

AFTER RECORDING RETURN TO:

KCPD Phase I, LLC
Attn: Craig Weston
10446 N. Iverson Lane,
Highland, UT 84003

Ent 556188 Bk 976 Pg 689 -762
Date: 07-Jul-2025 01:19 PM
Fee: \$40.00 ACH
Filed By: GKN
GINA NELSON, Recorder
GRAND COUNTY CORPORATION
For: Snell & Wilmer LLP
Recorded Electronically by Simplifile

ECHO CANYON

COMMUNITY DECLARATION

NO PORTION OF THE PROPERTY DESCRIBED ON EXHIBIT A HERETO IS SUBJECT TO THE TERMS OF THIS COMMUNITY DECLARATION UNLESS A NOTICE OF ANNEXATION DESCRIBING SUCH PORTION OF THE PROPERTY IS RECORDED IN THE OFFICIAL PUBLIC RECORDS OF GRAND COUNTY, UTAH, IN ACCORDANCE WITH SECTION 10.5 BELOW; PROVIDED, HOWEVER, CERTAIN PORTIONS OF THE PROPERTY ARE BENEFITTED BY EASEMENTS AND COVENANTS CONTAINED IN THIS COMMUNITY DECLARATION, EVEN THOUGH SUCH PROPERTY REMAINS UNANNEXED.

Declarant: KCPD Phase I, LLC, a Utah limited liability company

Page

12 cap)

23 cap)

24 cap)

30 cap)

30(c)

31 (F)

32 (i)

32 cap)

35 cap)

46 caps
49 9.8
51 Act X

ECHO CANYON
COMMUNITY DECLARATION

TABLE OF CONTENTS

	Page
ARTICLE I DEFINITIONS.....	2
ARTICLE II GENERAL RESTRICTIONS	10
2.1. General	10
2.2. Incorporation of Development Tract Declarations.....	11
2.3. Conceptual Plans.....	11
2.4. Provision of Benefits and Services to Service Areas	12
2.5. Designation of Special Common Areas	12
2.6. Mining and Drilling	13
2.7. Streets Within the Property	13
2.8. Open Space Open to the Public.....	13
2.9. Cell Tower and Telecommunications Equipment.....	13
2.10. View Impairment	14
2.11. Safety and Security	14
2.12. Districts	14
2.13. Densities and Entitlements.....	15
2.14. Gated Access.....	Error! Bookmark not defined.
2.15. Gate System Operation	16
ARTICLE III The Association.....	17
3.1. Organization.....	17
3.2. Membership	17
3.3. Governance	20
3.4. Voting Allocation.....	21
3.5. Powers.....	22
3.6. Common Area and Special Common Area.....	25
3.7. Indemnification	26
3.8. Insurance	26
3.9. Bulk Rate Contracts	26
3.10. Community Services and Systems.....	27
3.11. Protection of Declarant's Interests.....	28
3.12. Administration of Common Area, Special Common Area, or Service Area	28
ARTICLE IV AMENITIES PROPERTY AND OWNER ACKNOWLEDGMENTS	28
4.1. Amenities Property Disclosures	28
4.2. Amenities Not Governed by the Community Association.....	30
4.3. Owner Acknowledgments.....	30
4.4. The Amenities' Approval Rights	32
4.5. Amenities Easement.....	33
4.6. Easement for Unintended Amenities Encroachments.....	34
ARTICLE V INSURANCE	34
5.1. Insurance	34

5.2.	Restoration Requirements	35
5.3.	Restoration - Mechanic's and Materialmen's Lien	35
ARTICLE VI COVENANT FOR ASSESSMENTS		36
6.1.	Assessments	36
6.2.	Maintenance Fund	36
6.3.	Regular Assessments	37
6.4.	Special Assessments	37
6.5.	Special Common Area Assessments	37
6.6.	Service Area Assessments	38
6.7.	Individual Assessments	38
6.8.	Working Capital Assessment	38
6.9.	Amount of Assessment	39
6.10.	Late Charges	40
6.11.	Owner's Personal Obligation for Payment of Assessments	40
6.12.	Assessment Lien and Foreclosure	40
6.13.	Exempt Property	42
6.14.	Fines and Damages Assessment	42
ARTICLE VII ARCHITECTURAL CONTROL REVIEWER		43
7.1.	Architectural Control By Declarant	43
7.2.	Architectural Control by Association	43
7.3.	Prohibition of Construction, Alteration and Improvement	44
7.4.	Architectural Approval	44
ARTICLE VIII MORTGAGE PROVISIONS		46
8.1.	Notice of Action	46
8.2.	Examination of Books	47
8.3.	Taxes, Assessments and Charges	47
ARTICLE IX EASEMENTS		47
9.1.	Reserved Easements	47
9.2.	Common Area or Special Common Area Right of Ingress and Egress	47
9.3.	Bulk Rate Services; Community Services and Systems Easement	48
9.4.	Roadway and Utility Easements	48
9.5.	Subdivision Entry and Fencing Easement	48
9.6.	Landscape, Monumentation and Signage Easement	48
9.7.	Easement for Special Events	48
9.8.	Drainage, Detention and Water Quality Facilities Easement	49
9.9.	View Impairment	49
9.10.	Safety and Security	49
9.11.	Public Use Improvements	50
9.12.	Stormwater Runoff	50
9.13.	Cellular Tower and Telecommunications Easement	50
9.14.	Easement to Inspect and Right to Correct	51
ARTICLE X DEVELOPMENT RIGHTS		51
10.1.	Development	51
10.2.	Special Declarant Rights	51
10.3.	Addition of Land	51
10.4.	Withdrawal of Land	52

10.5.	Notice of Annexation	52
10.6.	Notice of Plat Recordation	53
10.7.	Assignment of Declarant's Rights; Discretion.....	54
10.8.	Branding; Intellectual Property Ownership Rights	54
ARTICLE XI GENERAL PROVISIONS.....		55
11.1.	Term.....	55
11.2.	Eminent Domain	55
11.3.	Amendment.....	55
11.4.	Enforcement.....	56
11.5.	No Warranty of Enforceability.....	56
11.6.	Higher Authority	56
11.7.	Severability	56
11.8.	Conflicts.....	56
11.9.	Gender.....	56
11.10.	Acceptance by Grantees.....	56
11.11.	Damage and Destruction	57
11.12.	No Partition	58
11.13.	Notices	58
ARTICLE XII DISPUTE RESOLUTION		58
12.1.	Introduction and Definitions	58
12.2.	Mandatory Procedures	59
12.3.	Claims Affecting Common Areas or Special Common Areas.....	60
12.4.	Claim by Lot and/or Dwelling Unit Owners – Improvements on Lots and/or Dwelling Units	63
12.5.	Notice.....	65
12.6.	Negotiation.....	65
12.7.	Mediation	65
12.8.	Binding Arbitration-Claims	66
12.9.	Allocation Of Costs.....	68
12.10.	General Provisions	68
12.11.	Period of Limitation	68
12.12.	Funding the Resolution of Claims.....	68

**ECHO CANYON
COMMUNITY DECLARATION**

This Echo Canyon Community Declaration (this “**Community Declaration**”) is made by KCPD Phase I, LLC, a Utah limited liability company (“**Declarant**”) and is as follows:

RECITALS:

A. Declarant owns certain real property located in Grand County, Utah, as more particularly described on Exhibit A, attached hereto (the “**Property**”).

B. Declarant desires to create a uniform, coordinated plan for the development, improvement, sale, and operation of the Property with Declarant to act as the “**Declarant**” for all purposes under this Community Declaration.

C. Portions of the Property may be made subject to this Community Declaration upon the Recording of one or more Notices of Annexation pursuant to *Section 10.5* below, and once such Notices of Annexation have been Recorded, the portions of the Property described therein will constitute the Development (as defined below) and will be governed by and fully subject to this Community Declaration. The Development in turn will be comprised of separate Development Tracts (as defined below) which might also be governed by and subject to separate Development Tract Declarations (as defined below) in addition to being governed by this Community Declaration.

NO PORTION OF THE PROPERTY IS SUBJECT TO THE TERMS AND PROVISIONS OF THIS COMMUNITY DECLARATION UNTIL A NOTICE OF ANNEXATION DESCRIBING SUCH PORTION OF THE PROPERTY IS RECORDED; PROVIDED, HOWEVER, CERTAIN PORTIONS OF THE PROPERTY ARE BENEFITTED BY EASEMENTS AND COVENANTS CONTAINED IN THIS COMMUNITY DECLARATION, EVEN THOUGH SUCH PROPERTY REMAINS UNANNEXED.

A NOTICE OF ANNEXATION MAY ONLY BE RECORDED BY DECLARANT.

PROPERTY VERSUS DEVELOPMENT VERSUS DEVELOPMENT TRACT

“Property”	Described on <u>Exhibit A</u> . This is the land that <u>may be made</u> subject to this Community Declaration, from time to time, by the Recording of one or more Notices of Annexations. Declarant may, but has no obligation to, annex all or any portion of the Property to this Community Declaration.
“Development”	This is the portion of the Property that <u>has been made</u> subject to this Community Declaration through the Recording by Declarant of a Notice of Annexation.
“Development Tract”	This is a portion of the Development. Each Development Tract may, in Declarant’s discretion, be made subject to a separate Development Tract Declaration, in addition to being governed by this Community Declaration.

D. This Community Declaration serves notice to the public that upon the further Recording of one or more Notices of Annexation, portions of the Property identified in such notice or notices will be subject to the terms and provisions of this Community Declaration.

E. Declarant intends to develop the Property and the Development in phases, all of which phases will provide for one coordinated, unified project, and where different phases may, in Declarant's discretion, have different and various uses that may be distinct from other phases, which uses may include residential neighborhoods with detached, single-family homes and/or multi-family condominium or townhouse structures and which may provide for employee housing; mixed use which may include hotel, fractional ownership, or other short-term occupancy use; commercial or office space; and open spaces, recreational areas, private membership clubs, and various amenities.

NOW, THEREFORE, it is hereby declared that: (i) those portions of the Property as and when made subject to this Community Declaration by the Recording of a Notice of Annexation will be held, sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which will run with such portions of the Property and will be binding upon all parties having right, title, or interest in or to such portions of the Property or any part thereof, their heirs, successors, and assigns and will inure to the benefit of each Owner thereof; and (ii) each contract or deed conveying those portions of the Property that have been made subject to this Community Declaration will conclusively be held to have been executed, delivered, and accepted, subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed. NOTWITHSTANDING THE FOREGOING, CERTAIN PORTIONS OF THE PROPERTY ARE BENEFITTED BY EASEMENTS AND COVENANTS CONTAINED IN THIS COMMUNITY DECLARATION, EVEN THOUGH SUCH PROPERTY REMAINS UNANNEXED INTO THIS COMMUNITY DECLARATION.

ARTICLE I **DEFINITIONS**

Each of the Recitals are incorporated into and made a part of this Community Declaration for all purposes. Unless the context otherwise specifies or requires, the following words and phrases when used in this Community Declaration will have the meanings hereinafter specified:

"ACC" means the architectural control committee, as defined in *Section 7.2*.

"Amenities" means the various amenities that may, in Declarant's discretion, be located on or be located in close proximity to the Property.

"Amenities Owner" means the owner(s) of the Amenities and their successors and assigns.

"Amenities Parties" means the Amenities Owner(s) and any officer, owner, member, director, agent or partner of any Amenities Owner; any designees of an Amenities Owner; the Amenities staff, employees, and contractors; and the Amenities managers.

"Amenities Property" means the real property on which the Amenities may be constructed. The Amenities Property is not included in the Property submitted to this Community Declaration and is not Common Area or Special Common Area unless otherwise described in a Notice of Annexation.

"Amenities Users" means permitted users of the Amenities, including guests, invitees and designees; Amenities event participants, staff, sponsors and officials; and Amenities function and party participants.

“Applicable Law” means all statutes, public laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments or their agencies having jurisdiction and control over the Development, and any other applicable building codes, zoning restrictions, permits and ordinances adopted by the County or other applicable governmental authority, which are in effect at the time a provision of the Documents is applied, and pertaining to the subject matter of the Document provision. Statutes, ordinances and regulations specifically referenced in the Documents are “Applicable Law” on the effective date of the Document, and are not intended to apply to the Development if they cease to be applicable by operation of law or if they are replaced or superseded by one or more other statutes or ordinances.

“Architectural Control Reviewer” means the Person holding the rights to approve Improvements within the Development and shall be Declarant or its designee until expiration or termination of the Development Period. Upon expiration or termination of the Development Period, the rights of the Architectural Control Reviewer will automatically be transferred to the ACC, the members of which shall be appointed by the Board as set forth in *Section 7.2* below.

“Articles” means the Articles of Incorporation of the Community Association, as adopted and as amended from time to time.

“Assessment” means an assessment imposed by the Community Association under this Community Declaration.

“Assessment Unit” has the meaning set forth in *Section 6.9*.

“Board” means the Board of Directors of the Community Association.

“Bulk Rate Contract” or **“Bulk Rate Contracts”** means one or more contracts which are entered into by Declarant or by the Community Association for the benefit of the Development or for the provision of utility services or other services of any kind or nature to the Lots and/or Dwelling Units. The services provided under Bulk Rate Contracts may include security services, trash pick-up services, propane service, natural gas service, landscape maintenance services, cable television services, telecommunication services, internet access services, “broadband services”, wastewater services, and any other services of any kind or nature which are considered by the Board to be beneficial to the Development. Each Bulk Rate Contract must be approved in advance and in writing by Declarant, such approval to be granted in Declarant’s discretion, until expiration or termination of the Development Period.

“Bylaws” means the Bylaws of the Community Association, as adopted and as amended from time to time.

“Common Area” means any property or facility that the Community Association owns or in which it otherwise holds rights or obligations, including, but not limited to, any property or facility held by Declarant for the benefit of the Community Association or its Members. Declarant reserves the right, from time to time and at any time, to designate by written and Recorded instrument portions of the Property being held by Declarant for the benefit of the Community Association. Upon the Recording of such designation, the portion of the Property identified in the Recorded written instrument will be considered Common Area for the purpose of this Community Declaration. Common Area also includes any property that the Community Association holds under a lease, license, or any easement in favor of the Community Association, including certain property conveyed to the Community Association or in which the Community Association is granted certain easements or other property interests by either the County or a District. Some Common Area will be solely for the common use and enjoyment of the Owners, while other portions of the Common Area may be for the use and enjoyment of the Owners and members of the public.

“Community Association” or **“Association”** means Echo Canyon Community Association, a Utah nonprofit corporation, which has been created to exercise the authority and assume the rights, powers, and duties specified in *Article III* and elsewhere in this Community Declaration. The failure of the Community Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Community Association, which derives its authority from the Documents and Applicable Law.

“Community Declaration” or **“Declaration”** means this Community Declaration, as the same may be amended from time to time, containing covenants, conditions, restrictions, limitations and/or easements applicable to all or any portion of the Property made subject hereto by one or more Notices of Annexation Recorded pursuant to *Section 10.5*. **“County”** means Grand County, Utah.

“CTT Equipment” has the meaning set forth in *Section 2.9*.

“Declarant” means KCPD Phase I, LLC, a Utah limited liability company, and its successors and assigns; *provided, however*, in no event shall the Community Association constitute the Declarant under any circumstances. Notwithstanding any provision in this Community Declaration to the contrary, Declarant may, by Recorded written instrument, assign, in whole or in part, exclusively or non-exclusively, any of its privileges, exemptions, rights, reservations and duties under this Community Declaration to any Person. Declarant may also, by Recorded written instrument, permit any other Person to participate in whole, in part, exclusively or non-exclusively, in any of Declarant’s privileges, exemptions, rights and duties under this Community Declaration.

Declarant enjoys special privileges to facilitate the development, construction, and marketing of the Property and the Development, or to direct the size, shape and composition of the Property and the Development. These special rights are described in this Community Declaration. Many of these rights do not terminate until either Declarant: (i) has sold all Lots or Dwelling Units which may be created out of the Property; or (ii) voluntarily terminates these rights by a Recorded written instrument. Declarant may also assign, in whole or in part, all or any of Declarant’s rights established under the terms and provisions of this Community Declaration to one or more third-parties.

“Declarant Affiliate” means any person or entity directly or indirectly controlling, controlled by or under common control with the Declarant as solely determined by Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation in which Declarant (or another Declarant Affiliate) is a general partner, managing member or controlling shareholder.

“Density Unit” means a unit of density allocated by Declarant to each Development Tract as described in the Notice of Annexation and as may be set forth on the Plat for the applicable Development Tract.

“Design Guidelines” means the standards for design and construction of Improvements, landscaping and exterior items proposed to be placed on any Lot or Dwelling Unit, which may be adopted pursuant to *Section 7.4(b)*, as the same may be amended from time to time, including, but not limited to, any supplemental guidelines which may be adopted from time to time for portions of the Development. The Design Guidelines may consist of multiple written design guidelines applying to specific portions of the Development. The Architectural Control Reviewer may adopt, and amend from time to time, the Design Guidelines applicable to the Development or any Development Tract, or any portion thereof. The Design Guidelines may be Recorded as a separate written instrument or may be incorporated into a Development Tract Declaration by exhibit or otherwise. Notwithstanding anything in this Community Declaration to the contrary, Declarant will have no obligation to establish Design Guidelines for the Development or any portion thereof.

“Development” means all or any portion of the Property made subject to this Community Declaration by the Recording of a Notice of Annexation.

“Development Period” means the period of time beginning on the date when this Community Declaration has been Recorded and ending 30 years thereafter, unless earlier terminated by a Recorded written instrument executed by Declarant. Declarant may terminate the Development Period by a Recorded written instrument executed by Declarant. The Development Period is the period of time in which Declarant reserves the right to facilitate the development, construction, or marketing of the Property and the Development, or the right to direct the size, shape and composition of the Property and the Development. The Development Period is for a term of years and does not require that Declarant own any portion of the Property or the Development. The “Declarant Control Period” described in Section 3.3 is separate from the Development Period, and as used in this Declaration and the other Community Documents, shall have the same meaning as the “period of administrative control” defined under the Utah Community Association Act.

“Development Tract” means any part of the Development (less than the whole), which Development Tract may be subject to a Development Tract Declaration in addition to being subject to this Community Declaration. A Development Tract may be further subdivided into Lots or Dwelling Units as described in the Development Tract Declaration.

“Development Tract Association” means any incorporated or unincorporated association of Owners which is formed to facilitate the management, maintenance and operation of a Development Tract.

“Development Tract Declaration” means, with respect to any Development Tract, the separate instruments containing covenants, restrictions, conditions, limitations and/or easements, to which such Development Tract is subjected.

“District” means a public improvement district, a municipal utility district, or a municipal management district, where any such district has been created pursuant to local government code and all Applicable Law, including, without limitation, any other similarly constituted governmental or quasi-governmental entity created for the purpose of providing benefits or services to the Development.

“Documents” means, singularly or collectively, as the case may be, this Community Declaration, the Articles, the Bylaws, the Policy Manual, the Design Guidelines (if adopted), any applicable Development Tract Declaration, any applicable Notices of Annexation as each may be amended from time to time, and any Rules promulgated by the Community Association pursuant to this Community Declaration or any Development Tract Declaration, as adopted and amended from time to time. Any appendix, exhibit, schedule, or certification accompanying any Document is part of such Document. See Table 1 at the end of this Article I for a summary of the Documents.

“Dwelling Unit” means an individual townhome, multi-family unit, single-family home, or condominium unit, including any common element or other appurtenant benefit assigned thereto, within a condominium regime, planned unit development, or residential subdivision, if any, established, in Declarant’s discretion, within the Development. A Dwelling Unit may be designated in any Development Tract Declaration for any purposes stated in such Development Tract Declaration in accordance with this Community Declaration.

“Homebuilder” means any Owner (other than Declarant) who is in the business of constructing single-family residences for resale to third parties and acquires all or a portion of the Development to construct single-family residences for resale to third parties.

“Improvements” means any and all physical enhancements and alterations to the Development, including, but not limited to, grading, clearing, removal of trees, site work, utilities, utility lines, landscaping, irrigation, trails, hardscape, exterior lighting, alteration of drainage flow, drainage facilities, detention/retention ponds, reservoirs, pipes, pumps, wells, tanks, lines, meters, antennas, water features, fences, gates, walls or retaining walls, garages, streets, roadways, driveways, sidewalks, parking areas and/or facilities, buildings, warehouses, storage facilities, electrical charging states, solar panels, recycling and trash receptacles, pumping stations, lighting facilities, exterior air conditioning equipment, exterior fixtures, poles, signs, signage, mailboxes, awnings, and every structure and all appurtenances of every type and kind, whether temporary or permanent in nature.

“Individual Assessments” means those Assessments levied against the Lots and/or Dwelling Units as described in *Section 6.7*, as may be determined from time to time by the Board in its sole discretion.

