expressly consents to such easements.
- L. Architectural Control. No grading, excavation, building, fence, wall, Dwelling or other structure of any kind shall be commenced, erected, maintained, improved, altered or made until the construction plans and specifications along with a topographical plan showing the location of all improvements, including a detailed landscaping plan, have been approved in writing by the Board. The Board shall not give its consent to any improvements unless, in the opinion of the Board, the proposed improvements meet all Design Requirements then in effect and are in harmony with existing structures and improvements in the Project and with the surrounding landscape. All subsequent additions or changes to or alterations in any building, fence, wall or other structure, including exterior color scheme, and all changes in the grade of any Lot, shall be subject to the prior written approval of the Board. No changes

or deviations in or from the plans and specifications once approved by the Board shall be made without the prior written approval of the Board. Architectural approval may also be subject to a Master Association Architectural review.

ARTICLE III

MAINTENANCE OBLIGATIONS

- A. Nuisances; Offensive or Unlawful Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate on or adjacent to any Lot, and no odors or loud noises shall be permitted to arise or emit from any Lot to render all or any portion of any Lot or activity thereon unsanitary, unsightly, offensive or detrimental to the Owners or occupants of any other Lot in the vicinity. No other nuisance shall be permitted to exist or operate upon any Lot to be offensive or detrimental to any other Lot in the vicinity or to its occupants. Woodpiles or other material shall be stored in a manner so as not to be visible from outside the lot and so as not to be attractive to rodents, snakes and other animals and to minimize the potential danger for fires. No noxious or offensive activities shall be permitted on any lot or common area which interferes with or jeopardizes the quiet enjoyment of other lots or common areas. No unlawful use shall be made of a lot or any part thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed.
- B. Unsightly Articles. No unsightly article, facility, equipment, object or condition (including but not limited to, clotheslines, garden or maintenance equipment, inoperable vehicle or furniture which is not deemed "outdoor furniture") shall be permitted to remain on any unit so as to be reasonably visible from any street or other unit or common areas.
- C. Signs. No sign, poster, billboard, advertising device or other display of any kind shall be displayed except those required by law without the approval of the ARC, except the Owner or resident may place one (1) customary 18" x 24" free-standing "for sale" sign on the Unit using Project designed and approved sign structures. Owners hiring real estate brokerages and agents to market their Units for sale will ensure that all real estate brokerages and agents use Project designed and approved sign structures. Real estate brokerages and agents may not use their own signs. Any other signage shall require ARC approval. Nothing herein contained shall restrict the right of Association to maintain street signs, Community monuments signs, and other Community signs in the Common Areas. The Board and the Declarant shall have the right to erect signs as they deem appropriate.
- D. Parking or Storage of Vehicles. No articles, material, equipment or vehicles of any nature shall be parked or stored on any street located within the Project, except as expressly provided in this paragraph. Licensed, regularly used passenger vehicles may be parked on the street of the Project however, overnight parking of vehicles shall be restricted to the driveway of the Owner's dwelling. Recreational vehicles including but not limited to vehicles over one (1) ton, mobile home, travel trailer, campers, boats, ATVs, vans and machines similar to these may not be parked in the project unless they fit entirely within

the garage of the unit. Recreational vehicles as described above may be parked at the unit for a period not to exceed 5 hours for purposes of loading/unloading. No cars on blocks or non-running vehicles are permitted within the Project. In addition, no Owner shall park, store or keep anywhere within the Property any vehicle or vehicular equipment, mobile or otherwise, deemed to be a nuisance by the Board. Commercial vehicles may be parked on the street or in the driveway while repairs or maintenance is being provided to the house or landscaping. Except in case of emergency, no repairs shall be made to a vehicle in the driveway or a street.

- E. Parking Enforcement. The Board shall have the power but not the obligation to enforce all parking and vehicle use restrictions applicable to the Property. The Board shall have the right to have any truck, mobile home, travel trailer, camper shell, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle or other motor vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of the Association documents towed away at the sole expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, then the cost incurred by the Association in towing the vehicle or equipment shall be assessed against the Owner and said Owner's lot.
- F. Garages. Garage doors shall not be left open for more than two continuous hours during the day. Vehicle repair which shall only be performed with the garage door closed excepting for emergencies.
- G. Trash. No rubbish, trash, garbage or other waste material shall be kept or permitted on or within any Unit, Dwelling, or otherwise within the Project, except in sanitary containers located in appropriate areas screened and concealed from view, and no odors shall be permitted to arise therefrom to render the Project, or any portion thereof, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. Such containers shall be exposed to the view of the neighboring Units only when set out for a reasonable period (not exceeding twenty-four (24) hours before and after scheduled trash collection hours.
- H. Lot, Living Unit, Limited Common Area and Party Wall Maintenance. Each owner shall have the obligation to provide exterior and interior maintenance of the lot and living unit and the limited common areas serving said lot and living unit including but not limited to painting, maintenance, repair and replacement and care of roofs, gutters, exterior surfaces, driveways, structural elements, windows, doors, garage, air unit, electrical, plumbing and heating systems that solely service the Lot or Unit. Responsibility and cost to maintain, repair or replace shared roofs shall be borne equally by the lot's owners. Each Party Wall (see Definitions) must be maintained in good condition. Each Owner covenants not to do anything or to erect any barrier that will hinder maintenance of the Party Wall. If maintenance or repair to the Party Wall is caused by the willful or negligent act of any owner or his Occupant, the cost of such maintenance or repair shall be the sole expense of

said Owner. Owners who mutually benefit by a Party Wall agree to share equally in the cost of maintenance and repair except as provided above.

- I. Windows. Each Owner shall have complete discretion as to the choice of furniture, furnishings, and interior decoration; however, all draperies, curtains, shutters, or other window coverings shall be of good quality and of such color, design and construction so as to be in accord with the attractive appearance of the Community. Plastic, aluminum foil, bed sheet or other unsuitable coverings may not be placed in or on the windows, except for blinds, shutters or other window coverings which may be constructed of plastic materials. Window tinting shall require the prior written approval of the ARC and shall be properly installed and maintained so as not to become damaged, scratched, discolored or otherwise unsightly.
- J. Repair of Improvements. No improvements on any Lot shall be permitted to fall into disrepair and all improvements shall always be kept in good condition and repair and adequately painted or otherwise finished. In the event any Dwelling or other structure is damaged or destroyed, then, subject to the requisite Board approvals, such Dwelling or other structure shall be repaired, rebuilt or demolished at the sole expense of the Owner of such Lot, within a reasonable amount of time.
- K. Animal Restrictions. No insects, reptiles, poultry or dangerous or poisonous animals of any kind shall be raised, bred or kept on or within any Lot, Dwelling, or otherwise within the Project, except that usual and ordinary dogs, cats, fish, birds and other household pets (excluding without limitations, equine, bovine, sheep, swine, goats, monkeys, snakes, pigs, iguanas, ferrets and other such animals) may be kept on or within the Project Lots, subject to rules and regulations adopted by the Association, and provided that they are not kept, bred or maintained for commercial purposes or in unreasonable quantities. As used in this Declaration, unreasonable quantities shall ordinarily mean more than two (2) pets per household, provided, however, that the Association (or the Architectural Board or other such person or entity as the Association may from time to time designate) may determine that a reasonable number in any instance may be. The Association acting through the Board of Trustees, shall have the right to prohibit maintenance of any animal which constitutes, in the opinion of the Board, a nuisance to any other Owner. Animals belonging to Owners or invitees within the Project shall not be permitted to roam at large at any time and must be either kept within a house or an enclosure, or on a leash being held by a person capable of controlling said animals. The enclosure must be so maintained that the animal cannot escape therefrom and shall be subject to the approval of the Architectural Board. Should any animal belonging to an Owner be found unattended, out of the enclosure, or not being held on a leash by a person capable of controlling the animal, such animal may be removed by the Association or a person designated to do so, to a shelter under the jurisdiction of the local governmental entity in which the Project is situated and subject to the laws and rules governing such shelter, or to a comparable animal shelter. Furthermore, any Owner shall be liable to each and all remaining Owners, their families, guests and invitees, for any unreasonable noise or damage to person or property caused by any animals brought or kept with the Project by an Owner or by members of his family or guests; and it shall be the

absolute duty and responsibility of each such Owner to clean up after such animals which have used any area within the Project. All owners must comply with any ordinances imposed by Hurricane City.