“Lot” means any portion of the Development designated by Declarant in a Recorded written instrument or as shown as a subdivided lot on a Plat, other than Common Area, Special Common Area, or a Lot on which a condominium regime has been established. All or any portion of the Development which is not so platted or subject to the condominium form of ownership on the date this Community Declaration is Recorded shall be designated as a singular Lot for the purpose of this Community Declaration until such time as additional Lots are established herein.

“Majority” means more than half.

“Manager” has the meaning set forth in *Section 3.5(h)*.

“Material Adverse Effect” means any act, event, occurrence, change in facts, conditions or other change or effect which has been or could reasonably be expected to be materially adverse to any Owner or its assignee within the Development, its business, operations or results of operations, its development or build-out opportunities, its financial condition or any material asset (including all or any portion of the Development or Improvements thereon owned or occupied by an Owner or its assignee).

“Member” means any of the Class A Members (Development Tract Associations), or the Class B Member (Declarant and/or Declarant Affiliates) in the Community Association as provided in this Declaration.

“Membership” means a membership in the Community Association and the rights granted to the Developer Tract Associations and Declarant pursuant to this Declaration to participate in the Community Association.

“Mortgage” means any mortgage or deed of trust securing indebtedness and covering any Lot or Dwelling Unit.

“Mortgagee” means the holder of any Mortgage. **“Notice of Annexation”** means the Recorded notice executed by Declarant for the purpose of adding all or any portion of the Property to the terms and provisions of this Community Declaration in accordance with *Section 10.5* below and assigning voting rights in the Community Association, calculated based on the Membership type (Class A or Class B) and the total number of Density Units assigned by Declarant to the Development Tract. The Notice of Annexation may include a description of any portion(s) of the Special Common Area or Service Area benefitting such portion of the Property added to this Community Declaration and any beneficiaries of such portion(s) of the Special Common Area or Service Area. A Notice of Annexation may also subject a portion of the Property to a previously Recorded Development Tract Declaration, and may be amended from time to time by Declarant. Furthermore, a Notice of Annexation may identify certain Common Areas on a Plat

and designate the Community Association as the entity responsible for the maintenance of such Common Areas of the date of Recordation.

“Notice of Plat Recordation” means the Recorded notice executed by Declarant for the purpose of more clearly identifying specific Lots subject to the terms and provisions of this Community Declaration after portions of the Property are made subject to a Plat and withdrawing those portions of the Property which are included on the Plat but not shown as a Lot from the terms and provisions of this Community Declaration.

“Occupant” means a resident, occupant or Occupant of a Lot or Dwelling Unit, other than an Owner.

“Ordinary Public View” means anything which can be seen in the sight line of normal visual range of a person on a public or private street, thoroughfare, or sidewalk, Common Area, or the Special Common Area.

“Owner” means the person(s), entity or entities, including Declarant, holding all or a portion of the fee simple interest in any Development Tract, Lot, or Dwelling Unit, and in no event shall mean any Occupant. A Mortgagee who acquires title to a Development Tract, Lot, or Dwelling Unit through a deed in lieu of foreclosure or through foreclosure is an Owner. A Person having an ownership interest merely as security for the performance of an obligation is not an Owner.

“Person” or **“person”** means an individual, partnership, limited partnership, limited liability partnership, limited liability limited partnership, limited liability company, corporation, trust, unincorporated association, or any other form of business organization. **“Plat”** means a Recorded subdivision plat of any portion of the Development, and any amendments thereto.

“Policy Manual” means the policy manual, which, in Declarant’s sole discretion, may be initially adopted as part of the initial project documentation for the Development. The Policy Manual may include the Bylaws, the Rules and other policies governing the Community Association, including by way of illustration, dark sky requirements and noise and speed restrictions for off-highway vehicles or recreational vehicles. The Policy Manual may be amended or modified, from time to time, by Declarant or upon expiration or termination of the Development Period, by a Majority of the Board.

“Preliminary Municipality” means that certain preliminary municipality commonly known as “Echo Canyon” created in accordance with Utah Code Ann. §§ 10-2a-501 *et seq.*, which requires that such preliminary municipalities meet certain thresholds for development, revenues, and population. If such thresholds are not met within certain defined periods, then the County may become the governmental authority for the Development and have the powers set forth herein for the Preliminary Municipality. The Development is subject to the Echo Canyon Land Use Code, which constitutes an Applicable Law and which sets forth the applicable zoning regulations and land use provisions applicable to a Lot or Dwelling Unit.

“Property” means all of that certain real property described on Exhibit A, attached hereto, that may be made subject to this Community Declaration, from time to time, by the Recording of one or more Notices of Annexation pursuant to *Section 10.5* below, subject to such additions thereto and deletions therefrom as may be made pursuant to *Section 10.3* and *Section 10.4* of this Community Declaration.

“Record”, “Recording”, “Recordation”, and “Recorded” means recorded in the Official Public Records of Grand County, Utah.

“Regular Assessments” means those Assessments levied against the Lots and/or Dwelling Units as described in *Section 6.3* for the purpose of funding the estimated net expenses of the Community Association as reflected on the Annual Budget (as defined in *Section 6.3* below).

“Residential Developer” means any Owner, other than Declarant, who acquires undeveloped land, one or more Lots or Development Tracts, or any other portion of the Development for the purposes of development or subdividing such Lots or Development Tracts, or creating, improving and constructing Dwelling Units thereon for resale to the public, or other subdivision, development, and/or resale to a Homebuilder.

“River” means the Colorado River and the related natural shoreline and riverbanks located near or adjacent to part of the Property and which may be used for fishing and boating activities, and includes any marina, dock, drainage facility, maintenance facility, and any other facilities related to the swimming, floating, fishing, and boating activities. The River is public and is not included in the Property submitted to this Community Declaration and is not a part of the Common Area or Special Common Area.

“Rules” means any instrument, however denominated, which may be initially adopted by Declarant, in its discretion, as part of the Policy Manual, or subsequently adopted by the Board, in its discretion, for the regulation and management of the Development, including but not limited to any amendments to those instruments. During the Development Period, any amendment to the Rules must be approved in advance and in writing by Declarant, unless such approval is otherwise waived in writing by Declarant in its sole discretion.

“Service Area” means a group of Lots and/or Dwelling Units designated pursuant to this Community Declaration for purpose of receiving specific benefits or services from the Community Association which are not provided to all Lots and Dwelling Units. A Service Area may be comprised of more than one type of use or structure and may include noncontiguous Lots. A Lot or Dwelling Unit may be assigned to more than one Service Area. Service Area boundaries may be established and modified as provided in *Section 2.4*.

“Service Area Assessments” means those Assessments levied against the Lots and/or Dwelling Units in a particular Service Area to fund Service Area Expenses, as described in *Section 6.6*.

“Service Area Expenses” means the estimated or actual expenses which the Community Association incurs or expects to incur for the benefit of Owners within a particular Service Area, which may include reserves for operations, capital repairs, and replacements.

“Special Assessments” means those Assessments levied against the Lots and/or Dwelling Units as described in *Section 6.4* for the purpose of enabling the Board to carry out the functions of the Community Association under the Documents, as may be determined from time to time by the Board in its sole discretion.

“Special Common Area” means any interest in real property or improvements which benefits certain Lot(s), Dwelling Unit(s), or one or more portion(s) of, but less than all of, the Development, which is designated by Declarant in a Notice of Annexation, Development Tract Declaration, or in any written instrument Recorded by Declarant (which designation will be made in the sole and absolute discretion of Declarant) as a Special Common Area for the exclusive use and/or the obligation to pay Special Common Area Assessments by the Owners of such Lot(s), Dwelling Unit(s), or portion(s) of the Development attributable thereto. Each Special Common Area will be conveyed to the Community Association, or the Community Association will be granted rights or obligations, or otherwise held by Declarant for the benefit of the Community Association, as set forth in *Section 2.5*. a Special Common Area may include any

property that the Community Association holds under a lease, license, or any easement in favor of the Community Association, including certain property conveyed to the Community Association or in which the Community Association is granted certain easement or other property interests by either the County or a District. Some portions of the Special Common Area will be solely for the common use and enjoyment of the Owners to which such portions of the Special Common Area has been designated, while other portions of the Special Common Area may be also for the use and enjoyment of members of the general public.

“Special Common Area Assessments” means Assessments levied against the Lots and/or Dwelling Units as described in *Section 6.5*.

“Special Common Area Expenses” means the estimated and actual expenses which the Community Association incurs or expects to incur to operate, maintain, repair and replace a Special Common Area, which may include a reasonable reserve for capital repairs and replacements.

“Unimproved Portion of the Development” means all of the Development other than those portions of Lots or Dwelling Units containing Improvements.

“Voting Group” has the meaning set forth in *Section 3.4(c)* below.

“Working Capital Assessment” means a one-time Assessment payable to the Community Association upon transfer of title to a Development Tract, Lot, or Dwelling Unit as described in *Section 6.8*, for the purpose of establishing working capital, which may include the use of such amounts by the Community Association to discharge operating expenses.

TABLE 1: DOCUMENTS	
Community Declaration (Recorded)	Creates obligations that are binding upon the Community Association and upon all present and future Owners of all or any portion of the Property made subject to this Community Declaration by the Recording of a Notice of Annexation.
Notice of Annexation (Recorded)	Describes the portion of the Property being made subject to the terms and provisions of this Community Declaration and any applicable Development Tract Declaration.
Development Tract Declaration (Recorded)	Includes additional covenants, conditions and restrictions governing portions of the Development.
Articles (Filed with Secretary of State)	Establishes the Community Association as a nonprofit corporation under Utah law.
Bylaws	Governs the Community Association’s internal affairs, such as elections, meetings, etc.
Policy Manual	If adopted, establishes the Rules and policies governing the Community Association and the Development.
Design Guidelines	If adopted, governs the design and architectural standards for the construction of Improvements and modifications thereto. Declarant and the Architectural Control Reviewer will have no obligation to establish Design Guidelines for the Development.
Rules	Rules regarding the use of property, activities, and conduct within the Development. The Rules may be included within the Policy Manual. Declarant and the

	Community Association will have no obligation to establish Rules for the Development.
Board Resolutions (Adopted by the Board of the Community Association)	Documented decision-making by the Board to establish rules, policies, and procedures for the Community Association.
Notice of Plat Recordation (Recorded)	Identifies specific Lots on a Plat and upon Recordation, adds or withdraws all or a portion of the Property from the terms and provisions of this Community Declaration. Declarant shall have no obligation to Record a Notice of Plat Recordation.

ARTICLE II GENERAL RESTRICTIONS

2.1. General.

(a) Conditions and Restrictions. All Lots and Dwelling Units within the Development to which a Notice of Annexation has been Recorded in accordance with *Section 10.5*, will be owned, held, encumbered, leased, used, occupied and enjoyed subject to the Documents. **NO PORTION OF THE PROPERTY WILL BE SUBJECT TO THE TERMS AND PROVISIONS OF THIS COMMUNITY DECLARATION UNTIL A NOTICE OF ANNEXATION HAS BEEN RECORDED DESCRIBING SUCH PORTION OF THE PROPERTY; PROVIDED, HOWEVER, CERTAIN PORTIONS OF THE PROPERTY ARE BENEFITTED BY EASEMENTS AND COVENANTS CONTAINED IN THIS COMMUNITY DECLARATION, EVEN THOUGH SUCH PROPERTY REMAINS UNANNEXED.**

(b) Compliance with Applicable Law and the Documents. Compliance with the Documents is mandatory. However, compliance with the Documents is not a substitute for compliance with Applicable Law. The Documents do not list or describe each requirement, rule, or restriction which may be applicable to a Lot or a Dwelling Unit located within the Development. Each Person who intends to become an Owner should review all encumbrances affecting the use and improvement of the Lot or Dwelling Unit such Person intends to acquire. An approval by the Architectural Control Reviewer does not constitute an assurance or certification that any Improvement complies with the terms and provisions of all encumbrances which may affect a Lot or Dwelling Unit. The Community Association, each Owner, Occupant or other user of any portion of the Development must comply with the Documents and Applicable Law.

(c) Approval of Regulatory Submission Items. By accepting the conveyance of an interest in any real property located in the Development, in accordance with Section 11.10, each Owner covenants and acknowledges that, prior to submitting any application, zoning change, variance or special use permit, plat, drainage plans, building or site plan, expressly including any amendments to the preliminary plan and any development plan required to be submitted by such Owner pursuant to any zoning ordinance applicable to the Property or the Development (the "**Regulatory Submission Items**"), to a regulatory authority for approval or issuance of a permit, as applicable, such Owner must first obtain approval from Declarant during the Development Period and the Board thereafter of the Regulatory Submission Items (the "**Preliminary Regulatory Approval**"). The requirement to obtain the Preliminary Regulatory Approval may be waived in writing in advance, in the sole and absolute discretion of Declarant or the Board, as applicable. In the event of a conflict between the Regulatory Submission Items approved pursuant to the Preliminary Regulatory Approval and the Regulatory Submission Items approved by the regulatory authority, the Owner will be required to resubmit the Regulatory Submission Items to obtain a final Preliminary Regulatory Approval. If granted, the Preliminary Regulatory Approval shall be

conditional ONLY and any Improvements to be constructed in accordance with the Regulatory Submission Items must be submitted by the Owner to the Architectural Control Reviewer for approval in accordance with *Section 7.4(a)* below. Each Owner in accordance with Section 11.10 acknowledges that no regulatory authority has the authority to modify the terms and provisions of the Documents applicable to all or any portion of the Development.

(d) Approval of Project Names. The name used by any Owner to identify any Development Tract or any portion thereof for marketing or identification purposes must be approved in advance and in writing by Declarant, in its sole and absolute discretion, during the Development Period, and the Board after termination or expiration of the Development Period.

(e) Development Features. A Development Tract may include Common Area, open space, water quality facilities, parkland, trails, landscape areas, roadways, driveways or easements which benefit other portions of the Development in addition to the Development Tract, as well as other features and areas, as reasonably determined by Declarant during the Development Period, and by the Board after termination or expiration of the Development Period (the “**Development Features**”). Declarant, during the Development Period, and the Board after termination or expiration of the Development Period, may require all or a portion of such Development Features be conveyed, transferred, or dedicated (by deed, easement, or license) to: (i) the Community Association; or (ii) another entity designated by Declarant or by a Majority of the Board, as applicable, including, but not limited to, any then-existing District. Alternatively, Declarant, during the Development Period, and a Majority of the Board after termination or expiration of the Development Period, may require that all or a portion of such Development Features be owned and maintained by the Owner of all or a portion of a particular Development Tract, subject to an easement in favor of other Owner(s) and Occupants, as designated by Declarant or a Majority of the Board, as applicable (e.g., ingress and egress over and across the driveways constructed within the Development Tract).

The Development Features may not be conveyed or otherwise transferred unless the conveyance or transfer is approved in advance and in writing by Declarant during the Development Period or a Majority of the Board after expiration or termination of the Development Period.

2.2. Incorporation of Development Tract Declarations. Upon Recordation of a Development Tract Declaration, such Development Tract Declaration will, automatically and without the necessity of further act, be incorporated into, and be deemed to constitute a part of this Community Declaration, to the extent not in conflict with this Community Declaration, but will apply only to portions of the Property made subject to the Development Tract Declaration upon the Recordation of one or more Notices of Annexation. To the extent of any conflict between the terms and provisions of a Development Tract Declaration and this Community Declaration, the terms and provisions of this Community Declaration will control.

2.3. Conceptual Plans. All plans, site plans, brochures, illustrations, information and marketing materials related to the Property or the Development (collectively, the “**Conceptual Plans**”) are conceptual in nature and are intended to be used for illustrative purposes only. The land uses and Improvements reflected on the Conceptual Plans are subject to change at any time and from time to time, and each Owner in accordance with Section 11.10 expressly agrees and understands that actual land uses within the Property or the Development may include uses which are not shown on the Conceptual Plans. For example, there may exist on certain Development Tracts employee housing intended to serve as accommodation for the workforce associated with the Development as Declarant may determine in its sole and exclusive discretion. The presence of employee housing within the Development is not guaranteed, and Declarant makes no representation or warranty regarding the availability, location, design, or features of such housing units. Neither Declarant, a Residential Developer nor any Homebuilder or other developer or contractor upon any portion of the Property or the Development makes any representation or warranty concerning such land uses and Improvements shown on the Conceptual Plans or otherwise planned for the

Property or the Development. Each Owner in accordance with Section 11.10 expressly agrees and understands that no Owner will be entitled to rely upon the Conceptual Plans, or any statement made by Declarant or any of Declarant's representatives regarding proposed land uses, or proposed or planned Improvements, in making the decision to purchase any land or Improvements within the Property or the Development. Each Owner who acquires a Lot or Dwelling Unit within the Development acknowledges in accordance with Section 11.10 that the Development is a coordinated, integrated planned community, the development of which will extend over many years and in multiple phases, and agrees that the Community Association will not engage in, or use Association funds to support, protest, challenge, or make any other form of objection to development of the Property or to any proposed or actual changes in the Conceptual Plans, as they may be amended or modified from time to time.

THE DEVELOPMENT IS A COORDINATED, INTEGRATED PLANNED MIXED-USE DEVELOPMENT WHICH WILL BE DEVELOPED OVER A NUMBER OF YEARS OR NOT DEVELOPED AT ALL. THE PLANS, LAND USES, PROJECTED IMPROVEMENTS, ASSESSMENTS, AND DOCUMENTS ARE SUBJECT TO CHANGE FROM TIME TO TIME, WITHOUT NOTICE OR OBLIGATION TO NOTIFY.

2.4. Provision of Benefits and Services to Service Areas. Declarant, in a Notice of Annexation Recorded pursuant to *Section 10.5* or in any written Recorded notice may assign Lots and/or Dwelling Units to one or more Service Areas (by name or other identifying designation) as Declarant deems appropriate, which Service Areas may be then existing or newly created, and may require that the Community Association provide benefits or services to such Lots and/or Dwelling Units in addition to those which the Community Association generally provides to the Development. Declarant may unilaterally amend any Notice of Annexation or any written Recorded notice, to re-designate Service Area boundaries. All costs associated with the provision of services or benefits to a Service Area will be assessed against the Lots and/or Dwelling Units within the Service Area as a Service Area Assessment.

2.5. Designation of Special Common Areas. During the Development Period, Declarant may designate, in a Notice of Annexation, a Development Tract Declaration, or in any other written instrument Recorded by Declarant (which designation will be made in the sole and absolute discretion of Declarant), any interest in real property or Improvements which benefits certain Lot(s), Dwelling Unit(s), or one or more portion(s) of but less than all of, the Development, as a Special Common Areas for the use of and/or the obligation to pay Special Common Area Assessments by the Owners of such Lot(s), Dwelling Unit(s), or portion(s) of the Development benefitted by such Special Common Areas. Such Owners shall have the obligation to pay Special Common Area Assessments for such Special Common Areas. Special Common Areas may include any property that the Community Association holds under a lease, license, or any easement in favor of the Community Association, including certain property conveyed to the Community Association or in which the Community Association is granted certain easement rights or other property interests by either the County or a District. Some portions of the Special Common Areas will be solely for the common use and enjoyment of the Owners to which such Special Common Areas has been designated, while other portions of the Special Common Areas may also be for the use and enjoyment of members of the general public. Any portion of the Development designated as a Special Common Area shall be conveyed to the Community Association, or the Community Association shall be granted rights or obligations with respect to such Special Common Area, or such Special Common Area shall otherwise be held by Declarant for the benefit of the Community Association. The Notice of Annexation, Development Tract Declaration, or other Recorded written instrument designating such Special Common Area will identify the Lot(s), Dwelling Unit(s), or other portion(s) of the Development assigned to such Special Common Area. All costs associated with maintenance, repair, replacement, and insurance of such Special Common Area will be assessed as a Special Common Area Assessment against the Owner(s) of the Lot(s), Dwelling Unit(s) or portion(s) of the Development to which the Special Common Area is assigned.

2.6. Mining and Drilling. Except for the Third Party Oil, Gas and Mineral Interests (defined below), no other portion of the Development may be used for the purpose of mining, quarrying, drilling, boring, installing, or exploring for or removing oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, earth, or groundwater. For the avoidance of doubt, this provision does not prevent the excavation of rocks, stones, sand, gravel, aggregate, or earth or the storage of such material for use as fill provided that such activities are conducted in conjunction with the construction of Improvements and/or the development of the Development by Declarant or Declarant Affiliate. This provision expressly prohibits the drilling of water wells to provide water to all or any portion of the Development or the installation of septic tanks. This *Section 2.6* shall not restrict the exercise of rights with respect to minerals, resources and groundwater, or some portion thereof or some interest therein, that may have been conveyed or reserved by third parties prior to Declarant's ownership of the Property (the "**Third Party Oil, Gas and Mineral Interests**"). No representation or warranty, express or implied, is made as to the ownership of the minerals, resources, and groundwater, or any portion thereof or any interest therein.

2.7. Streets Within the Property. The streets located outside the Development may be public streets and maintained by applicable governmental authorities as set forth on the Plat. Streets within the Development may be private and maintained by the Community Association. Private streets may be designated by Declarant as a part of the Common Area or Special Common Area. If designated as a part of the Common Area or Special Common Area, the Community Association may, from time to time, adopt, amend, repeal, and enforce rules, regulations and procedures for use of the private streets, including but not limited to: (a) identification of vehicles used by Owners and Occupants and their guests; (b) designation of parking areas and no-parking areas, and loading/unloading zones; (c) limitations or prohibitions on street parking; (d) removal or prohibition of vehicles that violate applicable rules and regulations; and (e) fines for violations of applicable rules and regulations; provided; however, no such rules, regulations and procedures for use of the private streets, or enforcement of the foregoing, shall materially and adversely affect use of or access to the Amenities by the Amenities Parties and the Amenities Users.

2.8. Open Space Open to the Public. Declarant reserves the right to grant an easement over and across any open space within the Development for the use and enjoyment of the general public. Declarant reserves for itself and the Community Association, a perpetual, nonexclusive easement, over, upon, under and across the open spaces for access, use, maintenance, landscaping, irrigation, construction, installation, placement, replacement, upgrading, and repair of the open spaces and related appurtenances in, upon, under and across the open spaces. The open spaces may be designated or conveyed to the Community Association as a part of the Common Area or Special Common Area. EACH OWNER IN ACCORDANCE WITH SECTION 11.10 HEREBY ACKNOWLEDGES AND AGREES THAT PORTIONS OF THE PROPERTY MAY BE OPEN FOR THE USE AND ENJOYMENT OF THE PUBLIC AS WELL AS MEMBERS OF THE ASSOCIATION.

The easements, rights, and privileges reserved by Declarant pursuant to this *Section 2.8* may be assigned by Declarant to the County or other similarly constituted governmental entity having jurisdiction over the open spaces. The assignment may be made: (a) unilaterally and without the consent or any further approval of any other Person; (b) exclusively or non-exclusively; and (c) in whole or in part.

2.9. Cell Tower and Telecommunications Equipment. Telecommunications, cellular, video and digital equipment, including broadcast antennae and related equipment, cell towers, cell tower equipment, or other wireless communication antennae and related equipment, cable or satellite television equipment and equipment for high-speed internet access (collectively, the "**CTT Equipment**") may be located on or near the Property and/or the Development or may be constructed on or near the Property and/or the Development. As more particularly described in *Section 9.14*, Declarant has reserved the right, for the benefit of itself and its assigns, to construct, install, use, maintain, repair, replace, improve, remove, and operate CTT Equipment upon all or any portion of the Common Area and/or the Special Common

Area. Persons other than Declarant may also have or be granted easements for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation of CTT Equipment.

2.10. View Impairment. Although certain Lots or Dwelling Units in the Development at any point in time may have particular views, no express or implied rights or easements exist for views or for the passage of light and air to any Lot or Dwelling Unit. Notwithstanding any oral or written statement made by any person or contained in any sales materials or brochures, no representation or warranty whatsoever, express or implied, is made by Declarant, the Community Association or the Amenities Parties concerning the view that any Lot or Dwelling Unit will have whether as of the date this Community Declaration is Recorded or thereafter. Any view that exists at any point in time for a Lot or Dwelling Unit may be impaired or obstructed by further construction within or outside the Development, including by construction of Improvements (including landscaping) by Declarant, the Community Association or the Amenities Owner, construction by third parties (including Owners and Occupants) and by the natural growth of landscaping. No third party, including any broker, salesperson or Owner, has any right to bind Declarant, the Community Association or the Amenities Owner with respect to the preservation of any view from any Lot or Dwelling Unit or any view of a Lot or Dwelling Unit from any other portion of the Development .

2.11. Safety and Security. Each Owner and Occupant of a Lot or Dwelling Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property on the Property. The Community Association may, but shall not be obligated to, maintain or support certain activities within the Development or other portions of the Property designed to promote or enhance the level of safety or security which persons provide for themselves and their property. However, none of the Community Association, Declarant, or any of their directors, employees, or agents, shall in any way be considered insurers or guarantors of safety or security within the Development or other portions of the Property, nor shall any of such Persons be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

Neither Declarant nor the Community Association makes any representation or warranty that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to the Development or other portions of the Property, cannot be compromised or circumvented; or that any such system or security measures undertaken shall in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner in accordance with Section 11.10 acknowledges, understands, and shall be responsible for informing any Occupants of such Owner's Lot or Dwelling Unit that the Declarant, the Community Association, the Board, and their respective employees, agents, and committees, are not insurers or guarantors of security or safety and that each person within the Development or other portions of the Property assumes all risks of personal injury and loss or damage to property, including any residences or Improvements constructed upon any Lot or Dwelling Unit and the contents thereof, resulting from acts of third parties.

2.12. Districts. In connection with the development of the Development, Districts have been or will be formed in order to provide the Development with various services and facilities including but not limited to waste water treatment and disposal services, fire protection service, road maintenance, emergency services, special lighting facilities for non-standard street lights, culinary water and facilities including pumping stations, and snowplowing. The Districts have or will have the power, among other things, to contract, to acquire and construct facilities and to finance the cost thereof by the issuance of bonds and to establish rates and charges that enable the Districts to operate such facilities as are necessary to fulfill its purposes. In accordance with Section 11.10, each Homebuilder, Residential Developer, Member and Owner hereby agrees and acknowledges that the Development is a part of certain Districts, and may become a part of future Districts, and that Districts have or shall have the right and authority to levy taxes, charges and/or assessments upon owners of taxable property within such Districts. Each Homebuilder, Residential

Developer, Member and Owner will be subject to all charges levied by such Districts and will pay such charges directly to the same. All charges levied by such Districts against owners of taxable property are and shall be the personal and individual obligation of each Homebuilder, Residential Developer, Member and Owner, and such charges do not constitute an Assessment.

2.13. Densities and Entitlements. Nothing in this Community Declaration shall restrict Declarant's development rights. Declarant reserves the right to develop the Property to include such Density Units as it shall determine in its sole discretion, without obtaining the prior approval or consent of the Community Association, or any Homebuilder or Residential Developer, Owner, or any other y person . In accordance with Section 11.10, each Owner hereby agrees and acknowledges that Declarant may unilaterally increase or decrease the Density Units associated with the Development, and such increased or decreased Density Units may modify the number, size, and type of neighborhoods or Improvements located within the Development, subject only to the Echo Canyon Land Use Code and applicable law. Declarant reserves the unilateral right to transfer the Density Units between and among the Development Tracts owned by Declarant in the event Declarant or Declarant Affiliate does not utilize all of the Density Units assigned to a Development Tract in the development of such Development Tract's Lots or Dwelling Units. Declarant intends that as each Development Tract is developed, a Development Tract Declaration will be recorded to establish the permissible uses as well as the use restrictions of property within such Development Tract. Declarant also reserves the sole and exclusive right to determine how and whether each Development Tract is developed.

2.14. Preliminary Municipality.

(a) The Development is located within the boundaries of a preliminary municipality established pursuant to Utah Code Ann. § 10-2a-401 *et seq.* The Preliminary Municipality is a unique and newly created entity under Utah law, formed for the purpose of managing and regulating development within designated areas, including the Development . The Preliminary Municipality may exercise certain powers typically associated with municipal governance, including but not limited to land use approvals, adoption of ordinances, imposition of fees, and enforcement of community standards. . In accordance with Section 11.10, Owners acknowledge and agree that the Preliminary Municipality's structure, powers, and authorities may differ significantly from those of a traditional municipality. During the Development Period, Declarant (or its designated affiliates) retains the right to appoint individuals to serve as the governing body of the Preliminary Municipality (the "PM Board"). These appointed individuals may simultaneously hold positions of authority within the Community Association and related entities.

(b) Declarant may continue to influence and control key aspects of the governance, administration, and development of the Development and the Preliminary Municipality for an extended period. Such control includes, but is not limited to: (i) the authority to appoint and remove members of the PM Board; (ii) the authority to appoint and remove directors of the Community Association; (iii) the ability to manage and approve land use, zoning, and development within the Development; (iv) the right to establish, impose, and modify assessments, fees, and charges within the Preliminary Municipality; and (v) the authority to adopt and enforce rules, regulations, and ordinances applicable within the boundaries of the Preliminary Municipality.

(c) The legal framework for Preliminary Municipalities is subject to change through amendments to Utah law or through actions by governmental authorities. In accordance with Section 11.10, Owners acknowledge and agree that: (i) the rights, powers, and obligations of the Preliminary Municipality, the Board, and the Community Association may evolve over time; (ii) governance structures, development controls, and community regulations may be amended, modified, or repealed as permitted by applicable law; (iii) the Development Period may continue until such time as Declarant voluntarily relinquishes such control or as otherwise provided by law or governing documents.

(d) By accepting title to any Lot or Dwelling Unit within the Development in accordance with Section 11.10, each Owner acknowledges and agrees that: (i) the Development is located within a Preliminary Municipality with unique governance and control features as described herein; (ii) Declarant and its appointees may continue to exercise significant control over the Preliminary Municipality, the Community Association, and the development of the Development; (iii) the legal framework governing Preliminary Municipalities is subject to change, and no assurances are made as to the future governance or regulatory environment of the Development.

(e) Owners and potential purchasers are strongly encouraged to seek independent legal and professional advice to fully understand the implications of the Preliminary Municipality and the Developer's ongoing control rights before purchasing property within the Development.

2.15. Gated Access. Declarant during the Development Period, or the Community Association, from time to time thereafter, may, but is in no way required or obligated to, take actions or provide Improvements, including devices or services intended to or which may have the effect of improving safety, including actions, devices or services limiting or controlling access to the Development or other portions of the Property (including portions of the Common Area or Special Common Area), including, but not limited to, mechanical system(s) that limit vehicular access to the streets in the Development from public streets (the "**Gate System**").

2.16. Gate System Operation. Declarant during the Development Period, and the Community Association thereafter, in each such party's sole and absolute discretion, may determine when any Gate System will be operational, including, but not limited to, hours of operation and periods when the Gate System will remain open. In accordance with Section 11.10, Owners acknowledge and agree that the Gate System may remain open or non-operational during all or a substantial portion of the Development Period and/or buildout of the Development.

(a) **Disclaimer.** Neither Declarant nor the Community Association shall be responsible for providing security to the Owners or Occupants or their family members, guests, invitees or to their Property or Improvements. The purpose of any Gate System shall be to provide some degree of controlled restriction of access on the streets located within the Development. Neither Declarant, the Community Association nor any Owner guarantees or assures any other Owner nor any other Person whomsoever that the Gate System will in any manner whatsoever provide personal protection or security to any Owner, such Owner's personal property or Occupants, guests or invitees, or to any other person, and each Owner, by the acceptance of its deed in accordance with Section 11.10, shall be deemed to have assumed the entire risk as between such Owner and Declarant or the Community Association for any loss or damage to person or property within the Development arising from any deficiency, failure or defect in any Gate System or otherwise.

(b) **Emergency Services Access.** The local police department and fire department shall have access to the Development for law enforcement and fire protection purposes. In accordance with Section 11.10, each Owner acknowledges and agrees that such Owner shall look solely to the local police department and fire department for the provisions of law enforcement, police and fire protection.

EACH OF DECLARANT AND ASSOCIATION DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, AND DECLARANT MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY NATURE WHATSOEVER, REGARDING THE GATE SYSTEM, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR THE PURPOSE FOR WHICH IT WAS DESIGNED. NEITHER DECLARANT NOR ASSOCIATION, EXPRESSLY OR IMPLIEDLY GUARANTEES

THAT THE GATE SYSTEM WILL AVERT OR PREVENT OCCURRENCES OR CONSEQUENCES WHICH THE GATE SYSTEM IS DESIGNED TO AVERT OR PREVENT.

ARTICLE III
THE COMMUNITY ASSOCIATION

3.1. Organization. The Community Association is or will be a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers of a nonprofit corporation created under Utah law. Neither the Articles nor the Bylaws will, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Community Declaration. For the avoidance of doubt, in the event of any such inconsistency, this Community Declaration shall control.

3.2. Membership.

(a) **Membership Classes.** The Community Association shall have two classes of Membership: Class A Members and a Class B Member. Each Residential Developer prior to the Transfer Date defined in Section 3.2(c) below, and thereafter the Development Tract Association for that Development Tract, shall be a Class A Member of the Community Association. Declarant or Declarant Affiliates shall be the Class B Member in the Community Association for so long as the Declarant or such Declarant Affiliate owns any portion of the Development. Unless excused in writing by Declarant, as required by such Development Tract Declaration, a separate Development Tract Association shall be formed for each Development Tract.

(b) **Relationship of Associations.** The members of a Development Tract Association shall be the Owners of Lots and Dwelling Units located within that Development Tract. The duties and powers of the Community Association shall relate to the Development as a whole, while the duties and powers of a particular Development Tract Association shall relate only to its particular Development Tract, including without limitation the Development Tract Association's duty to maintain any Improvements located within such Development Tract. In particular, the Community Association, shall have the powers and duties provided in this Community Declaration, the Articles and the Bylaws, and such additional powers as shall be reasonable and necessary for the Community Association to accomplish the purposes of this Community Declaration.

(c) **Development Tract Declarations.** Except as otherwise provided in this Community Declaration or unless excused in writing by Declarant, every Lot and Dwelling Unit shall be located within a Development Tract and subject to a Development Tract Declaration, including any assessment provisions contained therein. Subject to the provisions of this Section 3.2, a Development Tract Declaration may be established and Recorded by Declarant, the Homebuilder(s) and/or the Residential Developer(s) for such Development Tract and the Lots and Dwelling Units within a particular Development Tract may be subject to such additional covenants as may be included in such Development Tract Declaration.

(i) Each Development Tract Declaration shall initially assign the property described therein to a specific Development Tract by name, which Development Tract may be then existing or newly created. Declarant during the Development Period or the Architectural Control Reviewer thereafter, as appropriate, reserves the right to approve the specific Development Tract name and related project, marketing and advertising materials.

(ii) Prior to such time as a Development Tract Association is formed by Declarant or by the Residential Developer(s) or the Homebuilder(s) that establish and Record the applicable Development Tract Declaration, the articles of incorporation and bylaws or other

governing documents for the Development Tract Association for such Development Tract must be approved in writing by Declarant prior to expiration of the Development Period, and thereafter by the Architectural Control Reviewer. The governing documents for such Development Tract Association shall specify that the rights of its members are subject and subordinate to the provisions of this Community Declaration and the other Documents.

(d) Homebuilders and Residential Developers. Until such time as management and control of the neighborhood developed within a Development Tract is transferred to a Development Tract Association pursuant to a recorded agreement creating or implementing a condominium, fractional interest, club, subdivision, planned community or other ownership regime ("**Transfer Date**"), the Homebuilder or Residential Developer or its agent shall have the right to vote all votes attributable to the Development Tract at any Community Association meeting. Prior to the Transfer Date, the Homebuilder or Residential Developer shall be responsible for all of the covenants, duties and obligations appurtenant to such Development Tract, including without limitation the duty to pay Assessments, as the Owner thereof. From and after the Transfer Date for each Development Tract, an authorized officer of each Development Tract Association shall cast all of the votes to which such Development Tract Association is entitled at the Community Association meetings. In addition, from and after the Transfer Date for each Development Tract, the Owners of the Lots and Units shall be individually responsible for performance of all of such Owner's covenants, duties and obligations described in this Community Declaration, including without limitation, the duty to pay Assessments via their membership in a Development Tract Association as may be further described in such controlling Development Tract Declaration.

(e) Voting. Each Member shall be entitled to the following voting rights in the Community Association, calculated based on the Membership type (Class A or Class B):

(i) Each Class A Member is assigned one (1) vote per Density Unit in such Member's Development Tract, subject to the authority of the Board to suspend the voting rights of such Member for violations of this Community Declaration in accordance with the provisions hereof.

(ii) During the Development Period, Declarant or a Declarant Affiliate shall be the Class B Member of the Community Association and shall be entitled to five (5) votes for each Density Unit assigned to each Development Tract owned by Declarant or a Declarant Affiliate. Declarant's Class B Membership shall expire with respect to each Development Tract owned by Declarant or a Declarant Affiliate upon the earliest to occur of (i) the Transfer Date for that Development Tract, or (ii) the date Declarant or Declarant Affiliate shall transfer such Development Tract to a Homebuilder or Residential Developer or person other than Declarant or a Declarant Affiliate, or (iii) when the Declarant, in its sole and exclusive discretion, so determines, which determination shall be provided by written notice to the Community Association. Thereafter, the Class B Membership shall be considered "terminated" under this Community Declaration with respect to such Development Tract and Declarant and Declarant Affiliates shall be Class A Members of the Community Association with regard to each Lot or Dwelling Unit for which Declarant or any Declarant Affiliates is or are Owners within such Development Tract, and, as a Class A Member, Declarant and Declarant Affiliates shall be entitled to one (1) vote per Density Unit as may have been assigned pursuant to *Section 3.4(a)* to such Lot or Dwelling Unit it or they own.

(f) Exercise of Voting Rights. The Community Association vote with respect to each Development Tract as a Class A Member shall be exercised by the Homebuilder or Residential Developer prior to the Transfer Date, and thereafter by the Development Tract Association as provided in Section 3.2(d) above. The Homebuilder or Residential Developer or the Development Tract Association, as the case

may be, may cast all Class A Member votes assigned to such Development Tract as determined by the Homebuilder or Residential Developer, or in accordance with the respective Development Tract Association's governing documents.

(g) Easement of Enjoyment - Common Area. Every Owner within the Development will have a right and easement of enjoyment in and to all of the Common Area and an access easement, if applicable, by and through any Common Area, which easements will be appurtenant to and will pass with the title to such Owner's Lot or Dwelling Unit, subject to the following restrictions and reservations:

(i) The right of Declarant, or Declarant's designee, during the Development Period, and the Board thereafter or with Declarant's advance written consent during the Development Period, to cause improvements and features to be constructed upon the Common Area;

(ii) The right of the Community Association to suspend the Owner's right to use the Common Area for any period during which any Assessment against such Owner's Lot or Dwelling Unit remains past due or for any period during which such Owner is in violation of any provision of this Community Declaration;

(iii) The right of Declarant during the Development Period, and the Board thereafter or with Declarant's advance written consent during the Development Period, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for any purpose;

(iv) The right of Declarant during the Development Period, and the Board thereafter or with Declarant's advance written consent during the Development Period, to grant easements or licenses over and across the Common Area to other Persons;

(v) The right of the Board with the advance written consent of Declarant during the Development Period, to borrow money for the purpose of improving the Common Area and, in furtherance thereof, mortgage or otherwise encumber all or any portions of the Common Area as collateral;

(vi) The right of Declarant during the Development Period, and the Board thereafter or with the advance written consent of Declarant during the Development Period, to promulgate Rules regarding the use of the Common Area and any Improvements thereon; and

(vii) The right of the Community Association to contract for services and benefits with any third parties on such terms as the Board may determine, except that during the Development Period, all such contracts must be approved in advance and in writing by Declarant.

(h) Easement of Enjoyment - Special Common Area. Each Owner of a Lot or Dwelling Unit which has been assigned use of any portion of the Special Common Area in a Notice of Annexation, Development Tract Declaration, or other Recorded instrument, will have a right and easement of enjoyment in and to all of such Special Common Area for its intended purposes, and an access easement, if applicable, by and through such portion of the Special Common Area, which easement will be appurtenant to and will pass with title to such Owner's Lot or Dwelling Unit, subject to *Section 3.2(b)* above and subject to the following restrictions and reservations:

(i) The right of Declarant during the Development Period, and the Board thereafter or with Declarant's advance written consent during the Development Period, to cause improvements and features to be constructed upon such Special Common Area;

(ii) The right of Declarant during the Development Period to grant additional Lots or Dwelling Units use rights in and to such Special Common Area in a subsequently Recorded Notice of Annexation, Development Tract Declaration, or other Recorded instrument;

(iii) The right of the Community Association to suspend the Owner's rights to use the Special Common Area for any period during which any Assessment against such Owner's Lot or Dwelling Unit remains past due and for any period during which such Owner is in violation of any provision of this Community Declaration;

(iv) The right of Declarant during the Development Period, and the Board thereafter or with Declarant's advance written consent during the Development Period, to grant easements or licenses over and across such Special Common Area to other Persons;

(v) The right of Declarant during the Development Period, and the Board thereafter or with Declarant's advance written consent during the Development Period, to dedicate or transfer all or any part of such Special Common Area to any public agency, authority or utility for any purpose;

(vi) The right of the Board with the advance written consent of Declarant during the Development Period, to borrow money for the purpose of improving the Special Common Area and, in furtherance thereof, mortgage or otherwise encumber all or any portions of the Special Common Area as collateral;

(vii) The right of Declarant during the Development Period, and the Board thereafter or with the advance written consent of Declarant during the Development Period, to promulgate Rules regarding the use of the Special Common Area and any Improvements thereon; and

(viii) The right of the Community Association to contract for services with any third parties on such terms as the Board may determine, except that during the Development Period, all such contracts must be approved in advance and in writing by Declarant.