- L. Antennas and Satellite Dishes. No exterior radio antenna or aerial, television antenna or aerial microwave antenna aerial or satellite dish, CB antenna or other antenna or aerial of any type which is visible from any street or from anywhere in the Community shall be erected or maintained on any unit. Notwithstanding the foregoing, "Permitted Devices" (defined as antennas or satellite dishes: (1) which are one meter or less in diameter and designed to receive direct broadcast satellite service or (2) which are one meter or less in diameter or diagonal measurement and designed to receive video programming services via multi-point distribution services) shall be permitted, provided that such permitted device is mounted on the rear of the dwelling furthest from the street or not more than 10 feet closer to the street from side of the dwelling in a manner intended to minimize the visibility of the permitted device from all streets to the extent reasonably possible.
- M. Diseases and Insects. Owner shall not permit any item(s) or condition(s) to exist upon their Lot that shall induce, breed, or harbor infectious plant or tree diseases or noxious insects or harbor infectious plant or tree diseases or noxious insects, rodents, birds, or other animals, i.e., rabbits, etc. The owner of each Lot is responsible for pest control at their sole and separate expense.
- N. Fire Hazards. There shall be no exterior fires whatsoever except barbecue and approved fire features contained within appropriate receptacles.
All stacks and chimneys from fireplaces with combustible materials other than gas shall be fitted with a spark arrester. All Owners shall strictly comply with all state laws and county ordinances pertaining to fire hazard control.
- O. Hunting and Firearms. The discharge or shooting of firearms in the Project is prohibited. Hunting in the Project is prohibited. The term firearms includes B-B guns, pellet guns and other firearms of all types regardless of size.
- P. Fences/Gates/Privacy Walls. All fence, gates and privacy wall enclosures must be approved in writing by the Architectural Board prior to installation. Once installed, fences, gates and privacy walls must be maintained in "like new" condition.
- Q. Machinery and Equipment. No heavy machinery or construction equipment of any kind shall be placed, operated, or maintained upon or adjacent to any Unit except such machinery or equipment as is usual and customary in connection with and during the construction or approved improvement of a residence or other structure. No equipment for air conditioning, heating, fuel storage or other uses shall protrude through the walls, windows, or roof of any Improvement in the Community except for such equipment needed during the initial construction of a unit unless prior approval has been received from the Architectural Board.

- R. Landscaping. It shall be the obligation of each owner to maintain their landscaping in front, side and rear yards in a neat and attractive condition. Unit owner shall periodically replace when necessary trees, plants, grass, synthetic turf and other vegetation. The ARC may adopt rules and regulations to regulate landscaping permitted and required in the Properties. Each owner shall keep free from weeds, debris and other unsightly objects all portions of their yard. Excessive exterior lighting shall not be permitted. Exterior lighting must be downlighting and shielded lighting to protect night sky viewing and to avoid glare into neighboring properties. The Board shall in its sole discretion determine whether any exterior lighting is excessive.
- S. Vacant Lot Appearance. Vacant lots must be cleared of weeds, debris and vegetation at least every 6 months or more frequently if notified by the Association. Lot owners are responsible for clearing their lot and may do so themselves or hire a service of their choice. In the event the lot owner does not keep their lot clean to the standards of the Association, the owner will be notified of a maintenance violation. The Association will clean the lot and charge the owner for the service if owner does not comply with the maintenance violation notification. Unpaid fees will be subject to a lien.
- T. Certain Lot Owners' Obligations to Rebuild After Damage or Destruction. Each Owner of a Lot upon which a Residence is located shall carry casualty insurance insuring the residence on such Owner's Lot with coverage for all hazards, except earthquakes and floods and other acts of God which are normally excluded from standard form coverage policies ("Excluded Hazard"), which insurance shall be maintained in an amount equal to the full replacement cost of such residence. The Association shall have no duty to enforce the foregoing provision of this Declaration; provided, however, that if a residence is damaged or destroyed and the event causing the damage or destruction was not an Excluded Hazard, then the Owner(s) of the residence shall be jointly and severally liable to the Association to rebuild the residence on the Lot within community standards as established in the Architectural Guidelines.
- a. In the event the Lot Owner(s) of the damaged or destroyed residence fail to commence repair or reconstruction of the residence including the removal of debris associated with the initial damage or destruction, within the longer of one hundred twenty (120) days after the event causing the damage or destruction, or forty-five (45) days after the insurance proceeds are made available for reconstruction purposes, then the failure to commence repair or reconstruction shall be deemed to be a Maintenance Violation. Each Owner shall maintain and provide insurance coverage under their homeowner's policy for any rear and side yard walls or wrought iron rear yard walls. If an Owner or resident fails to perform necessary maintenance and repair, the Association shall have the right, after ten (10) day prior notice requesting such work be done and the Owner or resident not having done so, to enter upon such Lot for purposes of performing such work and the cost thereof, together with interest thereon as provided by applicable law, shall be charged to an Owner, and

shall be deemed a Maintenance Violation.

U. Maintenance Violations and Association's Right to Correct Maintenance Violation.

- a. A maintenance violation exists if any Owner allows, permits or causes any condition to exist on such Owner's Unit or within such Owner's residence which in the sole reasonable discretion of the Board is unsightly, unsanitary or hazardous, or is deemed not to conform to Community Wide Standards (including, but not limited to, a condition which causes dust to carry to another Owner's lot), or fails to maintain their Unit, the exterior of the residence on such Unit or the Improvements thereon in accordance with the provisions of this Declaration and if no emergency exists, then written notice will be given specifying the nature of the Maintenance Violation and a reasonable time period within which the Owner(s) must correct such Maintenance Violation. If an emergency exists, then the Association shall give the Owner of the Unit on which such condition exists, whatever notice is appropriate under the circumstances in whatever manner is appropriate under the circumstances, including no notice.
- b. The Owner of the Unit to whom a Maintenance Violation Notice is given, shall have the right to file a written objection thereto with the Secretary of the Association within ten (10) days after such Owner is deemed to have received such Maintenance Violation Notice. In the event such an objection is filed, and within thirty (30) days after the objection is filed, the Board shall hold a hearing regarding such Maintenance Violation. Notice of such hearing and the time and place thereof, shall be given to the Owner to whom the Maintenance Violation Notice is given at least five (5) business days prior to the date set for such hearing. The Board shall give written notice of its decision to the Owner against whom the Maintenance Violation Notice was given as to whether or not a Maintenance Violation exists and the nature of such violation. The decision of the Board shall be conclusive as to whether or not a Maintenance Violation in fact exists. The notice period within which a Maintenance Violation must be cured shall be tolled from the date of filing such objection until the date the Board notifies the Owner in Writing of its decision.
- c. If any emergency exists or if the Owner fails to correct a Maintenance Violation within the period specified in the notice (as such Period may have been extended by the filing of an objection), then the Association, acting through the Board, shall have the right, but not the obligation (unless an Owner Complaint is filed), to undertake and perform such work through its agents and employees as the Board may deem be necessary or desirable to remedy the Maintenance Violation. Neither the Association, the Board, nor any of their agents or employees shall be liable for failure

to correct a Maintenance Violation.

d. Procedure for Association's Correction of Maintenance Violation

- i. Bids. In the event the Association elects to correct a Maintenance Violation and if no emergency exists, then prior to commencement of work to correct the Maintenance Violation and promptly after the expiration of the cure period afforded a defaulting Owner, the Board shall obtain a written bid to perform the required work and shall mail the bid to the Owner of the Lot on which a Maintenance Violation exists. Such Owner shall have the right to approve the bid by notifying the Board in writing within fourteen (14) days after the bid is mailed by the Board to the Owner. In the event the Owner fails to approve the bid within such time period, the Board shall approve the bid and commence work. If an emergency exists, the Association may commence work to correct the Maintenance Violation immediately without notice and without obtaining a written bid.
- ii. Special Assessment. When the bid has been approved or when an emergency exists, the Board shall levy a Special Assessment against the Owner of the Lot on which a Maintenance Violation exists to pay for the cost of correcting the Maintenance Violation.
- iii. Performance of Corrective Work by Association. The Board shall have the duty to cause the corrective work to be commenced promptly after the Special Assessment has been levied against the defaulting Owner; provided, however, that if the cost of such corrective work exceeds two (2) times the amount of the periodic installment of the Annual Assessment against one Lot for the fiscal year in which the Maintenance Violation is required to be corrected, then the Association may, in the sole discretion of the Board, elect to levy a Special Assessment against the defaulting Owner prior to performing the corrective work, and perform such corrective work when the Special Assessment is paid in full. Neither the Association, the Board, nor any of the Association's agents or employees shall be liable for any damage which may result from any work performed by the Association to cure a Maintenance Violation.