3.3. Governance.

(a) Board of Directors; Officers. The Board will consist of at least three but not more than five individuals elected at the annual meeting of the Community Association or at a special meeting called for such purpose. Notwithstanding anything herein to the contrary, Declarant, or a managing agent or some other person or persons selected by Declarant, may appoint and remove some or all of the members of the Board or some or all of the officers of the Community Association or may exercise the powers and responsibilities otherwise assigned by this Declaration or under Utah law to the Community Association, its officers, or the Board. The "Declarant Control Period" is separate from the Development Period, and as used in this Declaration and the other Community Documents, shall have the same meaning as the "period of administrative control" defined under the Utah Community Association Act. The right of the Declarant contained in this Section 3.3 shall terminate no later than the earlier of the following to occur:

(i) Sixty (60) days after conveyance of eighty percent (80%) of the Lots or Development Tracts owned by Declarant;

(ii) The day on which Declarant no longer owns any Lot or Development Tract or no longer possess any development right;

(iii) Seven (7) years after the day on which the Declarant has ceased to offer Development Parcels or Lots, including Development Parcels or Lots that may be created, for sale in the ordinary course of business; or

(iv) the date on which Declarant, in its sole and exclusive discretion, voluntarily relinquishes its control rights as evidenced by a Recorded notice.

At such time as Declarant no longer has or terminates the right to appoint and remove any members of the Board as provided in this *Section 3.3*, an officer of the Community Association authorized under the Bylaws to do so will call a meeting of the Members of the Community Association to elect successor Board members who shall initially have staggered-length terms. For example, if the out-going Board is comprised of three persons, the Members will elect one Board member for a three-year term, one Board member for a two-year term, and one Board member for a one-year term. Upon expiration of the term of a Board member elected by the Members as provided herein, such Board member's successor will be elected by the Members for a term of two years. A Board member takes office upon the adjournment of the meeting or balloting at which such Board member is elected or appointed and, absent death, ineligibility, resignation, or removal, will hold office until such Board member's successor is elected or appointed.

(b) Advisory Committees. Subject to the requirements otherwise set forth herein and as further set forth in the Bylaws, the Board may, but is not required, to adopt a resolution to designate two or more Persons, which may include Declarant and/or one or more Board members, and which must include at least one member from a Development Tract Association governing board, to a committee for any purpose; provided, that any such committee shall serve in an advisory capacity only with the sole powers of: (i) recommending action to the Board; and (ii) carrying out and implementing any instructions or any policies, plans, programs and rules theretofore approved, authorized and adopted by the Board.

3.4. Voting Allocation. The method of voting and the number of votes which may be cast for election of Board members (except as provided by *Section 3.3*) and on all other matters to be voted on by the Members will be calculated as set forth below.

(a) Owners. Each Member will be allocated the number of votes as determined by Declarant in its sole and absolute discretion, which determination will be set forth in the Notice of Annexation attributable to the Development Tract, calculated based on the Membership type (Class A or Class B) and the total number of Density Units assigned by Declarant to the Development Tract, with votes assigned based on Membership type (Class A or Class B) as specified in *Section 3.2(e)* above. Declarant's determination regarding the number of votes to which such Members will be entitled will be final, binding and conclusive. Declarant, in its sole and absolute discretion, or a Majority of the Board after the expiration or termination of the Development Period, may modify and amend (which modification and amendment may be effected after Declarant's conveyance of any Development Tract to any person other than a Declarant Affiliate) the number of votes previously assigned to a Development Tract if the actual use of the Development Tract or the Improvements actually constructed on the Development Tract differ from the anticipated use of the Development Tract or Improvements contemplated to be constructed thereon at the time the Notice of Annexation was originally Recorded. In the event of a modification to the votes allocated to a Development Tract, Declarant, or the Board, as applicable, will Record an amended Notice of Annexation setting forth the revised allocation of votes attributable to the Development Tract. The votes allocated to each Class A Member may be cast in total or split within the discretion of the Development Tract Association as described in the applicable Development Tract Declaration.

(b) Declarant. In addition to the votes to which Declarant is entitled by reason of *Section 3.4(a)*, for every one vote outstanding in favor of any other Person, Declarant will have five additional votes until the expiration or termination of the Development Period. Declarant may cast votes allocated to Declarant pursuant to this *Section 3.4(b)* and shall be considered a Member for the purpose of casting such votes, and need not own any portion of the Development as a pre-condition to exercising such votes.

(c) Voting Groups. If applicable as exclusively determined by Declarant, Voting Groups permit Owners in separate portions of the Development, such as commercial Owners, the opportunity to be represented on the Board and to avoid situations in which one or more, but less than all, Owners are able to elect all Board members. Declarant hereby reserves the right to create and group certain Owners into Voting Groups as set forth in a Recorded written notice and to establish rules and procedures applicable thereto. If established, then upon the expiration or termination of the Development Period, the Owners within such Voting Groups will vote on a separate slate of Board member candidates, with each Voting Group electing a certain number of Board members, and any additional Board member elected at large by all Members. Voting Groups and any rules and procedures attributable thereto will be established, if at all, not later than the date of the expiration or termination of the Development Period. Such designation may be amended from time to time by Declarant, acting alone, during the Development Period by a Recorded written instrument. The designation of Voting Groups and the rules and procedures attributable thereto may be unilaterally amended by Declarant from time to time during the Development Period. An amendment to a Voting Group designation shall not constitute an amendment to this Community Declaration, and no consent or approval to modify such Voting Group designation shall be required.

3.5. Powers. The Community Association will have the powers of a Utah nonprofit corporation. It will further have the power to do and perform any and all acts that may be necessary or proper, for or incidental to, the exercise of any of the express powers granted to it by Applicable Law or this Community Declaration. Without in any way limiting the generality of the two preceding sentences, the Board, acting on behalf of the Community Association, will have the following powers at all times:

(a) Rules. To make, establish and promulgate, and in its discretion to amend from time to time, or repeal and reenact, Rules, policies, the Bylaws and the Policy Manual, as applicable, which are not in conflict with this Community Declaration, as the Board deems proper, covering any and all aspects of the Development (including, without limitation, the operation, maintenance and preservation thereof) or the Community Association. Any Rules, policies, the Bylaws and the Policy Manual and any modifications thereto, proposed by the Board must be approved in advance and in writing by Declarant, such approval to be granted in Declarant's discretion, until expiration or termination of the Development Period.

(b) Insurance. To obtain and maintain in effect, policies of insurance that, in the opinion of the Board, are reasonably necessary or appropriate to protect the Board members, the Community Association and its officers and employees and to carry out the Community Association's functions.

(c) Records. To keep books and records of the Community Association's affairs, and to make such books and records, together with current copies of the Documents available for inspection during normal business hours by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon request in accordance with Applicable Law.

(d) Assessments. To levy and collect Assessments and to determine Assessment Units, as provided in *Article VI* below.

(e) Right of Entry and Enforcement. To enter at any time without notice in an emergency (or in the case of a non-emergency, after 24 hours written notice, which notice may be provided solely by e-mail), without being liable to any Owner, upon any Lot or into any Dwelling Unit for the purpose of enforcing the Documents or for the purpose of maintaining or repairing any area, Improvement or other facility or removing any item to conform to the Documents. The expense incurred by the Community Association in connection with the entry upon any Lot or into any Dwelling Unit and the removal or maintenance and repair work conducted therefrom, thereon or therein will be a personal obligation of the Owner of the Lot or the Dwelling Unit so entered, will be deemed an Individual Assessment against such Lot or Dwelling Unit, will be secured by a lien upon such Lot or Dwelling Unit, and will be enforced in the same manner and to the same extent as provided in *Article VI* for Assessments. The Community Association will have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Documents. The Board is also authorized to settle claims, enforce liens and take all such action as it may deem necessary or expedient to enforce the Documents; provided, however, that the Board will never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, or Declarant's successors or assigns. The Community Association may not alter or demolish any Improvements on any Lot, or in any Dwelling Unit, other than any portion of the Common Area or Special Common Area, in enforcing this Community Declaration before a judicial order authorizing such action has been obtained by the Community Association, or before the written consent of the Owner(s) of the affected Lot(s) or Dwelling Unit(s) has been obtained. **IN ACCORDANCE WITH SECTION 11.10, EACH OWNER AND OCCUPANT HEREBY RELEASES AND HOLDS HARMLESS THE ASSOCIATION, ITS OFFICERS, BOARD MEMBERS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 3.5(e) (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT TO THE EXTENT SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION RESULTED FROM THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

(f) Legal and Accounting Services. To retain and pay for legal and accounting services which the Board deems necessary or proper in the operation of the Community Association.

(g) Conveyances. To grant and convey to any Person the real property and/or other interest, including fee title, leasehold estates, easements, rights-of-way or mortgages, out of, in, on, over, or under any Common Area or Special Common Area for the purpose of constructing, erecting, operating or maintaining the following:

- (i) Parks, open spaces, parkways or other recreational facilities or structures;
- (ii) Roads, streets, sidewalks, signs, street lights, walks, driveways, trails and paths;
- (iii) Lines, cables, wires, conduits, pipelines or other devices for utility purposes;
- (iv) Sewers, water systems, storm water drainage systems, sprinkler systems and pipelines; and

- (v) Any similar improvements or facilities.

Until expiration or termination of the Development Period, any grant or conveyance under this *Section 3.5(g)* must be approved in advance and in writing by Declarant, in Declarant's discretion. In addition, Declarant during the Development Period and the Community Association (with the advance written approval of Declarant during the Development Period) thereafter are expressly authorized and permitted to convey easements over and across a Common Area or Special Common Area for the benefit of property not otherwise subject to the terms and provisions of this Community Declaration.

(h) Manager. To retain and pay for the services of a Person, which may include Declarant or any Declarant Affiliate (the "**Manager**"), to manage and operate the Community Association, its real or personal property, including any Common Area or Special Common Area, and/or any Service Area, and including facilitating branding of the Development and/or of any Development Tract, whether for residence or hotel use branding purposes or otherwise, all to the extent deemed advisable by the Board (with the advance written approval of Declarant during the Development Period). Additional personnel may be employed directly by the Community Association or may be furnished by the Manager. To the extent permitted by Applicable Law, the Board may delegate any duties, powers and functions to the Manager. In addition, the Board may adopt transfer fees, reinvestment fees, resale certificate fees or any other fees associated with the provision of management services to the Community Association or its Members. **THE MEMBERS AND OWNERS HEREBY RELEASE THE ASSOCIATION AND THE MEMBERS OF THE BOARD FROM LIABILITY FOR ANY OMISSION OR IMPROPER EXERCISE BY THE MANAGER OF ANY SUCH DUTY, POWER OR FUNCTION SO DELEGATED.**

(i) Property Services. To pay for water, sewer, garbage removal, street lights, landscaping, security services, gardening, private or public recreational facilities, easements, roads, roadways, rights-of-ways, signs, parks, parkways, median strips, sidewalks, paths, trails, ponds, canals, and lakes and all other utilities, services, repair and maintenance for any portion of the Development.

(j) Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments that the Community Association or the Board is required or permitted to secure or to pay for pursuant to Applicable Law or under the terms of the Documents or as determined by the Board (with the advance written approval of Declarant during the Development Period).

(k) Construction on Common Area and Special Common Area. To construct new Improvements or additions to a Common Area and Special Common Area, subject to the approval of Declarant during the Development Period.

(l) Contracts. To enter into Bulk Rate Contracts or other contracts or licenses with Declarant or any third party on such terms and provisions as the Board will determine, to operate and maintain the Development, any Common Area, Special Common Area, Service Area, Improvement, or other property, or to provide any service, including but not limited to, cable, utility, or telecommunication services, or perform any function on behalf of Declarant, the Board, the Community Association, or the Members. During the Development Period, all Bulk Rate Contracts must be approved in advance and in writing by Declarant.

(m) Property Ownership. To acquire, own and dispose of real or personal property, whether by grant, lease, easement, gift or otherwise. During the Development Period, all acquisitions and dispositions by the Community Association hereunder must be approved in advance and in writing by Declarant.

(n) Authority with Respect to the Documents. To do any act, thing or deed that is necessary or desirable, in the judgment of the Board, to implement, administer or enforce any of the Documents. Any decision by the Board to delay or defer the exercise of the power and authority granted by this *Section 3.5(n)* will not subsequently in any way limit, impair or affect the ability of the Board to exercise such power and authority. During the Development Period, all material actions by the Community Association hereunder must be approved in advance and in writing by Declarant.

(o) Membership Privileges. To establish Rules governing and limiting the use of any Common Area, Special Common Area, Service Area, and any Improvements thereon. All Rules governing and limiting the use of any Common Area, Special Common Area, Service Area, and any Improvements thereon must be approved in advance and in writing by Declarant during the Development Period.

(p) Relationships with Districts and Tax Exempt Organizations. To create, enter into agreements or contracts with, or grant exclusive and/or nonexclusive easements or irrevocable licenses over any Common Area, Special Common Area, or Service Area, to any District or non-profit, tax-exempt organization, the operation of which confers some benefit upon the Development, the Community Association, the Members or the Owners. The Community Association may contribute money, real or personal property, or services to such Person. Any such contribution shall be a common expense to be included in the Assessments levied by the Community Association and included as a line item in the Community Association's annual budget. For the purposes of this *Section 3.5(p)*, a "tax-exempt organization" shall mean an entity which is exempt from federal income taxes under the Internal Revenue Code, as amended from time to time (the "**Code**"), such as, but not limited to, entities which are exempt from federal income taxes under Sections 501(c)(3) or 501(c)(4). The Community Association may maintain multiple-use facilities within the Development and allow use by tax-exempt organizations. Such use may be on a scheduled or "first-come, first-served" basis. A reasonable maintenance and use fee may be charged for the use of such facilities.

(q) Implied Rights. The Community Association may exercise any right or privilege given to it expressly by this Community Declaration or the other Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Community Declaration or the other Documents or by Applicable Law, all rights and powers of the Community Association may be exercised by the Board without a vote of the Members. The Board may institute, defend, settle, or intervene on behalf of the Community Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Development, enforcement of the Documents, or any other civil claim or action. During the Development Period, all such actions by the Community Association must be approved in advance and in writing by Declarant. However, the Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Community Association or its Members. In exercising the Community Association's rights and powers, making decisions on behalf of the Community Association, and conducting the Community Association's affairs, the members of the Board shall be subject to the standards set forth in the Bylaws.

3.6. Common Area and Special Common Area. The Community Association may acquire, hold, maintain, insure and dispose of any interest in tangible and intangible personal property and real property. Declarant, the County or a District may transfer or convey to the Community Association interests in real or personal property, including the Facilities (as defined in Section 9.8 below) within or for the benefit of the Development, or the Development and the general public, and the Community Association will accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. In addition, Declarant may reserve from any such property easements or irrevocable licenses for the benefit of Declarant, the County, a District, the general public, any third party and/or property not otherwise subject

to the terms and provisions of this Community Declaration. Such property will be accepted by the Community Association and thereafter will be maintained as part of the Common Area or Special Common Area, as applicable, by the Community Association for the benefit of the Owners, the Development and/or the general public subject to any restrictions set forth in the deed or other instrument conveying, transferring or assigning such property to the Community Association. Upon Declarant's written request during the Development Period, the Community Association will re-convey to Declarant any unimproved real property that Declarant originally conveyed to the Community Association to the extent conveyed in error or needed to make minor adjustments in property lines, as determined in the sole and absolute discretion of Declarant. Declarant and/or its assignees may construct and maintain upon portions of a Common Area and/or a Special Common Area such facilities and may conduct such activities which, in Declarant's sole opinion, may be required, convenient, or incidental to the construction or sale of Improvements on the Development, including, but not limited to, business offices, signs, model homes, and sales offices. Declarant and/or its assignees shall have an easement or irrevocable licenses over and across any Common Area and/or any Special Common Area for access and shall have the right to use such facilities and to conduct such activities at no charge.

3.7. Indemnification. To the fullest extent permitted by Applicable Law but without duplication (and subject to) any rights or benefits arising under the Articles or Bylaws of the Community Association, the Community Association will indemnify any person who was, or is, a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that such person is, or was, a Board member, officer, committee member, employee, servant or agent of the Community Association against expenses, including attorneys' fees, reasonably incurred by such person in connection with such action, suit or proceeding if it is found and determined by the Board or a court of competent jurisdiction that such person : (a) acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interests of the Community Association; or (b) with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of nolo contendere or its equivalent, will not of itself create a presumption that the person did not act in good faith or in a manner which was reasonably believed to be in, or not opposed to, the best interests of the Community Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful.

3.8. Insurance. The Board may purchase and maintain, at the expense of the Community Association, insurance on behalf of any person who is acting as a director, officer, committee member, employee, servant or agent of the Community Association against any liability asserted against such person or incurred by such person in their capacity as a director, officer, committee member, employee, servant or agent of the Community Association, or arising out of the person's status as such, whether or not the Community Association would have the power to indemnify the person against such liability or otherwise.

3.9. Bulk Rate Contracts. Without limitation on the generality of the Community Association powers set out in *Section 3.5* (except that during the Development Period, all Bulk Rate Contracts must be approved in advance and in writing by Declarant), the Community Association will have the power to enter into Bulk Rate Contracts at any time and from time to time. The Community Association may enter into Bulk Rate Contracts with any service providers chosen by the Board (including Declarant, a Declarant Affiliate, and/or any entities in which Declarant, or the owners or partners of Declarant are the owners or participants, directly or indirectly). The Bulk Rate Contracts may be entered into on such terms and provisions as the Board may determine in its sole and absolute discretion. The Community Association may, at its option and election add the charges payable by such Owner under such Bulk Rate Contract to the Assessments (Regular, Special, Service Area, Special Common Area, or Individual, as the case may be) against such Owner's Lot or Dwelling Unit. In this regard, in accordance with Section 11.10, each Owner acknowledges and agrees that, if such Owner fails to pay any charges due by such Owner under the terms

of any Bulk Rate Contract, then the Community Association will be entitled to collect such charges by exercising the same rights and remedies it would be entitled to exercise under this Community Declaration with respect to the failure by such Owner to pay Assessments, including the right to foreclose the lien against such Owner's Lot or Dwelling Unit which is reserved under the terms and provisions of this Community Declaration. In addition, in accordance with Section 11.10, each Owner acknowledges and agrees that in the event of nonpayment by such Owner of any charges due under any Bulk Rate Contract and after the lapse of at least 12 days since such charges were due, the Community Association may, upon five days' prior written notice to such Owner (which may run concurrently with such 12-day period), in addition to all other rights and remedies available at law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any utility service or other service provided at the cost of the Community Association and not paid for by such Owner (or Occupant of such Owner's Lot or Dwelling Unit) directly to the applicable service or utility provider. Such notice will consist of a separate mailing or hand delivery at least five days prior to a stated date of termination, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner (or Occupant of such Owner's Lot or Dwelling Unit) can make arrangements for payment of the bill and for re-connection or re-institution of service. No utility or cable television service will be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

3.10. Community Services and Systems. Declarant, or any Declarant Affiliate with Declarant's consent, during the Development Period, and the Board, with Declarant's prior written consent during the Development Period, is specifically authorized, but not required, to install, provide, maintain or furnish, or to enter into contracts with other persons to install, provide, maintain or furnish, central telecommunication receiving and distribution systems (e.g., cable television, high speed data/Internet/intranet services, and security monitoring) and utility services (e.g., electricity, solar, gas and water), and related components, including associated infrastructure, equipment, hardware, and software, to serve all or any portion of the Development (collectively, "**Community Services and Systems**"). The Community Services and Systems, including any fees or royalties paid or revenue generated therefrom, shall be the property of Declarant unless transferred by Declarant, whereupon any proceeds of such transfer shall belong to Declarant and neither the Community Association nor any Owner shall have any interest therein. Declarant shall have the right but not the obligation to convey, transfer, sell or assign all or any portion of the Community Services and Systems or all or any portion of the rights, duties or obligations with respect thereto, to the Community Association or to any other Person. Any or all of such services may be provided either: (i) directly through the Community Association and paid for by the Owners as part of the Assessments; or (ii) directly by Declarant, any Declarant Affiliate, or a third party, including any District, to the Owner who receives any or all of the Community Services and Systems. In the event Declarant, or any Declarant Affiliate, elects to provide any of the Community Services and Systems to all or any portion of the Development, Declarant or Declarant Affiliate may enter into an agreement with the Community Association with respect to such Community Services and Systems. In the event Declarant, or any Declarant Affiliate, enters into a contract with a third party, including any District, for the provision of any Community Services and Systems to serve all or any portion of the Development, Declarant, or the Declarant Affiliate, may assign any or all of the rights or obligations of Declarant, or the Declarant Affiliate, under the contract to the Community Association or any other Person. Any such contracts may provide for installation, operation, management, maintenance, and upgrades or modifications to the Community Services and Systems as Declarant or the Board, as applicable, determines appropriate, in their discretion. In accordance with Section 11.10, each Owner acknowledges and agrees that interruptions in Community Services and Systems will occur from time to time. Declarant and the Community Association, or any of their respective affiliates, Board members, officers, employees and agents, or any of their respective successors or assigns, shall not be liable for, and no Community Services and Systems user shall be entitled to, any refund, rebate, discount, or offset in applicable fees for, any interruption in Community Services and Systems, regardless of whether or not such interruption is caused by reasons within the control of the provider of such Community Services and

Systems. The rights of Declarant with respect to the Community Services and Systems installed by Declarant and the services provided through such Community Services and Systems are exclusive, and no other person may provide such services through the Community Services and Systems installed by Declarant without the prior written consent of Declarant.

3.11. Protection of Declarant's Interests. Despite any assumption of control of the Board by Owners other than Declarant, until the expiration or termination of the Development Period, the Board is prohibited from taking any action which would discriminate against Declarant, or which would be detrimental to the sale of Lots or Dwelling Units or any portion of the Property owned by Declarant. Declarant shall be entitled to determine, in its sole and absolute discretion, whether any such action discriminates or is detrimental to Declarant. Unless otherwise agreed to in advance and in writing by Declarant, the Board will be required to continue the same level and quality of maintenance, operations and services as that provided immediately prior to assumption of control of the Board by Owners other than Declarant until the expiration or termination of the Development Period.

3.12. Administration of Common Area, Special Common Area, or Service Area. The administration of any Common Area, any Special Common Area, or any Service Area by the Community Association shall be in accordance with the provisions of Applicable Law and the Documents, and of any other agreements, documents, amendments or supplements to the foregoing which may be duly adopted or subsequently required by any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans (including, for example, the Federal Home Loan Mortgage Corporation) designated by Declarant or by any public agency or District having regulatory jurisdiction over any Common Area, any Special Common Area, or any Service Area, or by any title insurance company selected by Declarant to insure title to any portion of such areas or any Lot or Dwelling Unit benefited thereby.

ARTICLE IV

AMENITIES PROPERTY AND OWNER ACKNOWLEDGMENTS

4.1. Amenities Property Disclosures. Portions of the Property about the Amenities Property and portions of the Amenities Property wind throughout the Property. Neither ownership nor occupancy of a Lot or Dwelling Unit shall confer any ownership interest in the Amenities Property. In accordance with Section 11.10, each Owner and Occupant acknowledges and agrees as follows:

(a) **No Representations or Warranties.** No representations or warranties have been or are made by Declarant, the Amenities Parties, the Community Association, or any person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of the Amenities.

(b) **Attractive Nuisances.** Portions of the Amenities, including pools, hiking trails, off-highway vehicle trails, shooting ranges, clubhouses, sporting facilities, boating facilities, food and beverage facilities, trails, restrooms, maintenance facilities, maintenance equipment and machinery and other installations, personal property and other features located on the Amenities Property near the River may be attractive nuisances to children and others and can pose a danger of serious injury or death.

(c) **Operation of Amenities Property.** The operation, maintenance and use of the Amenities and the Amenities Property will entail the operation and use of (i) noisy and odiferous power equipment such as tractors, lawn mowers and blowers on various days of the week, including weekends, during various times of the day, including early morning and late evening hours; (ii) sprinkler and other irrigation systems in operation during the day and at night; (iii) noisy and odiferous electric, gasoline or other power-driven vehicles and equipment; (iv) application of odiferous pesticides, herbicides and fertilizing chemicals and bio-solids; and (v) noisy and odiferous refuse removal trucks, delivery trucks, vendor vehicles, construction trucks and equipment and other vehicles entering and exiting the Amenities

Property on various days of the week, including weekends, during various times of the day, including early morning and late evening hours.

(d) Exterior Lighting; Exterior Sound. Certain Amenities will have exterior lighting and amplified exterior sound and will be regularly used for entertainment and social events on various days of the week, including weekends, and during various times of the day, including early morning and late evening hours.

(e) Property Waters. Water used to irrigate the Amenities Property, Common Area, and Special Common Area and to fill water features and water retention areas within the Property and Amenities Property, as well as the River, may be wastewater effluent, storm water and other ground or surface waters ("**Property Waters**"). The Property Waters are not potable (drinkable) water and consumption of such Property Waters by humans or animals may cause adverse reactions, severe illness or fatalities. The Property Waters may cause objectionable odors and staining on buildings, streets, sidewalks and other real and personal properties and may cause erosion and undermining of Lots, Dwelling Units, Common Area, and Special Common Area.

(f) Incursions and Interference. The Development is subject to an Amenities Easement (defined below) as set forth in *Section 4.6* of this Community Declaration and activities on or use of Amenities Property may result in incursion onto any Common Areas, Special Common Areas, Lots and Dwelling Units and may cause damage to an Owner, Occupant or Improvements on Lots and/or Dwelling Units as a result of such activities or use, including serious injury to or death of individuals, damage or destruction of property, and may cause interference with the quiet enjoyment by the Owner and Occupants of Lots and/or Dwelling Units.

(g) Relocation and Modification of Amenities Property Improvements. Any Improvements on the Amenities Property, including lighting, recreational or sporting areas, food and beverage facilities, restrooms, maintenance facilities, clubhouses, marinas, docks, and course layout, may be relocated, reconfigured, eliminated, added or modified from time to time, which actions may affect the risk associated to the Development from the Amenities Property, and may adversely impact Owners and Occupants' views and peaceful enjoyment of a Lot and/or Dwelling Unit.

(h) Property Waters Related Incursions. Certain Lots, Dwelling Units, Common Areas, and Special Common Areas may be more susceptible than others to incursions and damage by Property Waters.

(i) Risk of Damage or Injury. The proximity of Lots, Dwelling Units, any Common Area, and Special Common Area to the Amenities, Amenities Property, and the River create a risk of damage or destruction of property or injury to or death of individuals. In accordance with Section 11.10, each Owner and Occupant assumes the risk of any and all damage, destruction, injury or death which may be caused by operation of the Amenities, Amenities Property, and the River.

(j) Modification of Features. The landscaping, facilities, and other features of the Amenities Property may be added to, removed or otherwise modified, and the Amenities Parties, Homebuilders, Declarant, and the Community Association, shall have no liability to any Owner or Occupant as a result of such modifications to the Amenities Property.

In accordance with Section 11.10, each Owner and Occupant acknowledges, understands and agrees that the existence of the Amenities and the Property Waters may cause inconvenience, disturbance and possible injury or damage to property and to the Owners and Occupants, including, but not limited to: noise and odors from Amenities operations, noise from construction and maintenance equipment, noise and

disturbance from parties and functions in the Amenities, use of pesticides, herbicides and fertilizers on Amenities Property, view restrictions caused by planting and maturation of trees, shrubbery and Amenities Property features, reduction in privacy caused by constant traffic to Amenities Property, removal and pruning of trees and shrubbery, and design and redesign of the Amenities, and fluctuating water levels associated with the Property Waters. Each of the Owners and Occupants has considered the location of the Development and the Lot or Dwelling Unit being purchased, leased, used, visited, or occupied and its proximity to the Amenities Property, including the Improvements within the Amenities Property. **IN ACCORDANCE WITH SECTION 11.10, BY ACCEPTANCE OF A DEED, BY ACQUIRING ANY INTEREST IN ANY OF THE DEVELOPMENT, OR BY USING, VISITING OR OCCUPYING A LOT, CONDOMINIUM UNIT, AMENITY, COMMON AREA, OR SPECIAL COMMON AREA, EACH OWNER AND OCCUPANT ACKNOWLEDGES AND ASSUMES THE RISKS OF THE AFORESAID NUISANCE, INCONVENIENCE, DISTURBANCE AND POSSIBLE INJURY, or DEATH TO INDIVIDUALS OR DAMAGE AND DESTRUCTION OF PROPERTY BASED UPON, DUE TO, ARISING FROM OR OTHERWISE RELATED TO THE FOREGOING, AND AGREES TO HOLD THE ASSOCIATION, DECLARANT AND THE AMENITIES PARTIES HARMLESS THEREFROM, INCLUDING ANY CLAIM ARISING IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE AMENITIES PARTIES.**

4.2. Amenities Not Governed by the Community Association. NEITHER THE AMENITIES OWNER NOR THE AMENITIES PROPERTY IS GOVERNED BY THE ASSOCIATION. Declarant, the Homebuilders, , the Residential Developers, and the Amenities Owner make no representations, warranties, guaranties, commitments or promises that the Amenities Property, if any, will ever be improved with any recreational or other facilities or operated in any particular manner. In accordance with Section 11.10, by accepting title to any Lot or Dwelling Unit, each Owner hereby acknowledges, accepts, covenants and agrees that the Owner has no right, title or interest in the Amenities Property.

4.3. Owner Acknowledgments. In accordance with Section 11.10, each Owner, by acceptance of a deed or contract of sale to a Development Tract, Lot, or Dwelling Unit, and each Occupant by occupancy of an Improvement, acknowledges, covenants and agrees:

(a) Limitation of Liability. Notwithstanding the fact that the Amenities Property may be considered open space or a recreation area for purposes of Applicable Law, each Owner and Occupant releases and discharges forever Declarant and the Amenities Parties from: (i) any claim that the Amenities Property is, or must be, owned and/or operated by the Community Association or the Owners, and/or (ii) any claim that the Owners are entitled to use the Amenities Property by virtue of ownership of a Lot or Dwelling Unit.

(b) Liability for Modifications to Amenities Property. That the Amenities Owner and its designees, in the Amenities Owner's sole discretion, may add to, remove or otherwise modify the Amenities Property, including newly constructing or changing the location, configuration, design, size and elevation of buildings, bunkers, berms, walls, fences, marinas, docks, and other Amenities facilities; that neither the Amenities, Amenities Owner, Declarant, nor the Community Association shall have any liability to any Owner or Occupant as a result of such additions to or modifications of the Amenities Property; provided, however, all such modifications or changes shall comply with Applicable Law.

(c) Resale of a Lot or Dwelling Unit. The limitations, restrictions, responsibilities, obligations and liabilities imposed upon Owners by this Community Declaration, and the limitations, restrictions, responsibilities, obligations and liabilities imposed upon Owners and the Community Association, if any, under any applicable Amenities rules and regulations may adversely impact the number of potential future purchasers of an Owner's Lot or Dwelling Unit, the ability of Owner to re-sell such

Owner's Lot or Dwelling Unit, and the amount of consideration to be received by Owner upon the re-sale of such Owner's Lot or Dwelling Unit.

(d) Assumption of Risk, Waiver of Claims and Indemnification. The Development is a riverfront community with water recreation and resort-type activities, which may include, without limitation: boating, swimming, water tubing, and other water resort-type facilities, events, activities and programs (collectively, the "**Resort Activities**"), and each such Owner and Occupant expressly assumes the risk of noise, nuisances, hazards, personal injury, or property damage related to any and all Resort Activities, including, without limitation: noise from maintenance equipment (it being specifically understood that such maintenance may take place at any time(s) of the day or night), noise caused by Resort Activities and participants, construction and development activities, view restrictions caused by installation, relocation and maturation of trees and shrubbery, reduction in privacy, including that related to maintenance activities, and errant equipment, including boats, floating devices, and watercraft. Each Owner and Occupant agrees that neither Declarant, the Community Association, the Architectural Control Reviewer, any other committee created by the Community Association, any of the Declarant's Affiliates or agents, nor any Resort Activities participant (unless acting recklessly or in a willfully wrongful manner) shall be liable to any Owner, Occupant, or any other person claiming any loss or damage, including, without limitation, indirect, special, or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment, or any other alleged wrong or entitlement to remedy based upon, due to, arising from, or otherwise related to the proximity of Improvements on any Lot or Dwelling Unit to the River and any other Resort Activities venue.

(e) Easements for River Shoreline Maintenance and Flood Water. Declarant reserves for itself, Declarant Affiliates, the Community Association, and their respective successors, assigns, and designees, a perpetual, nonexclusive right and easement of access and encroachment, but not the obligation, over the Unimproved Portion of the Development adjacent to or within thirty (30) feet of the River bed and riverfront areas (collectively, the "**River Shoreline**"), in order to (a) temporarily flood and back water upon, and maintain water over, such portions of the Development; (b) clean, remove trash and debris, and generally maintain the River Shoreline; (c) maintain and landscape the slopes and banks pertaining to the River Shoreline; (d) construct, maintain, and repair any bulkhead, wall, dam, or other structure retaining water; and (e) enter upon and across such portions of the Development for the purpose of exercising its rights under this Section. Declarant's rights and easements provided in this Section shall be transferred to the Community Association at such time as the Development Period expires, or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from, the intentional exercise of such easements. Nothing herein shall be construed to make Declarant, Declarant Affiliate, the Community Association or any other person liable for damage resulting from flooding due to storms, heavy rainfall, or other natural disasters.

(f) Susceptibility to Storm Drainage and Substantial Destruction to Improvements. The Development and Improvements are located in a low-lying, riverfront area that is or may be subject to storms, high winds and tides, and periodic flooding. Any of these natural occurrences could result in substantial damage to or destruction of the Common Areas and all other Improvements within the Development, which could make all or portions of the Common Areas and Improvements temporarily or permanently unavailable for use by Owners or Occupants. Declarant, Declarant Affiliates, and the Community Association shall have no obligation to secure alternative facilities for use by Owners or Occupants. No warranty or representation is made by Declarant, Declarant Affiliate, or the Community Association, or any agent of either of them, that the Common Areas and Improvements can be rebuilt in accordance with the original plans if destroyed or materially damaged.

(g) View and Privacy Impairment. Declarant, Declarant Affiliate, and the Community Association do not guarantee or represent that any view or privacy over and across the Improvements, any open space within the Development, River, or any Common Area or Amenities Property will be preserved without impairment. Declarant, Declarant Affiliate, and the Community Association shall not be obligated to relocate, prune, or thin trees or other landscaping except to maintain the Common Areas. Any express or implied easements for view or privacy purposes or for the passage of light and air are hereby expressly disclaimed. All Owners and Occupants acknowledge the existence and nature of the Development being situated adjacent to land owned by the Bureau of Land Management. Neither the Bureau of Land Management nor the land it owns is governed by this Community Declaration or Declarant, Declarant Affiliate, or the Community Association.

(h) Use of Water Bodies. The use of the River is at the Owner's or Occupant's own risk. No person shall be permitted to live or reside on any boat or other watercraft docked, moored, or otherwise located on the River. In addition, no sewage effluent, treated or otherwise, may be discharged from any watercraft or any other portion of the River. Declarant, Declarant Affiliates, and the Community Association shall not be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of the River.

(i) Wastewater Treatment Plant. All Improvements are subject to certain combined limits of gallons per day flow with total nitrogen requirements. All Improvements are required to share and attach to the onsite wastewater treatment system located within the Development ("**System**"). The ability to operate and maintain the System in accordance with manufacturer's recommendations, permit limits, and in accordance with Applicable Law requires compliance of all Owners and Occupants with certain requirements as may be further described in the Documents. The Community Association may install, maintain, operate, sample, and service the System subject to the advance written approval of Declarant. All Owners and Occupants acknowledge the existence and nature of the System.

(j) Inconsistent Representations or Warranties. No representations or warranties which are inconsistent with this Community Declaration, either oral or written, have been made or are made by Declarant, the Community Association or any person acting on behalf of Declarant or the Community Association.

(k) RELEASE. EACH OF THE OWNERS AND OCCUPANTS HEREBY RELEASES AND HOLDS HARMLESS DECLARANT, THE ASSOCIATION, DECLARANT AFFILIATES, AND THE AMENITIES PARTIES FROM ANY AND ALL CLAIMS, ACTIONS, SUITS, DEMANDS, CAUSES OF ACTION, LOSSES, DAMAGES OR LIABILITIES BASED UPON, DUE TO, ARISING OUT OF, OR RELATING TO ANY NUISANCE, INCONVENIENCE, DISTURBANCE, INJURY, DEATH, DAMAGE, OR DIMINUTION OF VALUE, TO PERSONS AND PROPERTY ARISING OUT OF OR RELATING TO THE RESORT ACTIVITIES, IMPROVEMENTS, OR OCCURRENCES DESCRIBED IN THIS SECTION 4.3.

4.4. The Amenities' Approval Rights. The provisions contained in this *Article IV* may not be amended without the advance written approval of the Amenities Owner. The Amenities Owner shall further have the right to disapprove actions of the Community Association, the Board and any committees if, in the Amenities Owner's reasonable judgment, the actions materially and adversely affect the use of the Amenities, the Amenities Property or the rights or obligations of the Amenities Property or the Amenities Owner. The Community Association shall provide not less than 15 days prior written notice to the Amenities Owner of any proposed action of the Board and any committees that may in any way affect the use of the Amenities, the Amenities Property or the rights or obligations of the Amenities Property or the Amenities Owner.

Amendments to the Documents that, in the Amenities Owner's reasonable judgment, materially and adversely affect the use of the Amenities, the Amenities Property or the rights or obligations of the Amenities Property or the Amenities Owner shall require the advance written approval of the Amenities Owner. The Community Association shall provide not less than 15 days prior written notice to the Amenities Owner of any proposed amendment to the Documents.

In the event that the Amenities Owner disapproves of any action of the Community Association, the Board, or any committee, the Community Association, the Board or committee, as applicable, shall immediately cease and desist from taking any further action to move forward with, or implement, the disapproved action, and any such action, if approved or taken, shall be void and of no force or effect.

4.5. Amenities Easement. Declarant establishes and declares for the benefit of the Amenities Owner a perpetual, alienable and transferable easement over, across and upon Unimproved Portion of the Development for the purpose of performing every act necessary and appropriate for the use and enjoyment of the Amenities Property by the Amenities Parties and the Amenities Users (the "**Amenities Easement**"), which shall include the noise level created by Amenities functions and parties, and the activities associated with the operation and maintenance of the Amenities Property. Such Amenities Easement shall specifically constitute a part of the Amenities Property.

(a) **Amenities Easement.** Without limiting the foregoing, the Amenities Easement rights include the following:

(i) The Amenities Owner shall have a perpetual, nonexclusive easement over, under and upon the Unimproved Portion of the Development for the purpose of installation, operation, service, repair, replacement, enhancement and maintenance of the Amenities Property, including the installation of recreational and other facilities on the Amenities Property, and the use of usual and common equipment for irrigation, maintenance and landscaping thereof. By way of example and not limitation, such easement shall permit, but shall not require, entry onto any Unimproved Portion of the Development for the purpose of planting grass, applying fertilizer, mowing and edging and removing any underbrush, trash, debris and trees from the Amenities Property.

(ii) The Amenities Owner shall have a perpetual, nonexclusive easement over, under and upon the Unimproved Portion of the Development to provide for (A) installation, service, repair and maintenance of the equipment and lines required to provide utility services to the Amenities Property, including power, lights, telephone, cable television, telecommunications, gas, water, sewer, irrigation and drainage, and (B) governmental services, including police, fire, health, sanitation and other public service personnel, including reasonable rights of access for persons and equipment necessary for such purposes for the benefit of the appropriate utility companies, agencies, franchises or governmental agencies.

(iii) The Amenities Owner shall have a perpetual, nonexclusive easement for drainage and flowage of Property Waters over, under and upon the Unimproved Portion of the Development, including reasonable rights of access for persons and equipment to construct, install, maintain, alter, inspect, remove, relocate and repair drainage facilities, culverts, swales, pumps, canals, electrical boxes, flowage pipes and irrigation pipes. Additionally, the Amenities Owner shall have a perpetual, nonexclusive easement for drainage, stormwater collection, retention and detention over, upon and within the Unimproved Portion of the Development and all drainage and stormwater facilities serving the Development, and use of all drainage and storm water easements reserved, declared or created pursuant to this Community Declaration.

(iv) The Amenities Parties (regardless of whether such persons are Owners hereunder) shall at all times have a perpetual, nonexclusive, unrestricted easement for pedestrian, vehicular, construction, service and maintenance vehicle traffic for access and use over, alongside and through all streets, roadways, paths, and entry and exit gates located within the Development reasonably necessary to travel to and from each entrance and exit to the Development, from, to and between Amenities Property, respectively. Without limiting the generality of the foregoing, the Amenities Parties and any permitted Amenities Users shall have the right to enter and exit the Development through the entry and exit gates located within the Development, to use the pedestrian paths located throughout the Development, and to park their vehicles on and alongside the streets and roadways located within the Development, at reasonable times before, during and after the operating hours of the Amenities, special events on the Amenities Property, and various other functions and parties held at the Amenities Property, subject to such parking rules and regulations as may have been established pursuant to this Community Declaration by Declarant or by the Community Association. The Community Association shall not impose upon any Amenities Party or Amenities User a fee or other requirement to exercise an Amenities Party or Amenities User's rights under this subsection, except for such requirements as Amenities Owner desires to impose upon the Amenities Users (*e.g.*, identification) and unless as otherwise set forth in a Recorded instrument executed by the Amenities Owner.