V. Association's Right of Entry for Repair, Maintenance and Emergencies. Each of the Unit Owners hereby grants to the Association and its duly authorized agents, representatives,

employees and contractors the right of entry onto such Owner's Unit and residence, and within the Improvements thereon, which right shall be irrevocable, to make such repairs and perform such maintenance work which the Association is required or entitled to do pursuant to the provisions of this Declaration. Except as provided herein below with respect to emergencies, such right of entry shall be exercised only during reasonable hours and after reasonable notice. In the event any officer of the Association believes, in his or her sole discretion, that an emergency situation exists and that immediate repairs are necessary to prevent or mitigate damage to the Common Areas or to the residence or Unit of another Owner, then such officer shall have the right to exercise such right of entry without notice.

- W. No Waiver. The failure to enforce the provisions of any covenant, condition, or restriction contained in this Declaration shall not constitute a waiver of any right to enforce any such provisions or any other provisions of this Declaration.
- X. Restriction on Further Subdivision; Property Restrictions and Rezoning. No Lot shall be further subdivided or separated into smaller lots by any Owner without the prior written approval of the Board, which approval must be evidenced on the official plat or other instrument creating the subdivision. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, or other person against any Lot without having been first approved in writing by the Board. Any covenants, conditions, restrictions or easements recorded without such approval shall be null and void. No application for rezoning of any Lot, and no applications for variances or use permits, shall be filed with any governmental authority unless the proposed use of the Lot has been approved by the Board and the proposed use otherwise complies with the provisions of this Declaration.
- Y. Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by the Declarant or its duly authorized agents of temporary structures, trailers, improvements or signs necessary or convenient to the development, marketing or sale of Lots.
- Z. Utilities Easement and Right-of-Way. Easements and rights-of-way for the installation and maintenance of utilities and drainage facilities and other uses are reserved as shown on the Plat, and all Lots shall have a utility easement and right-of-way in compliance with Hurricane City's PDO requirements and surrounding all sides for installation of various utilities and equipment, such as water, sewer, storm drainage, telephone, electricity, secondary water, natural gas, etc., as shown on the Plat. All easements may be utilized by the various utility companies at their discretion for placement of utilities and/or equipment. Within this easement and right-of-way, no structure, large planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, change the direction or flow of drainage channels in the area, or obstruct or retard the flow of water through drainage channels or easements. The easement and right-of-way area of each Lot and all improvements within said area shall be maintained continuously by their Owners, excepting those improvements for which a public authority or utility company is expressly responsible.

ARTICLE IV

ARCHITECTURAL CONTROL; DEVELOPMENT STANDARDS

- A. Architectural Review Board. There shall be an "Architectural Review Board" (sometimes hereinafter "ARC") consisting of one or more members of the Board and may also have non-Board members in an advisory capacity. The Board shall have the power to appoint all members of the ARC. The ARC shall have the authority to establish Design Guidelines and Standards. The Design Guidelines and Standards may be amended from time to time by the Board. This article shall not apply to the activities of the Declarant nor to improvements to the common area by or on behalf of the Association as long as approved by the Declarant.
- B. Master Association Architectural Controls. Architectural controls are in addition to any architectural controls, guidelines and/or requirements set forth in a Master Declaration. Owners shall first seek approval from the Association, and if approved, may proceed with any Master Association approval as required or needed. The Board may forego, temporarily or permanently, the regulation of the Association's architectural control and rely entirely upon the architectural controls and regulations of a Master Association.
- C. Design Review Fees. For initial construction of a unit a fee of \$200.00 will be assessed to each builder/homeowner by the Board for architectural compliance review, to be completed by the Board within two weeks after complete submission. One resubmission will be allowed at no cost, and the Board will complete a review of a resubmission within one week. A fee of \$100.00 will be charged for any other resubmission(s), each of which may take up to three weeks for review. Fees do not apply to construction to be performed on lots controlled by Declarant. After receiving approval of the Board and prior to the commencement of construction, each Owner shall be responsible for obtaining a building permit from Hurricane City and connection of all utilities to such Owner's Lot.
- D. Commencement of Construction. If construction does not commence on a project for which plans have been approved within 90 days after the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any work.
- E. Construction. The original purchaser of the Lot must start construction on such Lot not later than six (6) months from the date of closing and complete construction of all structures not later than twelve (12) months from the date construction starts. The start of construction shall be when any construction activities are commenced on a Lot. All building debris, excavation dirt and the like associated with the building process shall be removed within such twelve (12) month period. Such debris and excavation dirt shall not be permitted on any of the streets or sidewalks in the Project. In the event of a resale of a Lot, no extension of time will be granted without written approval of the Board prior to the resale of the Lot. Normal construction activities and parking in connection with the building of improvements on a Lot shall not be considered a nuisance or otherwise

prohibited by this Declaration. However, all Lots shall be kept in a reasonably neat and orderly condition during construction periods. Trash and debris shall not be permitted to accumulate, and supplies of brick, block, lumber and other building materials shall be piled only in such areas as may be approved by the Board. In addition, any construction equipment and building materials stored or kept on any Lot during construction or improvements may be kept only in areas approved by the Board, which may also require screening of such material and equipment storage areas.

- F. Deadline for Completion of Landscaping and Automatic Sprinkling System. The front yard and back yard of each Lot shall be landscaped prior to receiving Certificate of Occupancy and must be approved by the Architectural Review Board. All landscaping must be irrigated and controlled by an automatic sprinkling system.
- G. Authority to Change Design Guidelines. During the Declarant Control Period neither the Board nor the Association shall have any authority to modify, repeal or expand the Design Guidelines without the written consent of Declarant.
- H. ARC Approval. After initial construction of a unit no building or other structure or improvement to the exterior, including, but not limited to, courtyard, garage, driveway change, landscaping, painting, walls and/or fencing, patio covers, screens, doors, windows, storage buildings, awnings, or any work that in any way alters the exterior appearance shall commence until a written application has been submitted, reviewed and approved. Failure to obtain permission may result in a fine and/or removal or modification of the change at the owner's expense.
- I. Interpretation. All questions of interpretation or construction of any of the terms or conditions in this Article shall be resolved by the Board with the input of the Architectural Board. The decision of the Board shall be final, binding and conclusive on all of the parties affected. Each owner acknowledges that the members of the Design Review Committee will change from time to time and that interpretation, application and enforcement of the Design Guidelines may vary accordingly. Approval of plans or drawings or any matter requiring approval shall not be deemed a waiver of the right to withhold approval of similar plans or drawings or other matters additionally submitted for review.
- J. Liability Limitation. Review and approval of any application is made on the basis of aesthetic considerations only and neither the Declarant, the Association, The Board or Design Review Committee or any of their members shall bear responsibility for ensuring structural integrity or compliance with building codes nor for injury or loss which may occur with any modification to any Lot.
- K. Violations. In the event violation of these restrictions exists, or in the event of the failure of any individual Owner to comply with a written directive or order from the ARC, then in such event, the ARC shall have the right and authority to perform the subject matter of such directive or order, including, if necessary, the right to enter upon the Unit and the cost of such performance shall be charged to the Owner of the Unit in question, which cost

shall be due within five (5) days after receipt of written demand therefore, and may be recovered by the ARC pursuant to a Violation Assessment or in an action at law against such individual Owner.