(b) Maintenance Easement. The Amenities Owner shall have an unrestricted easement for projectiles, Property Waters, grass cuttings, landscape clippings, herbicides, pesticides and fertilizer that enter upon the Unimproved Portion of the Development from any portion of the Amenities Property (the "**Maintenance Easement**").

(c) LIABILITY PERTAINING TO EASEMENTS. UNDER NO CIRCUMSTANCES SHALL DECLARANT, THE AMENITIES PARTIES, THE ASSOCIATION AND ANY SUCCESSOR IN INTEREST TO THE FOREGOING BE RESPONSIBLE OR LIABLE FOR ANY DAMAGE OR INJURY TO PERSONS OR PROPERTY ARISING OUT OF OR RESULTING FROM THE EXERCISE OF THE AMENITIES ENCROACHMENT EASEMENT, THE AMENITIES EASEMENT (AS DEFINED BELOW), AND THE MAINTENANCE EASEMENT.

4.6. Easement for Unintended Amenities Encroachments. To the extent that any Improvements on the Amenities Property or any Improvements owned by the Amenities Owner, including but not limited to paths, trails, water features, waste areas, clubhouse facilities, recreational facilities, sporting facilities, marina or boat dock facilities, maintenance facilities, driveways, irrigation facilities, utility facilities, underground pipelines and conduits, drainage structures, surface water runoff or any other Improvement as originally constructed or operated encroaches upon any Unimproved Portion of the Development, it shall be deemed that the Owner of such Lot or Dwelling Unit, or the Community Association, as the case may be, has granted a perpetual, alienable and transferable easement to the Amenities Owner for the continuing maintenance and use of such encroaching Improvement, structure or impact (the "**Amenities Encroachment Easement**"). The Amenities Encroachment Easement shall further apply to any replacements or enhancements of such Improvements or structures if the same are constructed in substantial conformity with the original structure or Improvement.

ARTICLE V **INSURANCE**

5.1. Insurance. Each Owner will be required to purchase and maintain commercially standard insurance on the Improvements located upon such Owner's Development Tract, Lot, or Dwelling Unit. The Community Association will not maintain insurance on the Improvements constructed upon any Development Tract, Lot, or Dwelling Unit. The Community Association may, however, obtain such other

insurance as it may deem necessary, including but not limited to such policies of liability and property damage insurance as the Board, in its discretion, may deem necessary. Insurance premiums for such policies will be a common expense to be included in the Assessments levied by the Community Association. The acquisition of insurance by the Community Association will be without prejudice to the right and obligation of any Owner to obtain additional individual insurance.

5.2. Restoration Requirements. In the event the Improvements on any Lot or Dwelling Unit are damaged or destroyed by fire or other casualty, the Owner of such Lot or Dwelling Unit will either: (a) unless otherwise approved by the Architectural Control Reviewer or by the ACC, as applicable, promptly commence the repair, restoration and replacement of any damaged or destroyed Improvements to the same exterior condition which existed prior to the damage or destruction thereof, within 180 days after the occurrence of such damage or destruction, and thereafter prosecute the same to completion; or (b) in the case of substantial or total damage or destruction of any Improvement, remove all such damaged Improvements and debris from the Development within 60 days after the occurrence of such damage or destruction. Unless otherwise approved by the Architectural Control Reviewer or by the ACC, as applicable, any repair, restoration or replacement will be commenced and completed in a good and workmanlike manner using exterior materials substantially the same as those originally used in the Improvements which have been damaged or destroyed, as determined by the Architectural Control Reviewer or by the ACC, as applicable, in such party's sole and absolute discretion. To the extent that the Owner fails to commence repair, restoration, replacement, or the removal of debris, within the time period required in this *Section 5.2*, the Community Association may commence, complete or effect such repair, restoration, replacement or clean-up, and the costs incurred by the Community Association will be levied as an Individual Assessment against such Owner's Lot or Dwelling Unit; provided, however, that if the Owner is prohibited or delayed by Applicable Law from commencing such repair, restoration, replacement or clean-up, the rights of the Community Association under this provision will not arise until the expiration of 30 days after such prohibition or delay is removed. If the Owner fails to pay such cost upon demand by the Community Association, the cost thereof (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, than at the rate of one and one-half percent per month) will be levied as an Individual Assessment chargeable to the Owner's Lot or Dwelling Unit. EACH OWNER AND OCCUPANT HEREBY INDEMNIFIES, RELEASES, AND HOLDS HARMLESS THE ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION 5.2, EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR COST OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

5.3. Restoration - Mechanic's and Materialmen's Lien. In accordance with Section 11.10, each Owner whose Improvements are repaired, restored, replaced or cleaned up by the Community Association pursuant to the rights granted under this *Article V*, hereby grants to the Community Association an express mechanic's and materialmen's lien for the reasonable cost of such repair, restoration, replacement or clean-up of the damaged or destroyed Improvement to the extent that the cost of such repair, restoration, replacement, or clean-up exceeds any insurance proceeds allocable to such repair, restoration, replacement, or clean-up which are delivered to the Community Association. Upon request by the Board, and before the commencement of any reconstruction, repair, restoration, replacement, or clean-up, such Owner will execute all documents sufficient to effectuate such mechanic's and materialmen's lien in favor of the Community Association.

ARTICLE VI
COVENANT FOR ASSESSMENTS

6.1. Assessments.

(a) Established by Board. Assessments established by the Board pursuant to the provisions of this *Article VI* will be levied against each Lot and Dwelling Unit in amounts determined pursuant to *Section 6.9(b)* below. The total amount of Assessments will be determined by the Board in accordance with the terms of this *Article VI*.

(b) Personal Obligation: Lien. Each Assessment, together with interest thereon and costs of collection as hereinafter provided, will be the personal obligation of the Owner of the Lot or Dwelling Unit against which the Assessment is levied. Such Assessments, interest and costs will be secured by a lien hereby established and declared by Declarant for the benefit of the Community Association against each such Lot and all Improvements thereon or each such Dwelling Unit (such lien, with respect to any Lot or Dwelling Unit not in existence on the date hereof, will be deemed established and declared at the time that such Lot or Dwelling Unit is created). The Community Association may enforce payment of such Assessments in accordance with the provisions of this *Article VI*. Unless the Community Association elects otherwise (which election may be made at any time), each Development Tract Association (whether for residential, commercial, or mixed use) imposed upon all or a portion of any Development Tract will collect all Assessments levied pursuant to this Community Declaration from, as applicable, Dwelling Unit Owners within such condominium regime or Lot Owners within such Development Tract Association. The Development Tract Association will promptly remit all Assessments collected from Dwelling Unit Owners or from the Lot Owners, as applicable, to the Community Association. If the Development Tract Association fails to timely collect any portion of the Assessments due from the Dwelling Unit Owner or the Lot Owner, then the Community Association may collect such Assessments allocated to the Dwelling Unit or to the Lot on the Community Association's own behalf and enforce its lien against the Dwelling Unit or the Lot without joinder of the Development Tract Association, as applicable. The Development Tract Association's right to collect Assessments on behalf of the Community Association is a license from the Community Association which may be revoked by written instrument at any time, and from time to time, at the sole and absolute discretion of the Board.

(c) Declarant Subsidy. Declarant may, but is not obligated to, reduce Assessments which would otherwise be levied against Lots and Dwelling Units for any fiscal year by the payment of a subsidy to the Community Association. Any subsidy paid to the Community Association by Declarant may be treated as a contribution or a loan, in Declarant's sole and absolute discretion. The payment of a subsidy in any given year will not obligate Declarant to continue payment of a subsidy to the Community Association in future years.

(d) Commencement of Assessments. Assessments will commence as to a particular Lot or Dwelling Unit on the first day of the month after the Lot or Dwelling Unit has been made subject to the terms and provisions of this Community Declaration. If Assessments are due and payable less frequently than once per month, e.g., quarterly or annually, Assessments will be prorated based on the number of months remaining during the billing period.

6.2. Maintenance Fund. The Board will establish a maintenance fund into which will be deposited all monies paid to the Community Association and from which disbursements will be made in performing the functions of the Community Association under this Community Declaration. The funds of the Community Association may be used for any purpose authorized by the Documents and Applicable Law.

6.3. Regular Assessments. Prior to the beginning of each fiscal year, the Board will prepare a budget to establish the estimated net expenses of the Community Association (the “**Annual Budget**”) by setting forth: (a) an estimate of expenses to be incurred by the Community Association during such year in performing its functions and exercising its powers under this Community Declaration, including, but not limited to, the cost of all management, repair and maintenance, the cost of providing street and other lighting, the cost of administering and enforcing the Documents; and (b) an estimate of the amount needed to maintain a reasonable provision for contingencies and an appropriate replacement reserve; and which (c) excludes the operation, maintenance, repair and management costs and expenses associated with any Service Area and Special Common Area. The Regular Assessments shall be set at such a level which is sufficient to fund the estimated net expenses of the Community Association as reflected on the Annual Budget, as determined by the Board in its sole and absolute discretion, and such amount shall thereafter be levied against each Lot and Dwelling Unit. The Board’s determination as to the amount of the Regular Assessments to be levied will be final and binding. If the sums collected prove inadequate for any reason, including nonpayment of any Assessment by an Owner, the Community Association may at any time, and from time to time, levy further Regular Assessments in the same manner. All such Regular Assessments will be due and payable to the Community Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion.

6.4. Special Assessments. In addition to the Regular Assessments provided for above, the Board may levy Special Assessments whenever, in the Board’s sole discretion, such Special Assessments are necessary to enable the Board to carry out the functions of the Community Association under the Documents. The amount of any Special Assessments will be at the sole discretion of the Board. In addition to the Special Assessments authorized above, the Community Association may, in any fiscal year, levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement upon the Common Area or Special Common Area. Any Special Assessment levied by the Community Association for the purpose of defraying, in whole or in part, costs of any construction, reconstruction, repair or replacement of capital improvement upon the Common Area will be levied against all Owners based on Assessment Units (as defined below). Any Special Assessments levied by the Community Association for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any Special Common Area will be levied against all Owners who have been assigned the obligation to pay Special Common Area Assessments based on Assessment Units. All Special Assessments will be due and payable to the Community Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole and absolute discretion.

6.5. Special Common Area Assessments. Prior to the beginning of each fiscal year, the Board will prepare a separate budget estimating the Special Common Area Assessments which will be needed to cover estimated expenses to be incurred by the Community Association to operate, maintain, repair, or manage any Special Common Area (the “**Special Common Area Budget**”). The Special Common Area Budget will be an estimate of the amount needed to operate, maintain, repair and manage such Special Common Area including a reasonable provision for contingencies and an appropriate replacement reserve. The level of Special Common Area Assessments will be set by the Board in its sole and absolute discretion, and the Board’s determination will be final and binding. If the sums collected prove inadequate for any reason, including non-payment of any Assessment by an Owner, the Community Association may at any time, and from time to time, levy further Special Common Area Assessments in the same manner as aforesaid. All such Special Common Area Assessments will be due and payable to the Community Association at the beginning of the fiscal year or during the fiscal year in equal monthly installments on or before the first day of each month, or in such other manner as the Board may designate in its sole discretion.

6.6. Service Area Assessments. Prior to the beginning of each fiscal year, the Board will prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses to be incurred by the Community Association in the coming year. The total amount of Service Area Assessments will be allocated: (a) equally among Lots or Dwelling Units within the Service Area; (b) based on Assessment Units assigned to Lots or Dwelling Units within the Service Area; or (c) based on the benefit received among all Lots and Dwelling Units in the benefited Service Area. All amounts that the Community Association collects as Service Area Assessments will be expended solely for the benefit of the Service Area for which they were collected and will be accounted for separately from the Community Association's general funds.

6.7. Individual Assessments. In addition to any other Assessments, the Board may levy an individual assessment (the "**Individual Assessment**") against an Owner's Lot or Dwelling Unit, which may include, but is not limited to: (a) interest, late charges, and collection costs on delinquent Assessments; (b) reimbursement for costs incurred in bringing an Owner or the Owner's Lot or Dwelling Unit into compliance with the Documents; (c) fines for violations of the Documents; (d) transfer-related fees and resale certificate fees; (e) fees for estoppel letters and project documents; (f) insurance deductibles; (g) reimbursement for damage or waste caused by willful or negligent acts of the Owner, the Owner's guests, invitees or Occupants of the Owner's Lot or Dwelling Unit; (h) common expenses that benefit fewer than all of the Lots or Dwelling Units, which may be assessed according to benefit received; (i) fees or charges levied against the Community Association on a per-Lot or per-Dwelling Unit basis; and (j) "pass through" expenses for services to Lots or Dwelling Units provided through the Community Association which are paid by each Lot or Dwelling Unit according to the benefit received.

6.8. Working Capital Assessment. Each Owner (other than Declarant) will pay a one-time Working Capital Assessment to the Community Association in such amount, if any, as may be determined by Declarant during the Development Period, and by the Board thereafter. The Working Capital Assessment hereunder will be due and payable to the Community Association by the transferee immediately upon each transfer of title to a Development Tract, Lot, or Dwelling Unit, including upon transfer of title from one Owner of such Development Tract, Lot, or Dwelling Unit to any subsequent purchaser or transferee thereof. Such Working Capital Assessment need not be uniform among all Development Tracts, Lots, or Dwelling Units, and Declarant or the Board, as applicable, is expressly authorized to levy Working Capital Assessments of varying amounts depending on the size, use and general character of the Development Tracts, Lots, or Dwelling Units then being made subject to such levy. The Community Association may use the Working Capital Assessments to discharge operating expenses or capital expenses, as determined from time to time by the Board. The levy of any Working Capital Assessment will be effective only upon the Recordation of a written notice, signed by Declarant, or a duly authorized officer of the Board, as applicable, setting forth the amount of the Working Capital Assessment and the Development Tract(s), Lot(s) or Dwelling Unit(s) to which it applies.

Notwithstanding the foregoing provision, the following transfers will not be subject to the Working Capital Assessment: (a) foreclosure of a deed of trust lien, tax lien, or the Community Association's Assessment lien; (b) transfer to, from, or by the Community Association; or (c) voluntary transfer by an Owner to one or more co-Owners, or to the Owner's spouse, child, parent, or trust. In the event of any dispute regarding the application of the Working Capital Assessment to a particular Owner, Declarant during the Development Period, or the Board thereafter, will determine application of an exemption in its sole and absolute discretion. The Working Capital Assessment will be in addition to, and not in lieu of, any other Assessments levied in accordance with this *Article VI* and will not be considered an advance payment of such Assessments. Declarant during the Development Period, and the Board thereafter, will have the power to waive the payment of any Working Capital Assessment attributable to any or all Lots or Dwelling Units by the Recordation of a waiver notice or in the Notice of Annexation, which waiver may be temporary or permanent.

6.9. Amount of Assessment.

(a) Assessments to be Levied. The Board will levy Assessments against each “Assessment Unit” (as described in *Section 6.9(b)* below). Unless otherwise provided in this Community Declaration, Assessments levied pursuant to *Section 6.3* and *Section 6.4* will be levied uniformly against each Assessment Unit. Special Common Area Assessments levied pursuant to *Section 6.5* will be levied uniformly against each Assessment Unit allocated to a Lot or Dwelling Unit that has been assigned the obligation to pay Special Common Area Assessments for specified Special Common Area. Service Area Assessments levied pursuant to *Section 6.6* will be levied either: (i) equally among Lots or Dwelling Units within the Service Area; (ii) based on Assessment Units assigned to Lots or Dwelling Units within the Service Area; or (iii) based on the benefit received among all Lots and Dwelling Units in the Service Area as reasonably determined by the Board.

(b) Assessment Unit. Each Lot and Dwelling Unit will be allocated that number of Assessment Units set forth in the Notice of Annexation attributable to such Lot or Dwelling Unit. Declarant will determine such Assessment Units in its sole and absolute discretion. Declarant’s determination regarding the number of Assessment Units applicable to each Lot or Dwelling Unit will be final, binding and conclusive. A Notice of Annexation may include a provision with an alternative Assessment Unit allocation in the event all or a portion of a Lot is submitted to the condominium form of ownership. Declarant, in its sole and absolute discretion, or the Board, in its sole and absolute discretion, after the expiration or termination of the Development Period, may modify and amend (which modification and amendment may be effected after Declarant’s conveyance of any Lot or Dwelling Unit to any person not affiliated with Declarant) the number of Assessment Units previously assigned to a Lot or Dwelling Unit if the actual use of the Lot or Dwelling Unit or Improvements actually constructed on the Lot or Dwelling Unit differ from the anticipated use of the Lot or Dwelling Unit or Improvements contemplated to be constructed thereon at the time of Recording of the Notice of Annexation. In the event of a modification to the Assessment Units allocated to a Lot or Dwelling Unit, Declarant or the Board, as applicable, will Record an amended Notice of Annexation setting forth the revised allocation of Assessment Units attributable to the Lot or Dwelling Unit.

(c) Assessment Unit Allocation. Declarant, in Declarant’s sole and absolute discretion, may elect to allocate an amount greater or smaller than one Assessment Unit to a Lot (but in no event less than zero). An allocation of an amount greater or smaller than one Assessment Unit to a Lot must be made in a Notice of Annexation. Declarant’s determination regarding the Assessment Units applicable to a Lot pursuant to this *Section 6.9(c)* shall be final, binding and conclusive.

(d) Declarant Exemption. Notwithstanding anything in this Community Declaration to the contrary, no Assessments will be levied upon the Property not within the Development or upon any Lots or Dwelling Units owned by Declarant.

(e) Other Exemptions. Declarant may, in its sole discretion, elect to: (i) exempt any un-platted or unimproved portion of the Development, or any Lot or Dwelling Unit from Assessments; (ii) delay the levy of Assessments against any un-platted, unimproved or improved portion of the Development, or any Lot or Dwelling Unit; or (iii) reduce the levy of Assessments against any un-platted, unimproved or improved portion of the Development, or any Lot or Dwelling Unit. In the event Declarant elects to delay or reduce Assessments pursuant to this *Section 6.9(e)*, the duration of the delay or the amount of the reduction will be set forth in a Recorded written instrument. Declarant may terminate, extend or modify any delay or reduction set forth in a previously Recorded instrument by the Recordation of a replacement instrument. Declarant or the Board may also, in each such party’s discretion, exempt any portion of the Property which is dedicated and accepted by public authority from Assessments.

6.10. Late Charges. If any Assessment is not paid by the due date applicable thereto, the Owner responsible for the payment thereof may be required by the Board, at the Board's election at any time and from time to time, to pay a late charge in such amount as the Board may determine, and the late charge (and any reasonable handling costs) will be a charge upon the Lot or Dwelling Unit owned by such Owner, collectible in the manner as provided for collection of Assessments, including foreclosure of the lien against such Lot or Dwelling Unit; provided, however, such charge will never exceed the maximum charge permitted under Applicable Law.

6.11. Owner's Personal Obligation for Payment of Assessments. Assessments levied as provided for herein will be the personal and individual debt of the Owner of the Lot or Dwelling Unit against which such Assessments are levied. No actions by any Owner shall exempt such Owner from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot or Dwelling Unit will be obligated to pay interest on the amount of the Assessment at the highest rate allowed by Applicable Law (including usury laws) from the due date thereof (or if there is no such highest rate, then at the rate of one and one-half percent per month), together with all costs and expenses of collection, including reasonable attorney's fees.

6.12. Assessment Lien and Foreclosure. The payment of all sums assessed in the manner provided in this *Article VI* is, together with late charges as provided in *Section 6.10* and interest as provided in *Section 6.11* and all costs of collection, including attorney's fees, is secured by the continuing Assessment lien granted to the Community Association pursuant to *Section 6.1(b)* above, and will bind the Owner of such Lot and Dwelling Unit, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien will be superior to all other liens and charges against such Lot or Dwelling Unit, except only for (a) tax or governmental assessment liens; and (b) all sums secured by a Recorded first Mortgage or, to the extent such first Mortgage secures sums borrowed for the acquisition or improvement of the Lot or Dwelling Unit in question. The Community Association will have the power to subordinate the aforesaid Assessment lien to any other lien. Such power will be entirely discretionary with the Board, and such subordination may be signed by an authorized officer of the Community Association or the Manager. The Community Association may, at its option and without prejudice to the priority or enforceability of the Assessment lien granted hereunder, prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot or Dwelling Unit covered by such lien and a description of the Lot or Dwelling Unit. Such notice may be signed by an authorized officer of the Community Association or the Manager and will be Recorded. In accordance with *Section 11.10*, each Owner, by accepting a deed or ownership interest to a Lot or Dwelling Unit subject to this Community Declaration, will be deemed conclusively to have granted a power of sale to the Community Association to secure and enforce the Assessment lien granted hereunder. The Assessment liens and rights to foreclosure thereof will be in addition to and not in substitution of any other rights and remedies the Community Association may have pursuant to Applicable Law and under this Community Declaration, including the rights of the Community Association to institute suit against such Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien. In any foreclosure proceeding, such Owner will be required to pay the costs, expenses and reasonable attorney's fees incurred. The Community Association will have the power to bid (in cash or by credit against the amount secured by the lien) on the Lot or Dwelling Unit at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Community Association will report to said Mortgagee any unpaid Assessments remaining unpaid for longer than 60 days after the same are due. The lien hereunder will not be affected by the sale or transfer of any Lot or Dwelling Unit; except, however, that in the event of foreclosure of any lien superior to the Assessment lien, upon the unappealable ratification of such foreclosure sale, if applicable, the lien for any Assessments that were due and payable before the foreclosure sale will be extinguished, provided that past-due Assessments will be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the first Mortgage. The provisions of the preceding sentence

will not, however, relieve any subsequent Owner (including any Mortgagee or other purchaser at a foreclosure sale) from paying Assessments becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien of the type described in this *Section 6.12*, the Community Association will, following the written request of the Owner, and at such Owner's cost, execute a release of lien relating to any lien for which written notice has been Recorded as provided above, except in circumstances in which the Community Association has already foreclosed such lien. Such release may be signed by an authorized officer of the Community Association or the Manager and Recorded. Unless otherwise prohibited by Applicable Law, in addition to the lien hereby retained, in the event of nonpayment by any Owner of any Assessment and after the lapse of at least 12 days since such payment was due, the Community Association may, upon five days' prior written notice (which may run concurrently with such 12-day period) to such Owner, in addition to all other rights and remedies available pursuant to Applicable Law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any utility or cable services, provided through the Community Association and not paid for directly by an Owner or Occupant to the utility or service provider. Such notice will consist of a separate mailing or hand delivery at least ten days prior to a stated date of disconnection, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner or the Occupant can make arrangements for payment of the bill and for reconnection of service. Any utility or cable service will not be disconnected or terminated on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services. Except as otherwise provided by Applicable Law, the sale or transfer of a Lot or Dwelling Unit will not relieve the Owner of such Lot or Dwelling Unit or such Owner's transferee from liability for any Assessments thereafter becoming due or from the lien associated therewith. If an Owner conveys its Lot or Dwelling Unit and on the date of such conveyance Assessments against the Lot or Dwelling Unit remain unpaid, or said Owner owes other sums or fees under this Community Declaration to the Community Association, the Owner will pay such amounts to the Community Association out of the sales proceeds of the Lot or Dwelling Unit, and such sums will be paid in preference to any other charges against the Lot or Dwelling Unit other than the first Mortgage and charges in favor of the State of Utah or a political subdivision thereof for taxes on the Lot or Dwelling Unit which are due and unpaid. The Owner conveying such Lot or Dwelling Unit will remain personally liable for all such sums until the same are fully paid, regardless of whether the transferee of the Lot or Dwelling Unit also assumes the obligation to pay such amounts.

(a) Reinvestment Fee. Each purchaser of a Lot or Residence within the Development, other than a purchaser initially purchasing a Lot or Residence directly from Declarant, shall pay to the Community Association at closing a Reinvestment Fee immediately upon becoming the Owner of the Lot or Residence in such amount as is established from time to time by Declarant or the Board, subject to applicable law, including Utah Code Ann. § 57-1-46. The purpose of the Reinvestment Fee is for the payment of Community Expenses and reserves, payment for common planning, facilities, infrastructure, obligations arising from an environmental covenant, community programming, resort facilities, open space, recreation amenities, charitable purposes, and any other authorized use of such funds under the Utah Community Association Act. Currently, the Reinvestment Fee is equivalent to three (3) months of the then current Assessments for such Lot or Residence (unless otherwise determined by the Board). In no event shall the Reinvestment Fee exceed the maximum amount permitted by applicable law, including Utah Code Annotated § 57-1-46. Nothing in this Section shall be interpreted as a restriction, limitation, or cap on the amount of Assessments that may be levied by the Community Association. Should the amount of three (3) months of Assessments ever exceed the reinvestment fee amount permitted by applicable law, the Reinvestment Fee will automatically be reduced to the maximum amount permitted by applicable law. Declarant or the Board shall have the right to collect and enforce the payment of the Reinvestment Fee in the same manner as enforcement and collection of delinquent Assessments as further described in this Declaration. In the event that the Reinvestment Fee is not paid at closing to the Community Association, then Declarant or the Board shall have the right to impose a charge against the new Owner of the Lot or Residence in an amount as determined by the Board from time to time in its sole and subjective discretion.

In accordance with Utah Code Ann. §57-1-46(10), before imposition of the Reinvestment Fee, a majority of voting interests in the Community Association must approve the Reinvestment Fee. After a vote approving the Reinvestment Fee, the Community Association may set the amount of the Reinvestment Fee in accordance with this Section 6.15; and upon providing notice in accordance with Utah Code Ann. § 57-8a-214. Members of the Community Association may remove or amend the Reinvestment Fee by holding a vote at a special meeting: (a) called by the Members for the purpose of removing or amending the Reinvestment Fee; and (b) at which: (i) at least 51% of the voting interests attend and vote; and (ii) a majority of the voting interests that attend vote to remove or amend the Reinvestment Fee.

(b) **Transfer Fee.** Each purchaser of a Lot or Residence within the Development, other than a purchaser initially purchasing a Lot or Residence directly from Declarant, shall pay to the Community Association at closing a Transfer Fee immediately upon becoming the Owner of the Lot or Residence in such amount as is established from time to time by Declarant or the Board, subject to applicable law, including Utah Code Ann. § 57-1-46(9). The purpose of the Transfer Fee is to reimburse the Community Association for costs incurred by the Community Association in connection with transfer of title to such new Owner and any other authorized use of such funds. In no event shall the Transfer Fee exceed the maximum amount permitted by applicable law, including Utah Code Annotated §57-1-46. Nothing in this Section shall be interpreted as a restriction, limitation, or cap on the amount of Assessments that may be levied by the Community Association. Declarant or the Board shall have the right to collect and enforce the payment of the Transfer Fee in the same manner as enforcement and collection of delinquent Assessments as further described in this Declaration. In the event that the Transfer Fee is not paid at closing to the Community Association, then Declarant or the Board shall have the right to impose a charge against the new Owner of the Lot or Residence in an amount as determined by the Board from time to time in its sole and subjective discretion.

6.13. Exempt Property. The following areas within the Development will be exempt from the Assessments provided for in this *Article VI*:

- (a) All area dedicated and accepted by a District or other public authority or governmental or quasi-governmental entity;
- (b) The Common Areas and the Special Common Areas; and
- (c) Any portion of the Development owned by Declarant.

No portion of the Property will be subject to the terms and provisions of this Community Declaration, and no portion of the Property (or any owner thereof) will be obligated to pay Assessments hereunder unless and until such Property has been made subject to the terms of this Community Declaration by the Recording of a Notice of Annexation in accordance with *Section 10.5* below.

6.14. Fines and Damages Assessment.

(a) **Board Assessment.** The Board may assess fines against an Owner for violations of the Documents by an Owner, an Occupant, or an Owner's or Occupant's guests, agents or invitees, pursuant to a fine and enforcement policy adopted by the Board and as the Board, in its discretion, may revise from time to time. Any fine and/or charge for damage levied in accordance with this *Section 6.14* shall be considered an Individual Assessment pursuant to this Community Declaration. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owner. The Board may assess damage charges against an Owner for pecuniary loss to the Community Association from property damage or destruction of Common Area, Special Common Area, Service Area, or any Improvements caused by the Owner, Occupant, or the Owner's or Occupant's guests, agents, or invitees.

The Manager shall have authority to send notices to Owners, informing them of the alleged violations and asking such Owners to comply with the Documents, and/or informing such Owners of potential or probable fines or damage Assessments. The Board may from time to time adopt a schedule of fines.

(b) Lien Created. The payment of each fine and/or damage charge levied by the Board against an Owner is, together with interest as provided in *Section 6.11* hereof and all costs of collection, including attorney's fees as herein provided, secured by the lien granted to the Community Association pursuant to *Section 6.1(b)* of this Community Declaration. Unless otherwise provided in this *Section 6.14*, the fine and/or damage charge shall be considered an Assessment for the purpose of this *Article VI* and will be enforced in accordance with the terms and provisions governing the enforcement of Assessments pursuant to this *Article VI*.

ARTICLE VII

ARCHITECTURAL CONTROL REVIEWER

7.1. Architectural Control By Declarant. During the Development Period, the Community Association, the Board, any committee appointed by the Community Association or Board (no matter how the committee is named) or any other Person, shall have no power or authority, and shall not otherwise be permitted under the Documents, to involve itself with the approval of any Improvements. Until expiration of the Development Period, the Architectural Control Reviewer is Declarant or its designee. No Improvements constructed or caused to be constructed by Declarant will be subject to the terms and provisions of this *Article VII* and will not be required to be approved by the Architectural Control Reviewer.

(a) Declarant's Rights Reserved. Each Owner, in accordance with Section 11.10, by accepting an interest in or title to a Lot or Dwelling Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that during the Development Period no Improvements will be started or progressed without the prior written approval of Declarant, which approval may be granted or withheld in Declarant's sole discretion. In reviewing and acting upon an application for approval, Declarant may act solely in its self-interest and owes no duty to any other Person. .

(b) Delegation by Declarant. During the Development Period, Declarant may, from time to time, but is not obligated to, designate one or more persons to act on its behalf to review and respond to applications and may delegate all or a portion of its reserved rights under this *Article VII* to an architectural control committee appointed by the Board or a committee comprised of architects, engineers, or other persons who may or may not be Owners. Any such delegation must be in writing and must specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant to: (i) revoke such delegation at any time and reassume jurisdiction over the matters previously delegated; and (ii) veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason. Declarant is not responsible for: (i) errors in or omissions from the plans and specifications submitted to Declarant; (ii) supervising construction for the Owner's compliance with approved plans and specifications; or (iii) the compliance of the Owner's plans and specifications with Applicable Law.

7.2. Architectural Control by Association. Unless and until such time as Declarant delegates all or a portion of its reserved rights to the Board, or the Development Period is terminated or expires, the Community Association has no jurisdiction over architectural matters. On termination or expiration of the Development Period, or earlier if delegated in writing by Declarant, the Community Association, acting through an architectural control committee (the "ACC") will assume jurisdiction over architectural control and will have the powers of the Architectural Control Reviewer hereunder.

(a) ACC. The ACC will consist of at least three individuals appointed by the Board. Members of the ACC serve at the pleasure of the Board and may be removed and replaced at the Board's discretion. At the Board's option, the Board may act as the ACC, in which case all references in the Documents to the ACC will be construed to mean the Board. Members of the ACC need not be Owners or Occupants, and may but need not include architects, engineers, and design professionals whose compensation, if any, may be established from time to time by the Board.

(b) Limits on Liability. The ACC has sole discretion with respect to taste, design, and all standards specified in this *Article VII*. The members of the ACC have no liability for the ACC's decisions made in good faith, and which are not arbitrary or capricious. The ACC is not responsible for: (i) errors in or omissions from the plans and specifications submitted to the ACC; (ii) supervising construction for the Owner's compliance with approved plans and specifications; or (iii) the compliance of the Owner's plans and specifications with Applicable Law.

(c) Release. EACH OWNER, IN ACCORDANCE WITH SECTION 11.10, BY ACCEPTING TITLE TO ALL OR ANY PORTION OF THE DEVELOPMENT, HEREBY RELEASES AND HOLDS HARMLESS DECLARANT AND ITS AFFILIATES, THE ARCHITECTURAL CONTROL REVIEWER, THE ASSOCIATION AND THEIR RESPECTIVE OFFICERS, DIRECTORS, COMMITTEE MEMBERS, PARTNERS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ARCHITECTURAL CONTROL REVIEWER'S ACTS OR ACTIVITIES UNDER THIS COMMUNITY DECLARATION.

7.3. Prohibition of Construction, Alteration and Improvement.

(a) Construction of Improvements. No Improvements shall be constructed on any portion of the Development, and no addition, alteration, improvement, installation, modification, re-decoration, or reconstruction thereof may occur, unless approved in advance and in writing by the Architectural Control Reviewer. The Architectural Control Reviewer has the right, but not the duty, to evaluate every aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of the Development.

(b) Improvements Not Within Ordinary Public View. Notwithstanding anything to the contrary as set forth above, unless otherwise provided in the Design Guidelines, an Owner shall have the right without approval by the Architectural Control Reviewer to modify, alter, repair, decorate, redecorate, or improve the interior of any Improvement located on such Owner's Lot or within such Owner's Dwelling Unit, provided that such Improvements and activities are not within Ordinary Public View.

(c) Preliminary Regulatory Approval. If an Owner is required to obtain and is granted a Preliminary Regulatory Approval pursuant to *Section 2.1(c)* above, no Improvements may be constructed in accordance with any permit or approval otherwise granted by the applicable regulatory authority until the Owner has submitted to the Architectural Control Committee a copy of the Regulatory Submission Items approved by the regulatory authority, and the Architectural Control Committee issues a written notice to proceed in compliance with such approval.

7.4. Architectural Approval.

(a) Submission and Approval of Plans and Specifications. Construction plans and specifications or, when an Owner desires solely to plat, re-subdivide or consolidate Lots or Dwelling Units, a proposal for such plat, re-subdivision or consolidation, will be submitted in accordance with the Design Guidelines, if any, or any additional rules adopted by the Architectural Control Reviewer together with any

review fee which is imposed by the Architectural Control Reviewer in accordance with *Section 7.4(b)*. No plat, re-subdivision or consolidation will be made, nor any Improvement placed or allowed on any Lot or Dwelling Unit, until the plans and specifications and the contractor or builder which the Owner intends to use to construct the proposed Improvement have been approved in writing by the Architectural Control Reviewer. The Architectural Control Reviewer reserves the right to adopt preconditions or requirements for the approval of contractors or builders proposed by the Owner to construct such Improvements. The Architectural Control Reviewer may, in reviewing such plans and specifications, consider any information that it deems proper; including any permits, environmental impact statements or percolation tests that may be required by the Architectural Control Reviewer or any other entity; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished grade elevation. The Architectural Control Reviewer may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the Architectural Control Reviewer, in its sole discretion, may require. Site plans must be approved by the Architectural Control Reviewer prior to the clearing of any Lot, or the construction of any Improvements. The Architectural Control Reviewer may refuse to approve plans and specifications for proposed Improvements, or for the plat, re-subdivision or consolidation of any Lot or Dwelling Unit on any grounds that, in the sole and absolute discretion of the Architectural Control Reviewer, are deemed sufficient, including, but not limited to, purely aesthetic grounds. Notwithstanding any provision to the contrary in this Community Declaration, the Architectural Control Reviewer may issue an approval to a Homebuilder or a Residential Developer for the construction of Improvements based upon the review and approval of plan types and adopt a procedure which differs from the procedures for review and approval otherwise set forth in this Community Declaration.

(b) Design Guidelines. Declarant will have no obligation to establish Design Guidelines for the Development, or any portion thereof. If adopted, however, the Architectural Control Reviewer will have the power, from time to time, to adopt, amend, modify, or supplement the Design Guidelines which may apply to all or any portion of the Development; provided, however, that Declarant shall not amend the Design Guidelines or adopt additional written design guidelines applying to the Development or any portion thereof, if such action, if taken, would cause a Material Adverse Effect upon all or any portion of the Development without the signed written consent of the affected Owner(s) thereof, which consent shall not be unreasonably withheld, conditioned or delayed. In the event of any conflict between the terms and provisions of the Design Guidelines and the terms and provisions of this Community Declaration, the terms and provisions of this Community Declaration will control. In addition, the Architectural Control Reviewer will have the power and authority to impose a fee, in such amount as may be established by the Architectural Control Reviewer from time to time, for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Community Declaration. Such charges will be held by Architectural Control Reviewer and used to defray the administrative expenses and any other costs incurred by the Architectural Control Reviewer in performing its duties hereunder; provided, however, that any excess funds held by the Architectural Control Reviewer will be distributed to the Community Association at the end of each calendar year. The Architectural Control Reviewer will not be required to review any plans until a complete submittal package, as required by this Community Declaration and the Design Guidelines, is assembled and submitted to the Architectural Control Reviewer. The Architectural Control Reviewer will have the authority to adopt such additional or alternate procedural and substantive rules and guidelines not in conflict with this Community Declaration (including the imposition of any requirements for a compliance deposit, certificates of compliance or completion relating to any Improvement, and the right to approve in advance any contractor selected for the construction of Improvements), as it may deem necessary or appropriate in connection with the performance of its duties hereunder.

(c) Failure to Act. In the event that any plans and specifications are submitted to the Architectural Control Reviewer as provided herein, and the Architectural Control Reviewer fails to either

approve or reject such plans and specifications for a period of 60 days following such submission, the plans and specifications will be deemed disapproved.

(d) Variances. The Architectural Control Reviewer, in its sole and absolute discretion, may grant variances from compliance with any of the provisions of the Documents pertaining to the size, appearance, height, square footage, location or any other physical feature of any Improvements. All variances must be evidenced in writing and, if Declarant has assigned its rights to the ACC, must be approved by Declarant until expiration or termination of the Development Period, and thereafter by a Majority of the Board, and a Majority of the members of the ACC. If a variance is granted pursuant to the provisions of this *Section 7.4(d)*, no violation of any of the provisions of the Documents will be deemed to have occurred with respect to the Improvements for which the variance is granted. The granting of such variance will not operate to waive or amend any of the terms and provisions of the Documents for any purpose, except as to the particular Lot or Dwelling Unit, or portion thereof, or Improvement thereon or therein, and in the particular instance covered by the variance, and such variance will not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions of the Documents.

(e) Duration of Approval. The approval of the Architectural Control Reviewer of any final plans and specifications, and any variances granted by the Architectural Control Reviewer will be valid for a period of 180 days only. If construction in accordance with such plans and specifications or variance is not commenced within such 180-day period and diligently prosecuted to completion thereafter, the Owner will be required to resubmit such final plans and specifications or request for a variance to the Architectural Control Reviewer, and the Architectural Control Reviewer will have the authority to re-evaluate such plans and specifications in accordance with this *Section 7.4(e)* and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

(f) No Waiver of Future Approvals. The approval of the Architectural Control Reviewer to any plans or specifications for any work done or proposed in connection with any matter requiring the approval or consent of the Architectural Control Reviewer will not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications on any other matter, subsequently or additionally submitted for approval by the same or a different person, nor will such approval or consent be deemed to establish a precedent for future approvals by the Architectural Control Reviewer.

(g) Non-Liability of Architectural Control Reviewer. NEITHER DECLARANT, THE BOARD NOR THE ARCHITECTURAL CONTROL REVIEWER WILL BE LIABLE TO ANY OWNER OR TO ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR INJURY ARISING OUT OF THE PERFORMANCE OF THE ARCHITECTURAL CONTROL REVIEWER'S DUTIES UNDER THIS COMMUNITY DECLARATION.

ARTICLE VIII

MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots or Dwelling Units within the Development. The provisions of this *Article VIII* apply to this Community Declaration and the Bylaws of the Community Association.

8.1. Notice of Action. An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Community Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot or Dwelling Unit to which its Mortgage

relates (thereby becoming an “**Eligible Mortgage Holder**”)), will be entitled to timely written notice from the Community Association or the Manager of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Development or which affects any Lot or Dwelling Unit on which there is a Mortgage held, insured, or guaranteed by an Eligible Mortgage Holder;

(b) Any delinquency in the payment of assessments or charges owed for a Lot or Dwelling Unit subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Documents relating to such Lot or Dwelling Unit or the Owner or Occupant which is not cured within 60 days after notice by the Community Association to the Owner of such violation; or

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Community Association with respect to any Common Area, Special Common Area or Service Area that benefits the Lot or Dwelling Unit encumbered by the Mortgage held by the Eligible Mortgage Holder.

8.2. Examination of Books. The Community Association will permit Mortgagees to examine the books and records of the Community Association upon advance written notice pursuant to the procedures described in the Bylaws for Owners , at the Community Association’s main business office, during normal business hours.

8.3. Taxes, Assessments and Charges. All taxes, assessments and charges that may become liens prior to first lien Mortgages under Applicable Law will relate only to the individual Lots or Dwelling Units and not to any other portion of the Development.