- L. Intent. The intent of the TAVA Community Wide Standards and Design Guidelines (Guidelines) is to protect and enhance the spectacular views of the surrounding mountains; to respect the climatic conditions and environment of the region and to maintain and enhance Community property values. Also, within this intent, it is important to allow individual ideas to flourish and enrich the Community, provided that standards are maintained.
- M. Framework. The Guidelines provide an overall framework and comprehensive set of standards to allow the Community to develop and progress in an orderly and cohesive manner. They establish criteria for architectural style and design, landscape concepts, site improvements, colors and materials. They also establish a process for judicious review of proposed new developments and changes within the Community. The Guidelines additionally set forth the means by which they may be changed and amended to better serve the needs of an evolving Community.
- N. Availability. Copies of the Guidelines will be made available to all Owners.
- O. Authority. To the extent that any local government ordinance, building code or regulation or Master Declaration or Design Guideline requires a more restrictive standard than that found in the Guidelines, the local government or Master Declaration or Design Guideline standard shall prevail. To the extent that the local ordinance or Master Declaration or Design Guideline is less restrictive than the Guidelines or this Declaration, the Guidelines and this Declaration shall prevail.
- P. Views. There are no representation or warranty with respect to the presence or absence of any view from any portion of any Unit. Any existing view may change or be blocked or impaired depending upon construction, landscaping or other activities undertaken on remaining land located within the Community or on land located outside the boundaries of the Community. Each Owner, by accepting title to a Unit in the Community, hereby acknowledges that construction, landscaping or other installation of Improvements outside the Community may impair the view from any Unit in the Community, and the Owners hereby consent to such view impairment.

ARTICLE V

THE ASSOCIATION

- A. Association. All Owners shall belong to the Association. The Association shall exist for managing, operating, maintaining, repairing and replacing, as necessary, the Common Areas; enforcement of the Governing Documents; collection of assessments; administering, monitoring compliance with and enforcing the Design Guidelines. The

Association is a non-profit corporation. In the event the non-profit corporate status expires or is invalidated, the Board, in its sole discretion, may renew or re incorporate the Association. Any such expiration or invalidation shall not relieve any owner from paying assessments and abiding by all restrictions contained in this Declaration. The Association shall keep the common areas in good, clean, attractive and sanitary conditions. The Board is authorized, but not obligated to retain or employ professional management to assist in carrying out the Association's responsibilities under this Declaration, the cost of which shall be a common expense.

- B. Membership. The Members of the Association shall be the Owners of the Units. The Owner(s) of each Unit shall have (1) membership in the Association. The number of memberships in the Association shall be equal to the number of units within the Property.
- C. Members' Rights and Duties. As used in this Declaration, the term "Member" shall refer to the Owner of a Unit if there is one Owner, or collectively to all of the Owners of a Unit if there is more than one Owner. Each Member shall have the rights, duties, and obligations set forth in this Declaration, the Articles, Bylaws, and Rules and Regulations, as the same may from time to time be amended.
- D. Transfer of Membership. The Association membership of the Owner(s) of a Unit shall be appurtenant to such Unit, and shall not be assigned, transferred, pledged, hypothecated, conveyed, or alienated in any way except on a transfer of the title to such Unit, and then only to the transferee. Any attempt to make a prohibited transfer shall be void. Any transfer of the title or interest to a unit shall operate automatically to transfer the appurtenant membership rights in the Association to the new owner(s). Prior to any transfer of title to a Unit (including the sale of a Unit under a recorded contract of sale), either the transferring owner or the acquiring owner shall give notice to the Board of such transfer, including the name and address of the acquiring owner and the anticipated date of transfer.
- E. Voting. The Association shall have one class of membership, comprised of all owners. Each Lot shall have one (1) vote. During the Declarant control period there shall be a temporary second class of membership in which Declarant shall be the sole member, and which class shall allow the Declarant five (5) votes for each unit in which it holds an interest. The temporary second class shall expire upon the expiration of Declarant control period. The following restrictions apply to voting on Association issues, including, but not limited to, the election of Board members:
 - a. When more than one person owns or holds an ownership interest in a Lot, the vote for such Lot shall be exercised as those persons themselves determine and advise the Secretary of the Association prior to any meeting, and in the absence of such advice the vote of the Lot shall be suspended in the event more than one person seeks to exercise it;

- b. The Board has the right to suspend an Owner's right to vote if such Owner is not current on the payment of such Owner's Assessments or is in material violation of any of the terms, covenants or provisions set forth in this Declaration.
- F. Board. The Association shall be operated and controlled by the Board, which shall be the Board of Directors of the Association for purposes of the Utah Community Association Act, subject to the following:
- a. Members of the Board. The Board shall be comprised of not less than three (3) qualified persons who shall be duly qualified, elected or appointed in the manner set forth below. The Board may increase its size to not more than six (6) members.
 - b. Composition of Board. The Declarant shall have the exclusive right to appoint all the members of the Board until the occurrence of the earlier of the following events (either, a Transfer Event), at which time control of the Board (subject to the perpetual right of the Declarant to appoint one (1) member of the Board) shall be transferred by the Declarant to the Owners and the Owners shall elect the Board:
 - i. At such time when a certificate of permanent occupancy has been issued for 90% of the Lots; or
 - ii. When the Declarant elects in writing to transfer management and control of the Association.
 - iii. The initial members of the Board shall be Roger Ball, Marsha Ball and Diana Black. Anything to the contrary contained in this Declaration notwithstanding, one (1) person designated by the Declarant shall always remain a member of the Board if the Declarant so desires.
 - c. Terms. Board members shall be elected and/or appointed to serve two (2) year terms.
 - d. Qualifications. To qualify to serve on the Board, a person must be an individual Owner or the legal representative of an organizational Owner in good standing or may be a person other than an Owner if appointed by the Declarant.
 - e. Vacancies. Any vacant seat on the Board shall be filled by the Declarant prior to a Transfer Event. After a Transfer Event, a vacant seat shall be filled by a person that is an Owner duly qualified, elected or appointed to fill such vacancy.

- f. Dismissal. Any member of the Board who fails on three (3) successive occasions to attend Board meetings (whether regular or special) or who has failed to attend at least twenty-five percent (25%) of all Board meetings (whether regular or special) held during any twelve (12) month period shall automatically forfeit such member's seat. In such cases, the remaining Board members shall elect a replacement to sit on the Board until the next meeting of the Association.
 - g. Removal of Board Member. Except for members of the Board appointed by the Declarant prior to the occurrence of a Transfer Event, members of the Board may be removed at any time by the affirmative vote of at least a majority of the Owners. (As used in this Declaration, a majority of the Owners refers to a majority of the Lots, irrespective of the number of Owners.)
 - h. Replacement. Unless a member of the Board is removed by the affirmative vote of a majority of the Owners, such member shall be replaced by an appointment of the remaining members of the Board. A member of the Board removed by the affirmative majority vote of the Owners shall be replaced by the majority vote of the Owners present in person or by proxy at a special meeting called for that purpose. Anything to the contrary notwithstanding, the Declarant shall be entitled to replace all members of the Board appointed by the Declarant.
 - i. Completion of Term. Unless such member forfeits or otherwise loses such member's seat as provided in this Declaration, a member shall serve on the Board until such member's successor qualifies and is properly elected by the Owners or appointed by the Declarant.
 - j. No Compensation. Members of the Board shall not be compensated for their services but shall be reimbursed for all expenses reasonably incurred relating to Board business and approved by the Board.
- G. Officers and Agents of the Association. The Board is the agent of the Association and shall perform its functions through those Owners or Declarant appointees elected as officers of the Association by the Board. The Board may also perform its duties through such agents or employees as the Board may employ or appoint. Any Association officer, agent or employee may at any time be removed, with or without cause, by the affirmative vote of a majority of the members of the Board; provided, however, any officer so removed shall continue to be a member-at-large of the Board. One (1) member may hold more than one (1) office at the same time, except that of President and Secretary. The officers of the Association, and their respective powers and functions, shall be as follows:

- a. President. The President shall be a member of the Board and the chief executive of the Association and shall exercise general supervision over the property and affairs of the Association. The President shall preside over all meetings of both the Board and the Association. The President shall execute all instruments on behalf of the Board, unless the President chooses to delegate that authority to another Board member.
 - b. Vice President. The Vice President shall assist the President and shall have all the powers of the President in the event of the latter's absence or inability to act.
 - c. Secretary. The Secretary shall keep minutes of all the meetings of both the Board and the Association, as well as all other books and records which are required or made necessary.
 - d. Treasurer. The Treasurer shall have custody and control of the funds available to the Board. The Treasurer shall cause to be prepared an annual financial statement for each fiscal year of operation. The financial books and records of the Association shall be kept in accordance with generally accepted accounting practices. The offices of Secretary and Treasurer may be held by the same Board member.
- H. Board Meetings. A regular meeting of the Board shall be held immediately after the adjournment of each annual Owners meeting or at such other time as the members of the Board may decide. Other regular meetings shall be held at periodic intervals at such time and place as the Board may determine, but no less than once each quarter. No notice need be given of regular Board meetings. Special Board meetings shall be held whenever called by the President or by any two (2) members of the Board. Written notice of all special meetings shall be delivered to each member of the Board at least twenty-four (24) hours before the time fixed for the meeting. The propriety of holding any meeting which is attended by all members of the Board may not be challenged on grounds of inadequate notice. A quorum for the transaction of business at any Board meeting shall consist of a majority of all the Board members then in office.
- I. Status and General Authority of Board. The Association shall constitute a legal entity capable of dealing in its own name pursuant to the general non-profit corporation laws of the State of Utah and the powers, duties and obligations of a Homeowner's Association pursuant to the Community Association Act of the state of Utah. The Board shall have, and is granted, the following authority and powers:
- a. To Enter. The power and authority to enter on any Lot to make repairs and to do other work necessary for the proper maintenance and operation of any easement, right-of-way, utility or the Common Areas.

Except in the case of an emergency, residents shall be given at least twenty-four (24) hours prior notice before the Board or its representative shall exercise this power. In the event of an emergency entry without notice, the person entering the property shall leave in a conspicuous place written notice stating such person's name and title as well as the day, date, time and purpose of the entry.

- b. Grant Easements. The authority, without the vote or consent of any other person, to grant or create, on such terms as the Board deems advisable, reasonable permits, licenses, and non-exclusive easements over, under, across, and through the Project as reasonably necessary or useful for the proper maintenance, operation or regulation of the easements, rights-of-way, utilities and Common Areas.
- c. Execute Documents. The authority to execute and record, on behalf of all Owners, any amendment to this Declaration which has been approved by the vote or consent necessary to authorize such amendment.
- d. Insurance. Obtain and maintain in force policies of insurance as provided in this Declaration.
- e. Enter into Contracts. The authority to enter into contracts which in any way concern the Association, easements, rights-of-way, utilities or the Common Areas.
- f. Acceptance and Control of Association Property. May acquire, hold and dispose of tangible and intangible personal and real property, enter into leases, licenses or operating agreements for common areas, permit use of common areas by community organizations and others whether nonprofit or for profit.
- g. Compliance and Enforcement. The Board may instigate litigation to enforce the provisions of this Declaration. The Board may impose sanctions for violating the governing documents after notice and hearing. The Board shall establish a graduated range of penalties for violations. Penalties may include:
 - i. Reasonable graduated range of monetary fines;
 - ii. Suspension of an Owner's right to vote;
 - iii. Suspension of any person's right to use any recreational; or park facilities within the common elements.
- h. Promulgate Rules. The authority to promulgate such reasonable rules and regulations as may be necessary or desirable to aid the Board in

carrying out any of its functions or to ensure that the easements, rights-of-way, utilities and Common Areas are maintained and used in a manner consistent with their original design and construction.

- i. Delegation of Authority. The power and authority to delegate its duties, in whole or in part, to a manager or management company.
 - j. Limit on Obligation to enforce. The Association shall not be obligated to take action to enforce any covenant restriction or rule which the Board reasonably determines is, or is likely to be construed as inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed as a waiver of the right to enforce such provision at a later time or from enforcing any other covenant, restriction or rule.
 - k. Indemnification. The Association shall indemnify every officer, Trustee and committee member against any and all damages and expenses reasonably incurred in connection with any action, suit or other proceeding to which he or she may be a party by reason of having been an officer, Trustee or committee member. The officers, Trustees and committee members shall not be liable for any mistake in judgment except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The Association shall maintain adequate general liability and Trustee's liability insurance to fund this indemnity obligation as a common expense if such insurance is reasonably available.
 - l. Provision of Services. The Association may provide services and facilities for the Members of the Association and their guests, lessees and invitees. The Association shall be authorized to enter into contracts with other entities including Declarant to provide such services and facilities which may be funded as a common expense. In addition, the Board shall be authorized to charge additional use and consumption fees of services and facilities. Some services, by way of example which may be provided may include: landscape maintenance, pest control, television service, etc. This is not a representation of services that will be provided by the Association.
 - m. All Other Acts. The power and authority to perform all other acts and to enter into any other transactions which may be reasonably necessary for the Board to perform its functions for and on behalf of the Owners.
- J. Amendments. Anything to the contrary contained in this Declaration notwithstanding, while the Declarant controls the Association and before the occurrence of a Transfer

Event, any amendments to this Declaration must be approved in writing and in advance by the Declarant. No amendment may remove, revoke or modify any right or privilege of Declarant without the prior written consent of Declarant.

ARTICLE VI

ASSESSMENTS

- A. Reinvestment Fee. The Association shall levy a reinvestment fee against a new homeowner and his unit. At the close of escrow for each initial sale or transfer of a unit by Declarant or successor of Declarant the purchaser shall be required to pay to the Association a reinvestment fee in an amount established from time to time by the Board. The reinvestment fee shall not exceed the lesser of 0.5% of the value of the applicable unit or the maximum rate permitted by law. The reinvestment fee shall not be levied for a transfer to the Association or its successors.
- B. Common Income, Expenses and Voting Rights. The common income of the Association shall be allocated, the Common Expenses shall be charged, and the voting rights shall be allocated to the Owners equally. Each Owner, on receipt of a deed or other document of conveyance or transfer to a Lot, agrees to and shall pay such Owner's portion of the Common Expenses or any other Assessment levied against such Owner or such Owner's Lot, including any fines resulting from a violation of this Declaration or any rule or regulation adopted by the Board. Each owner of any lot by the acceptance of a deed covenants to pay to the Association all assessments and other fees, charges or fines as provided in the governing documents.
- C. Declarant. Anything to the contrary notwithstanding, the Declarant shall not be obligated to pay Assessments on any Lots owned by the Declarant. However, during the Period of Declarant Control it shall provide the difference between the Association's expenses and actual assessment collections. Declarant may provide the difference with money, services or in kind.
- D. Purpose of Common Expenses. The Assessments provided for in this Declaration shall be used for the general purpose including but not limited to: operating the Association as well as maintaining, repairing and replacing the easements, rights-of-way and Common Areas; payment of the Association's allocated portion of the Master Association's common expenses; cost of taxes and insurance; any expenses necessary or desirable to enable the Association to perform its obligations.
- E. Budget. At least thirty (30) days prior to the annual meeting of the Owners, the Board shall prepare and deliver to the Owners a proposed budget which:
- a. shall set forth an itemization of the anticipated Common Expenses for the twelve (12) month calendar year, commencing with the following January 1; and

- b. shall be based on advance estimates of cash requirements by the Board to provide for the payment of all estimated expenses growing out of or connected with the operation, maintenance, repair and replacement of the easements, rights-of-way and Common Areas, as well as the management of the Association.
- F. Procedure for Establishing Annual Assessments. Not less than sixty (60) days before the beginning of each fiscal year of the Association, the Board shall meet for the purpose of preparing the Proposed budget of the Common Expenses for the next succeeding fiscal year and establishing the Annual Assessment for such fiscal year. Within thirty (30) days after adoption of the proposed Budget by the Board for such fiscal year, the Board shall provide a summary of the Budget to all Owners. The Board shall be authorized to adopt the annual budget, thus establishing the regular assessment payable by the Owners, unless the percentage increase in the regular assessment over the previous year's regular assessment exceeds an increase of twenty percent (20%) over the previous year's assessment. If the proposed budget would require an increase in the regular assessment greater than twenty percent (20%) over the prior year's assessment, at that meeting the budget must be affirmatively approved by at least a simple majority (50%+) of the owners voting. They may be present to vote, vote by mail, or vote via verifiable electronic means. If the proposed Budget is so rejected or not approved, as applicable, the Budget last ratified by the Owners shall be continued until such time as the Owners ratify a subsequent Budget proposed by the Board.
- G. Method of Payment of Assessments. The Board has the sole authority and discretion to determine how and when any Assessment is to be paid.
- H. Personal Obligation of Owner. Each Owner is personally liable to pay any Assessment levied by the Board against such Owner or such Owner's Lot; provided, however, no mortgagee or beneficiary under a first position mortgage or deed of trust that obtains title to a Lot pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid Assessments which accrued prior to the acquisition of title.
- I. Equitable Changes. If the aggregate of all monthly payments on all the Lots is too large or too small because of unanticipated income or expenses, the Board may from time to time effect an equitable change in the amount of said payments. Owners shall be given at least thirty (30) days' prior written notice of any increase in the amount of the Assessment.
- J. Reserve Account. The Board shall establish and maintain a reserve account to fund long-term maintenance of the common areas. The Board shall follow any statutory requirement to conduct a reserve analysis in making decisions regarding the funding of the reserve account. Such reserve fund duties and obligations shall not apply to the Association and Board during the period of Declarant control.

- K. Statement of Common Area Assessments Due. On written request, the Board shall furnish to any Owner a statement of Assessments due, if any, on such Owners Lot.
- L. Superiority of Common Area Assessments. All Assessments and liens created to secure the obligation to pay an Owner's share of the Common Expenses are superior to any homestead exemptions to which an Owner may be entitled, which exemptions an Owner, by accepting a deed or other document of conveyance or transfer to a Lot, expressly subordinates or waives.
- M. Suspension of right to Vote for Non-Payment. At the discretion of the Board, the right of an Owner to vote on issues concerning the Association may be suspended if the Owner is delinquent in the payment of such Owner's Assessments and has failed within ten (10) days after delivery of written notice of the default to cure or make satisfactory arrangements to cure the default. Owner's right to use any recreational or park facilities may also be suspended if owner's account is delinquent.
- N. Special Assessments. The Board, with the affirmative consent or approval of at least a majority of the Owners, may levy a special Assessment to pay for unanticipated expenses, a budget shortfall or any capital improvement.
- O. Fines and Individual Assessments. The Board may fine Owners and residents for the failure to comply with this Declaration or any rules and regulations adopted from time to time. In addition, individual assessments may be levied by the Board against a Lot or its Owner to compensate or reimburse the Association for:
- a. costs incurred in enforcing or construing this Declaration;
 - b. costs associated with the maintenance, repair or replacement of any portion of the easements, rights-of-way and Common Areas damaged by an Owner or resident;
 - c. any other charge, fee or expense designed by the Board as an individual assessment; and
 - d. attorney's fees, late fees, default interest and collection costs;
 - e. provided, however, that no fine or individual assessment shall be final until after the Owner or resident shall have received written notice thereof and a reasonable opportunity to be heard. After notice and hearing, the decision of the Board shall be binding, final and conclusive.
- P. Collections. Assessments, fines and other monetary charges shall be collected as follows:
- a. The amount of Common Expenses assessed against each Lot is a debt of the Owner at the time the Assessment is made and is collectible as such.

A lawsuit or cause of action brought to recover a money judgment for unpaid Common Expenses is maintainable without foreclosing or waiving the lien securing it. If any Owner fails or refuses to make any payment of the Common Expenses when due, that amount constitutes a lien on the interest of the Owner in the Lot, and on the recording of notice of lien, constitutes a lien on the Owner's interest in the Lot first in priority to all other liens and encumbrances, recorded or unrecorded, except:

- i. tax and special assessment liens on the Lot in favor of any assessing unit or special improvement district; and
- ii. encumbrances on the interest of the Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

- Q. Late Fees and Accruing Interest. A late fee in the amount of Twenty-Five Dollars (\$25) or five percent (5%) of the delinquent amount, whichever is greater, shall be assessed on payments received more than ten (10) days after their due date. Simple interest at the rate of one and one-half percent (1.5%) per month shall accrue on all delinquent accounts. The Board may, in its sole discretion and under circumstances that the Board deems fair and just, elect to waive late fees and accruing interest but the Board is not required to do so.
- R. Foreclosure of Lien and/or Personal Judgment. The Board may elect to institute a lawsuit, foreclose a lien or both to collect past due obligations.
- S. No Waiver. No Owner may waive or otherwise exempt such Owner from liability for such Owner's portion of the Common Expenses or the payment of any Assessment, fine or other monetary charge provided for in this Declaration by the abandonment of such Owner's Lot.
- T. Duty to Pay Independent. No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration, or for inconvenience or discomfort arising from the operation, maintenance, repair or replacement of the easements, rights-of-way or the Common Areas, or from any action taken to comply with any law, ordinance or order or directive of any municipal or other governmental authority, since the obligation to pay Common Expenses and Assessments is a separate and independent covenant on the part of each Owner.
- U. Foreclosure of Lien as Mortgage. The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's Lot. The sale or foreclosure shall be conducted in the same manner as foreclosures of mortgages or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including, but not limited to, the cost of recording the notice of lien,

certified mailing or personal service, foreclosure report and reasonable attorney's fees. The Association may bid for the Lot at foreclosure or other sale and hold, mortgage or convey the same.

ARTICLE VII

INSURANCE

The Board shall purchase and maintain insurance as required in this Declaration, the Community Association Act, or other applicable laws. The Association may obtain insurance that provides more coverage than required in this Declaration.

A. Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

a. Blanket property insurance or guaranteed replacement cost insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements for each attached Unit and within the Common Responsibility to the extent that the Association has responsibility in the event of a casualty, regardless of ownership. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes.

i. Each Owner of an attached Unit is an "insured person" under the Association's property insurance policy. As such, each Home Owner of an attached Unit covenants and agrees, and is hereby given notice in accordance with sections 57-8a-214 and 57-8a-405 of the Community Association Act, that an owner of an attached Unit that has suffered "lot damage" (as defined in section 57-8a-405(7)) as a part of a covered loss is responsible for an amount calculated by applying the lot damage percentage for that Unit to the amount of the deductible under the Association's property insurance policy. If an Owner of an attached Unit does not pay the amount of the property insurance policy deductible within thirty (30) days after substantial completion of the repairs to, as applicable, the Unit, or the limited common area appurtenant to the Unit, the Association may levy an assessment against the Owner of the attached Unit for the Owner's allocation of the property insurance policy deductible.

- b. Commercial General Liability Insurance on Common Areas, insuring the Association and its Owners for damage or injury caused by the negligence of the Association or any of its Owners, employees, agents, or contractors while acting on their behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage, with umbrella coverage of at least \$5,000,000;
 - c. Workers' Compensation Insurance and Employers' liability insurance, if and to the extent required by law;
 - d. Directors' and officers' liability coverage (including coverage for committee members);
 - e. Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-quarter (1/4) of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and
 - f. Such additional insurance as the Board, in its business judgment, determines prudent or necessary.
 - g. Premiums for all insurance on the Commons Areas shall be Common Expenses. In addition, the Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Washington County area.
- B. Policy Requirements. All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Member insured.
- a. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of this Article VII. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after Notice and Hearing, that the loss is the result of the

negligence or willful misconduct of one or more Owners, or their respective guests or invitees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

- b. All insurance coverage obtained by the Board shall:
1. be written with a company authorized to do business in the State of Utah which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;
 2. be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members;
 3. not be brought into contribution with insurance purchased by Owners or their mortgagees individually;
 4. contain an inflation guard endorsement;
 5. include an agreed amount endorsement, if the policy contains a co-insurance clause;
 6. provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's interest in the Common Areas or membership in the Association;
 7. include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer conditioning recovery on account of an act or omission of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and
 8. include an endorsement precluding the insurer from denying a claim by a Member or Owner or conditioning recovery under the policy based on or due to the negligent acts or omissions of the Association, any other Member, or any other Owner.

c. In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners (as a class) as additional insureds and provide:

1. a waiver of subrogation as to any claims against the Association's Board, officers, employees, and manager, and the Owners and their respective families and invitees;
2. a waiver of the insurer's rights to repair and reconstruct instead of paying cash;
3. an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;
4. an endorsement requiring at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;
5. a cross-liability provision; and
6. a provision vesting in the Board's exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

d. The Association shall provide Declarant with at least twenty (20) days prior written notice of any cancellation, termination, substantial modification, or non-renewal of any Association insurance policy.

C. Restoring Damaged Improvements. In the event of damage to or destruction of Common Areas or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property substantially to the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes. Damaged improvements on the Common Areas shall be repaired or reconstructed unless the Requisite Membership Percentage or Declarant (during the Declarant Rights Period) decides within sixty (60) days after the loss not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60)

additional days. No mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Areas shall be repaired or reconstructed. If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community Standards. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under this Article VII,

- D. Waiver of Claims. To the extent permitted by law, the Association and each Owner, by accepting a deed or entering into a contract of sale for any portion of the Property, waives any claims against Declarant and its affiliates for any damages or losses for which insurance coverage is available, to the extent of such insurance coverage.

ARTICLE VIII

MORTGAGEE PROVISIONS

- A. Notices of Action. An institutional holder, insurer or guarantor of a first Mortgage which provides a written request to the Association will be entitled to timely written notice of:
- a. any condemnation loss or casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured or guaranteed by such eligible holder.
 - b. Eligible holder shall also be entitled to notice of any delinquency in the payment of assessments or charges owed by a unit subject to the mortgage holder where such delinquency has continued for a period of ninety (90) days.
 - c. Any lapse, cancellation or material modification of any insurance policy maintained by the Association.
 - d. Any proposed action which would require the consent of a specified percentage of Eligible holders.
- B. Failure of Mortgagee to Respond. Any mortgagee who receives a written request from the Association to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the mortgagee within 30 days of the date of the request.
- C. HUD/VA Approval. During the Declarant control period, the following actions shall require the prior approval of the US Department of Housing and Urban Development or

the US Department of Veterans Affairs if either such agency is insuring or guaranteeing the mortgage on any unit; merger, consolidation or dissolution of the Association, annexation of additional property, dedication, conveyance or mortgaging by the Association of common elements; or material amendment of this Declaration; provided however, that such prior approval shall not be a condition precedent if at such time HUD or VA has ceased to regularly require or issue such prior approval. The granting of easements for utilities or other similar purposes consistent with the intended use of the common areas shall not be deemed a conveyance within the meaning of this section.

ARTICLE IX

SPECIAL DECLARANT RIGHTS

- A. Special Declarant Rights. The Declarant reserves the following Special Declarant Rights during the Period of Declarant Control which may be exercised anywhere within the property.
- B. Assignment. The Declarant may assign any Special Declarant Rights to any affiliate of the Declarant or a Builder or Declarant may allow any affiliate or the Declarant or a Builder to exercise such rights on behalf of the Declarant.
- C. Transfer of Special Declarant Rights. The Declarant may transfer Special Declarant Rights which shall be effective upon recordation with the County Recorder of Washington County Utah.
- D. Models, Sales Offices and Management Offices. During the Period of Declarant Control the Declarant and Builders authorized by Declarant may maintain upon any Lot owned by Declarant or any portion of the Common Areas such facilities and activities as in the sole discretion of the Declarant may be desirable or necessary to the construction or sale of Lots including but not limited to business offices, model units, signs or sales offices.
- E. Expandable Project. The Declarant expressly reserves the right to expand the Project by the addition of land. Expansion of the Project by the Declarant shall be effective without prior written approval of the Association. All improvements erected upon any Additional Land will be compatible with the living units and improvements upon the Property and approximately equal to or better in terms of quality.
- F. Improvement Limitation by Association. During the Period of Declarant Control the Association shall not make any improvement or alteration in any of the Common Areas other than repairs or replacement without written consent of the Declarant.

ARTICLE X

MISC. PROVISIONS, DISCLOSURES, DISCLAIMERS AND RELEASES

- A. Covenants to Run with the Land. This Declaration shall apply to all the Project. The Developer shall have the right to expand the application of this Declaration to other property by written amendment to this Declaration duly recorded. This Declaration and all the provisions hereof shall constitute covenants running with the land and equitable servitudes, and shall be binding on and shall inure to the benefit of the Association, all other signatories hereto, all parties who hereafter acquire any interest in a Lot or the Project and their respective grantees, transferees, heirs, devisees, personal representatives, successors and assigns. Each Owner or occupant of a Lot shall comply with, and all interests in all Lots shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments and determinations contemplated by this Declaration. By acquiring any interest in a Lot, the party acquiring such interest consents to, and agrees to be bound by, each provision of this Declaration.
- B. Enforcement and Right to Recover Attorney's Fees. If the Association, the Board or an aggrieved Owner takes any action to enforce or construe this Declaration or any rules and regulations adopted from time to time, or to pursue any remedy provided in this Declaration or by applicable law, including a claim for injunctive relief or damages, whether such remedy is pursued by filing suit or otherwise, the non-defaulting party shall be entitled to recover such party's reasonable attorney's fees, costs and expenses which may arise or accrue.
- C. Limitation of Liability. The protective covenants, conditions and restrictions set forth in this Declaration, together with any rules and regulations adopted by the Board, are established for the benefit of the Project and the Owners. Any damage, loss, claim or liability which might arise due to any decision, act or failure to act of the Declarant or the Board or any of its members shall be exempt from any civil claim or action, including negligence, brought by any person owning or having an interest in any Lot. The Board and its members shall be indemnified, saved and held harmless from any such action or failure to act, and exempt from any civil claim or action which may result from any act or failure to act (whether intended or implied) while functioning as a member of the Board, or for decisions that they may render during their service, unless said party is guilty of gross negligence.
- D. Amendments. Until after the termination of the Period of Declarant Control, the Declaration and the Plat may be amended unilaterally by the Declarant without any additional approval requirement. During the Period of Declarant Control no amendment shall be valid or enforceable without the Declarant's prior written consent. After termination of the Period of Declarant Control amendments to this Declaration shall be proposed by either a majority of the Board or by Owners holding at least forty percent

(40%) of the voting interest of the Association. Proposed amendments must be presented in writing and may only be adopted upon the affirmative vote of at least sixty-seven percent (67%) of the voting interests of the Association. Any amendment shall be effective upon recordation in the office of the recorder of Washington County Utah.

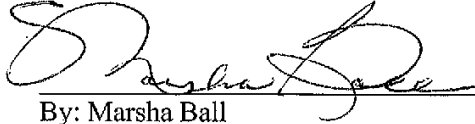
- E. Duration. This Declaration shall survive for a term of fifty (50) years from the date this Declaration is recorded, after which time this Declaration shall automatically be extended for successive periods of ten (10) years.
- F. Interpretation. The captions which precede the paragraphs of this Declaration are for convenience purposes only and shall in no way affect the manner in which any provision is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part and any gender shall include both other genders or the neuter. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder of this Declaration.
- G. Construction Disclosures and Releases. By acquiring title to a Unit, or by possession of a unit, each owner shall conclusively be deemed to understand and to have acknowledged and agreed to all of the following and to release and hold harmless Declarant, Board, Agents of the Declarant or Board, any Builder from any and all claims, causes of action, loss, damage, bodily injury related to or arising in connection with any disturbance, inconvenience, injury or damage resulting from or pertaining to all and/or any one or more the conditions, activities, occurrences or other matters described in the following:
 - a. That construction or installation of improvements by Declarant, builders, other owners or third parties or installation or growth of trees and other plants may impair or eliminate the view, if any, of or from any unit and/or common areas and that each Owner hereby releases Declarant from any and all claims arising from said impairment or elimination of view; and
 - b. That residential home construction is an industry inherently subject to variations and imperfections and items which do not materially affect safety or structural integrity shall be deemed "expected minor flaws" (including but not limited to: reasonable wear, tear or deterioration; shrinkage, swelling, expansion or settlement; squeaking, peeling, chipping, cracking, or fading; touch up painting, minor flaws or corrective work and like items) and not constructional defects; and
 - c. That the finished construction of the unit and common elements, while within the standards of the industry in Washington County will be subject to minor flaws. Issuance of a Certificate of Occupancy by the City of Hurricane shall be deemed conclusive evidence that the relevant improvements have been built within industry standards; and

- d. That indoor air quality of the unit and/or common elements may be affected in a manner and to a degree found in new construction within industry standards by particulates or volatiles emanating or evaporating from new carpeting or other building materials, fresh paint or other sealants or finishes; and
 - e. That the unit or common areas may experience the presence of scorpions, bees, ants, spiders, termites, roaches, rodents, snakes or other insect or pest problems and that Declarant hereby specifically disclaims any and all representation or warranties with regard to any such pest and each Owner must make its own independent determination regarding the existence of any pest; and
 - f. The properties are located adjacent or nearby to certain undeveloped areas which may contain various species of wild creatures including but not limited to coyotes and foxes which may from time to time stray onto the properties and which may otherwise pose a nuisance or hazard; and
 - g. The properties may be located adjacent to or within the vicinity of certain other property zoned to permit the owners of such other property to keep and maintain horses or other “farm” animals which may give rise to matters such as resultant noise, odors, insects and other “nuisances”; and
 - h. That residential subdivisions and new home construction are subject to and accompanied by substantial levels of noise, dust, construction related traffic and other construction-related “nuisances”. Owner acknowledges it is purchasing a unit which is within a residential subdivision currently being developed and that the owner will experience and accepts substantial levels of construction related “nuisances” until the subdivision has been completed and sold out:
 - i. Each owner understands, acknowledges and agrees that Declarant has reserved certain rights in the Declaration which may limit certain rights of owners other than Declarant.
- H. Business of Declarant. Except to the extent provided herein or as required by applicable law, during the Declarant control period, no provision of this Declaration shall be applicable to limit or prohibit any act of Declarant or its agents or representatives in connection with or incidental to Declarant’s improvement and/or development of the Property.

THE DECLARANT has executed this Declaration on the 22nd day of December, 2022.

TAVA LAND, LLC,

An Idaho limited liability company



By: Marsha Ball

Its: Manager

STATE OF UTAH)
 : ss.
County of Washington)

On the 22nd day of December 2022, personally appeared before me Marsha Ball, who being by me duly sworn did say that she is the manager of Tava Land, LLC, and that she executed the foregoing Third Amended and Restated Covenants, Conditions, and Restrictions for Tava Homeowners' Association, Inc. in behalf of said limited liability company being authorized and empowered to do so by the operating agreement of Tava Land, LLC, and she did duly acknowledge before me that such limited liability company executed the same for the uses and purposes stated herein.

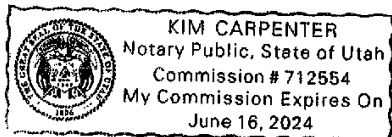

Notary Public

EXHIBIT A

TAVA LEGAL DESCRIPTION

COMMENCING AT THE WEST 1/4 CORNER OF SECTION 23, TOWNSHIP 42 SOUTH, RANGE 14 WEST, SALT LAKE BASE AND MERIDIAN; THENCE NORTH 00°05'32" EAST, ALONG THE SECTION LINE, A DISTANCE OF 54.88 FEET; THENCE NORTH 90°00'00" EAST, A DISTANCE OF 138.43 FEET TO THE POINT OF BEGINNING, THENCE NORTH 62°22'17" EAST, A DISTANCE OF 109.71 FEET; THENCE NORTH 30°12'46" EAST, A DISTANCE OF 53.16 FEET; THENCE NORTH 62°22'17" EAST, A DISTANCE OF 94.03 FEET; THENCE NORTH 32°06'53" WEST, A DISTANCE OF 74.28 FEET; THENCE NORTH 36°23'22" WEST, A DISTANCE OF 52.75 FEET; THENCE NORTH 30°21'44" WEST, A DISTANCE OF 42.87 FEET; THENCE NORTH 12°56'20" EAST, A DISTANCE OF 107.02 FEET; THENCE SOUTH 71°30'21" EAST, A DISTANCE OF 100.05 FEET; THENCE NORTH 14°02'16" EAST, A DISTANCE OF 103.62 FEET; THENCE NORTH 67°39'14" WEST, A DISTANCE OF 6.65 FEET; THENCE NORTH 22°20'46" EAST, A DISTANCE OF 26.00 FEET; THENCE SOUTH 67°39'14" EAST, A DISTANCE OF 117.74 FEET; THENCE NORTH 22°14'28" EAST, A DISTANCE OF 26.00 FEET; THENCE NORTH 13°20'14" EAST, A DISTANCE OF 54.43 FEET; THENCE NORTH 07°36'58" EAST, A DISTANCE OF 36.45 ACT; THENCE NORTH 00°13'25" WEST, A DISTANCE OF 11.76 FEET; THENCE NORTH 06°45'30" WEST, A DISTANCE OF 319.48 FEET; THENCE NORTH 24°56'76" WEST, A DISTANCE OF 49.53 FEET; THENCE NORTH 00°15'03" WEST, A DISTANCE OF 109.96 FEET; THENCE NORTH 89°44'57" EAST, A DISTANCE OF 252.42 FEET, TO A POINT ON THE WESTERLY LINE OF THE RETREAT AT SAND HOLLOW PHASE 3, ACCORDING TO THE OFFICIAL PLAT THEREOF FILED UNDER DOCUMENT #20170007372 WASHINGTON COUNTY RECORDS; THENCE THE FOLLOWING NINE (9) COURSES ALONG SAID LINE, SOUTH 00°14'52" EAST, A DISTANCE OF 133.84 FEET; THENCE SOUTH 11°11'30" EAST, A DISTANCE OF 330.64 FEET; THENCE SOUTH 00°04'34" WEST, A DISTANCE OF 647.60 FEET; THENCE SOUTH 62°00'03" WEST, A DISTANCE OF 81.22 FEET; THENCE SOUTH 50°00'53" WEST, A DISTANCE OF 53.16 FEET; THENCE SOUTH 62°00'03" WEST, A DISTANCE OF 99.00 FEET; THENCE SOUTH 27°59'57" EAST, A DISTANCE OF 164.16 FEET; THENCE SOUTH 49°05'50" EAST, A DISTANCE OF 360.61 FEET, TO A POINT ON THE NORTHWESTERLY LINE OF THE RETREAT AT SAND HOLLOW RESORT PHASE 1, ACCORDING TO THE OFFICIAL PLAT FOUND ON DOCUMENT #20070042165 WASHINGTON COUNTY RECORDS; THENCE SOUTH 88°04'15" WEST, A DISTANCE OF 127.21 FEET, TO THE NORTHEASTERLY CORNER OF THE RETREAT AT SAND HOLLOW RESORT PHASE 1A, ACCORDING TO THE OFFICIAL PLAT FOUND ON DOCUMENT #20100000283, WASHINGTON COUNTY RECORDS; THENCE NORTH 66°08'22" WEST, A DISTANCE OF 65.73 FEET, TO THE NORTHWESTERLY CORNER OF SAID PHASE 1A; THENCE SOUTH 38°36'48" WEST, ALONG THE WESTERLY LINE OF SAID PHASE 1A, A DISTANCE OF 113.71 FEET; THENCE SOUTH 14°35'43" WEST, ALONG SAID LINE, A DISTANCE OF 46.58 FEET; THENCE SOUTH 34°42'04" WEST, ALONG SAID LINE AND AN EXTENSION THEREOF, A DISTANCE OF 115.91 FEET, TO A POINT ON THE NORTHEASTERLY LINE OF THAT PARCEL SHOWN BY DOCUMENT #20160031276, OFICIAL WASHINGTON COUNTY RECORDS; THENCE THE FOLLOWING THREE (3) COURSES ALONG SAID LINE, NORTH 50°38'16" WEST, A DISTANCE OF 126.11 FEET; THENCE NORTH 27°37'43" WEST, A DISTANCE OF 702.77 FEET; THENCE NORTH 32°02'05" WEST, A DISTANCE OF 87.40 FEET, TO THE POINT OF BEGINNING;

Containing 15.20 acres more or less