ARTICLE IX **EASEMENTS**

9.1. Reserved Easements. All dedications, limitations, restrictions and reservations shown on any Plat and all grants and dedications of easements, rights-of-way, restrictions and related rights made by Declarant or any third party prior to any portion of the Property becoming subject to this Community Declaration are incorporated herein by reference and made a part of this Community Declaration for all purposes as if fully set forth herein, and will be construed as being adopted in each and every contract, deed or conveyance of any portion of the Development executed or to be executed by or on behalf of Declarant. Declarant reserves the right to relocate, make changes in, and additions to said easements, rights-of-way, dedications, limitations, reservations and grants for the purpose of developing the Property and the Development; provided, however, that Declarant shall not relocate, change or add to such easements, rights-of-way, dedications, limitations, reservations and grants if such action, if taken, would, in Declarant’s discretion, cause a Material Adverse Effect upon all or any portion the Development, without the signed written consent of the affected Owner(s) thereof, which consent shall not be unreasonably withheld, conditioned or delayed.

9.2. Common Area or Special Common Area Right of Ingress and Egress. Declarant, its agents, employees, successors and designees will have a right of ingress and egress over and the right of access to the Common Area or Special Common Area to the extent necessary to use the Common Area or Special Common Area and the right to such other temporary uses of the Common Area or Special Common Area as may be required or reasonably desirable (as determined by Declarant in its sole discretion) in connection with construction and development of the Property or the Development.

9.3. Bulk Rate Services; Community Services and Systems Easement. The Unimproved Portion of the Development shall be subject to a perpetual nonexclusive easement for the installation, maintenance and repair, including the right to read meters, service or repair lines and equipment, and to do everything and anything necessary to properly install, provide, maintain and furnish Community Services and Systems and the facilities pertinent and necessary to the same, and provide and maintain services available through any Bulk Rate Contract, which easement shall run in favor of Declarant and the Community Association.

9.4. Roadway and Utility Easements. Declarant hereby reserves for itself and the Community Association, as well as its successors and assigns, a perpetual, nonexclusive easement over and across the Unimproved Portion of the Development for: (a) the installation, operation and maintenance of utilities and associated infrastructure to serve the Development, the Property, and any other property owned by Declarant; (b) the installation, operation and maintenance of cable lines and associated infrastructure for sending and receiving data and/or other electronic signals, security and similar services to serve the Development, the Property, and any other property owned by Declarant; (c) the installation, operation and maintenance of, walkways, pathways and trails, drainage systems, street lights and signage to serve the Development, the Property, and any other property owned by Declarant; and (d) the installation, location, relocation, construction, erection and maintenance of any streets, roadways, or other areas to serve the Development, the Property, and any other property owned by Declarant. Declarant will be entitled to unilaterally assign the easements reserved hereunder to any third party who owns, operates or maintains the facilities and Improvements described in (a) through (d) of this *Section 9.4*. In addition, Declarant may designate all or any portion of the easements or facilities constructed therein as Common Area, Special Common Area, or a Service Area.

9.5. Subdivision Entry and Fencing Easement. Declarant reserves for itself, the Community Association, and their respective successors and assigns a perpetual, nonexclusive easement over and across the Unimproved Portion of the Development for the installation, maintenance, repair or replacement of fencing and subdivision entry facilities which serve the Development, the Property, and any other property owned by Declarant. Declarant will have the right, from time to time, to Record a written notice which identifies the fencing and/or subdivision entry facilities to which the easement reserved hereunder applies. Declarant may designate all or any portion of the fencing and/or subdivision entry facilities as Common Area, Special Common Area, or a Service Area.

9.6. Landscape, Monumentation and Signage Easement. Declarant reserves for itself, the Community Association, and their respective successors and assigns a perpetual, nonexclusive easement over and across the Unimproved Portion of the Development for the installation, maintenance, repair or replacement of landscaping, monumentation and signage which serves the Development, the Property, and any other property owned by Declarant. Declarant will have the right, from time to time, to Record a written notice which identifies the landscaping, monumentation, or signage to which the easement reserved hereunder applies. Declarant may designate all or any portion of the landscaping, monumentation, or signage as Common Area, Special Common Area, or a Service Area.

9.7. Easement for Special Events. Declarant reserves for itself and the Community Association, and their respective successors, assigns, and designees, a perpetual, nonexclusive easement over the Common Area and Special Common Area, for the purpose of conducting educational, cultural, artistic, musical and entertainment activities, and other activities of general community interest at such locations and times as Declarant or the Community Association, in their reasonable discretion, deem appropriate. Members of the public may have access to such events as Declarant or the Community Association shall determine. Each Owner, by accepting a deed or other instrument conveying any interest in a Lot or Dwelling Unit subject to this Community Declaration acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related

inconveniences, and each Owner agrees on behalf of itself and any Occupants to take no action, legal or otherwise, which would interfere with the exercise of such easement.

9.8. Drainage, Detention and Water Quality Facilities Easement. Portions of the Development may include one or more water quality facilities, sedimentation, drainage and detention facilities, or ponds or related improvements, which serve all or a portion of the Development, the Property, or additional land (collectively, the “**Facilities**”). Declarant hereby reserves, for itself and the Community Association, and their respective successors, assigns, and designees, a perpetual, nonexclusive easement over and across the Unimproved Portion of the Development for the installation, maintenance, repair, or replacement of the Facilities (the “**Facilities Easement**”). Declarant may designate all or any portion of the Facilities as Common Area or Special Common Area by Recording a written notice identifying the particular Facilities and shall describe the Facilities Easement reserved herein. Declarant may also dedicate all or a portion of the Facilities to the County or to a District or other governmental or quasi-governmental authority (which may include a designation of or retention of maintenance responsibilities to or by the Community Association), or convey or transfer or cause to be conveyed or transferred all or any portion of the Facilities to the Community Association to be maintained or and otherwise held as Common Area, Special Common Area, or a Service Area for the benefit of the Development and/or the Owners. If the Facilities are designated, dedicated, or conveyed or transferred, or if maintenance responsibility is reserved for or by the Community Association, the Community Association shall maintain and operate the Facilities in accordance with the Documents, Applicable Law and, if applicable, in accordance with any requirements of the County, any applicable District or other governmental or quasi-governmental authority to which the Facilities have been dedicated.

9.9. View Impairment. Declarant, the Architectural Control Reviewer, the ACC, and the Community Association do not guarantee or represent that any view over and across the Lots, Dwelling Units, Common Area, Special Common Area, or any open space within the Development, will be preserved without impairment. Declarant, the Architectural Control Reviewer, the ACC, and the Community Association shall have no obligation to relocate, prune, or thin trees or other landscaping. The Community Association will have the right to add trees and other landscaping to any Common Area or Special Common Area from time to time, subject to Applicable Law. There shall be no express or implied easements for view purposes or for the passage of light and air.

9.10. Safety and Security. In accordance with Section 11.10, each Owner and Occupant of a Lot or Dwelling Unit, covenants, agrees and acknowledges that such Owner or Occupant and such Owner's or Occupant's guests and invitees, shall be responsible for their own personal safety and the security of their property in the Development. The Community Association may, but shall not be obligated to, maintain or support certain activities within the Development designed to promote or enhance the level of safety or security which such persons provide for themselves and their property. However, neither the Community Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Development, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made by the Community Association or Declarant that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to the Development, cannot be compromised or circumvented; or that any such system or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. In accordance with Section 11.10, each Owner acknowledges, understands, and shall be responsible for informing all Occupants of such Owner's Lot or Dwelling Unit, that the Community Association, the s Board and its committees, and Declarant, are not insurers or guarantors of security or safety and that each person within the Development assumes all risks of personal injury and loss or damage to property, including any Improvements constructed upon any Lot or Dwelling Unit and the contents thereof, resulting from acts of third parties.

9.11. Public Use Improvements. Certain Improvements, physical assets, and areas within the Development may be open for the use and enjoyment of the public and may include, by way of example, restaurants, trails and paths, parks, roads, sidewalks, and medians, as determined by Declarant or the Community Association.

9.12. Stormwater Runoff. From time to time, Declarant may grant easements over and across the Unimproved Portion of the Development to a District, the County and/or one or more Owners for the inspection, monitoring, operation, maintenance, replacement, upgrade, or repair of the Facilities or certain other drainage facilities that may be constructed in order to convey and receive stormwater runoff from and to the Property. From time to time, Declarant may impress upon over and across the Unimproved Portion of the Development, the Property, and any other property owned by Declarant, additional easements for the inspection, monitoring, operation, maintenance, replacement, upgrade, or repair of other drainage facilities that convey and receive stormwater runoff from and to the Development, the Property, and any other property owned by Declarant, as set forth in one or more declarations, agreements, or other Recorded written instruments.

9.13. Cellular Tower and Telecommunications Easement. Declarant hereby establishes, declares, and reserves for itself and its assigns, an exclusive, perpetual and irrevocable easement, license and right to use any portion of the Common Area or Special Common Area, or any Unimproved Portion of the Development or any portion of the Property which Declarant intends to designate as Common Area or Special Common Area (the "**CTT Easement Area**") for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation of CTT Equipment. Declarant or its assignee will have the right, from time to time, but without any obligation, to Record a written notice which identifies the portion of the Common Area or Special Common Area to which the CTT Easement Area pertains, and Declarant, or its assignee, may fence, install landscaping, or otherwise install Improvements restricting access to the CTT Easement Area identified in such Recorded instrument. Neither the Community Association, nor any Owner other than Declarant or its assignee hereunder, may use the CTT Easement Area in any manner which interferes with operation of the CTT Equipment. Declarant hereby reserves for itself and its assigns the right to use, sell, lease or assign all or any portion of the CTT Easement Area, for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation of the CTT Equipment. In addition, Declarant hereby reserves for itself and its assigns a nonexclusive, perpetual and irrevocable easement over the Unimproved Portion of the Development for access to and from the CTT Easement Area and to construct, install, use, maintain, repair, replace, improve, remove, and operate, or allow others to do the same, any utility lines servicing the CTT Equipment. Declarant also reserves for itself and its assigns the right to select and contract with any third party for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation of the CTT Equipment and to provide any telecommunication, cellular, video or digital service associated therewith. Declarant shall have and hereby reserves for itself and its assigns the sole and exclusive right to collect and retain any and all income and/or proceeds received from or in connection with use or services provided by the CTT Equipment and the rights described in this *Section 9.14*. The rights reserved to Declarant under this *Section 9.14* shall benefit only Declarant and its assigns, and no other Owner or successor-in-title to any portion of the Property or the Development shall have any rights to income derived from or in connection with the rights and easements granted in this *Section 9.14*, except as expressly approved in writing by Declarant. **IN ACCORDANCE WITH SECTION 11.10, EACH OWNER AND OCCUPANT HEREBY RELEASES AND HOLDS HARMLESS DECLARANT AND ITS ASSIGNS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF ANY ACTS, ACTIONS OR ACTIVITIES PERMITTED BY DECLARANT OR ITS ASSIGNS UNDER THIS SECTION 9.14 (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF GROSS**

NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE. The provisions of this *Section 9.14* shall not be amended without the written and acknowledged consent of Declarant or the assignee of all or any portion of Declarant's rights hereunder.

9.14. Easement to Inspect and Right to Correct. For a period of ten years after the expiration of the Development Period, Declarant reserves for itself and for Declarant's architect, engineer, other design professionals, builder and general contractor the right, but not the duty, to inspect, monitor, test, redesign, correct and relocate any structure, Improvement or condition that may exist on any portion of the Development, including the Lots and Dwelling Units, and a perpetual nonexclusive easement of access throughout the Development to the extent reasonably necessary to exercise this right. The party exercising such rights will promptly repair, at its sole expense, any damage resulting from the exercise of this right. By way of illustration but not limitation, relocation of mechanical or electrical facilities may be warranted by a change of circumstance, imprecise siting of the original facilities, or the desire or necessity to comply more fully with Applicable Law. This *Section 9.14* may not be construed to create a duty for Declarant, the Community Association, or any architect, engineer, other design professionals, builder or general contractor, and may not be amended without Declarant's advanced written consent. In support of this reservation, each Owner, by accepting an interest in or title to a Lot or Dwelling Unit, hereby grants to Declarant an easement of access and entry over, across, under, and through the Development, including all Common Areas, Special Common Areas, and the Owner's Lot or Dwelling Unit, and all Improvements thereon for the purposes contained in this *Section 9.14*.

ARTICLE X

DEVELOPMENT RIGHTS

10.1. Development. It is contemplated that the Development will be developed pursuant to a plan, which may, from time to time, be amended or modified by Declarant in its sole and absolute discretion. Declarant reserves the right, but will not be obligated, to designate Development Tracts, and to create and/or designate Lots, Dwelling Units, Voting Groups, Common Area, Special Common Area, and Service Areas and to subdivide all or any portion of the Development or Property. As each area of the Development is conveyed, developed or dedicated, Declarant may Record one or more Development Tract Declarations and designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate, in its sole and absolute discretion, for each area. Any Development Tract Declaration may provide its own procedure for the amendment thereof.

10.2. Special Declarant Rights. Notwithstanding any provision of this Community Declaration to the contrary, at all times, Declarant will have the right and privilege: (a) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots and Dwelling Units in the Development; (b) to maintain Improvements upon Lots, Dwelling Units, Common Area, or Special Common Area as sales, model, management, business and/or construction offices; and (c) to maintain and locate construction trailers and construction tools and equipment within the Development. In accordance with Section 11.10, each Owner and Occupant covenants, agrees and acknowledges that the construction, placement or maintenance of Improvements by Declarant will not be considered a nuisance.

10.3. Addition of Land. Declarant may, at any time and from time to time, add additional land to the Property and, upon the Recording of a notice of addition of land (as set forth below), such land will be considered part of the Property for purposes of this Community Declaration, and upon the further Recording of a Notice of Annexation meeting the requirements of *Section 10.5* below, such added land will be considered part of the Development and be subject to this Community Declaration, and the rights,

privileges, duties and liabilities of the persons subject to this Community Declaration will be the same with respect to such added land as with respect to the land originally covered by this Community Declaration. Such added land need not be contiguous to the Property. To add land to the Property, Declarant must Record a notice of addition of land (which notice may be contained within any Notice of Annexation or Development Tract Declaration affecting such land) containing the following provisions:

(a) A reference to this Community Declaration, which reference will state the document number or volume and page wherein this Community Declaration is Recorded;

(b) A statement that such land will be considered Property for purposes of this Community Declaration, and that upon the further Recording of a Notice of Annexation meeting the requirements of *Section 10.5* of this Community Declaration, all of the terms, covenants, conditions, restrictions and obligations of this Community Declaration will apply to the added land; and

(c) A legal description of the added land.

10.4. Withdrawal of Land. Prior to the conveyance of such portion of the Development to any other Person, Declarant may, at any time and from time to time, reduce or withdraw land from the Development and remove and exclude from the burden of this Community Declaration any portion of the Development by the Recording of an instrument which strictly complies with the provisions set forth in this *Section 10.4*. Upon any such withdrawal, the covenants, conditions, restrictions and obligations set forth in this Community Declaration will no longer apply to the portion of the Development withdrawn. To withdraw land from this Community Declaration, until expiration or termination of the Development Period, Declarant will be required to Record a notice of withdrawal which:

(a) has been executed and acknowledged by:

(i) Declarant alone, so long as Declarant owns the entire Development or the withdrawal is so minor in nature, in Declarant's sole discretion, as to have no Material Adverse Effect upon all or any portion of the Development or Owner thereof; or

(ii) Declarant and two authorized officers of the Community Association certifying that such reduction or withdrawal of the Development Tract has been approved by Declarant and Members entitled to cast at least 67% of the total number of votes allocated to the Development Tract; and

(b) contains a reference to this Community Declaration, which will include the Recordation information thereof; and

(c) contains a statement that the provisions of this Community Declaration will no longer apply to the withdrawn land; and

(d) sets forth a legal description of the withdrawn land.

10.5. Notice of Annexation. Upon Recording, this Community Declaration serves to provide notice that at any time, and from time to time, Declarant, and Declarant only, may subject all or any portion of the Property to the terms, covenants, conditions, restrictions and obligations of this Community Declaration and any applicable Development Tract Declaration. This Community Declaration and any applicable Development Tract Declaration will apply to and burden a portion or portions of the Property upon the Recording of a Notice of Annexation describing such applicable Property and expressly providing that such Property will be considered a part of the Development and will be subject to the terms, covenants

conditions, restrictions and obligations of this Community Declaration and any applicable Development Tract Declaration.

To be effective, a Notice of Annexation must be executed by Declarant, and the portion of the Property included in the Notice of Annexation need not be owned by Declarant. The Notice of Annexation may include a description of any Special Common Area or Service Area benefitting such portion of the Property added to this Community Declaration and any beneficiaries thereof. Declarant may also cause a Notice of Annexation to be Recorded covering a portion of the Property for the purpose of encumbering such Property with any Development Tract Declaration previously Recorded by Declarant (which Notice of Annexation may amend, modify or supplement the restrictions, set forth in the Development Tract Declaration, which will apply to such Property). Furthermore, a Notice of Annexation may identify certain Common Areas on a Plat and designate the Community Association as the entity responsible for the maintenance of such Common Areas as of the date of Recordation. To make the terms and provisions of this Community Declaration applicable to a portion of the Property, Declarant must Record a Notice of Annexation containing the following provisions:

(a) A reference to this Community Declaration, which reference will state the document number or volume and page number wherein this Community Declaration is Recorded;

(b) If applicable, a reference to the Recorded Development Tract Declaration applicable to such portion of the Property (with any amendment, modification, or supplementation of the restrictions set forth in the Development Tract Declaration which will apply to such portion of the Property);

(c) A statement that all of the provisions of this Community Declaration will apply to such portion of the Property;

(d) A legal description of such portion of the Property;

(e) If applicable, a description of any Special Common Area or Service Area which benefits such portion of the Property, and the beneficiaries of such Special Common Area or Service Area; and

(f) If applicable, an identification of any Common Areas set forth on a Plat and a designation of the Community Association as the entity responsible for the maintenance thereof.

NOTICE TO TITLE COMPANY

NO PORTION OF THE PROPERTY IS SUBJECT TO THE TERMS AND PROVISIONS OF THIS COMMUNITY DECLARATION AND THIS COMMUNITY DECLARATION DOES NOT BURDEN ANY PORTION OF THE PROPERTY UNLESS AND UNTIL A NOTICE OF ANNEXATION DESCRIBING SUCH PROPERTY AND REFERENCING THIS COMMUNITY DECLARATION HAS BEEN RECORDED. NOTWITHSTANDING THE FOREGOING, PORTIONS OF THE PROPERTY NOT BURDENED BY THIS COMMUNITY DECLARATION MAY BE BENEFITED BY THE TERMS HEREOF.

10.6. Notice of Plat Recordation. Declarant may, at any time and from time to time, Record a Notice of Plat Recordation to clearly identify specific Lots subject to the terms and provisions of this Community Declaration after portions of the Property are made subject to a Plat. Unless otherwise provided in a Notice of Plat Recordation, portions of the Property included in the Plat identified in the Notice of Plat Recordation, but not shown as a Lot on such Plat, shall be automatically withdrawn from the terms and provisions of this Community Declaration without the necessity of complying with the withdrawal

provisions set forth in this *Article X*. Declarant shall have no obligation to Record a Notice of Plat Recordation and failure to Record a Notice of Plat Recordation shall in no event remove any portion of the Property from the terms and conditions of this Community Declaration.

10.7. Assignment of Declarant's Rights; Discretion. Notwithstanding any provision in this Community Declaration to the contrary, Declarant may, in its sole and absolute discretion, by written instrument, assign, in whole or in part, any of its privileges, exemptions, rights, reservations and duties under this Community Declaration to any Person and may permit the participation, in whole, in part, exclusively, or non-exclusively, by any other Person in any of its privileges, exemptions, rights, reservations and duties hereunder. With respect to any determination, election, approval, decision, discretion, or judgment of Declarant or the Board under this Community Declaration or the other Documents, such determination, election, approval, decision, discretion, or judgment shall be within the sole and absolute discretion of Declarant or the Board, as the context may require, from time to time and shall be final and nonappealable. All uses of the word "discretion" or "determined" or similar words described in this Community Declaration or the other Documents shall mean sole and absolute.

10.8. Branding; Intellectual Property Ownership Rights. Declarant is the owner of all rights in the Development name and trademark, including all related trademarks, trade names, service marks, designs and logos, including the goodwill associated therewith ("**Trademarks**"), including but not limited to all rights in the Trademarks in connection with the Development, and any variant or combination of the Trademarks. Neither the Community Association nor the Owners shall have any license to use or other interest in the Trademarks. In addition, Declarant reserves the right to utilize the Trademarks in connection with other Declarant or Declarant Affiliate projects in Declarant's sole and exclusive discretion. In accordance with Section 11.10, by accepting a deed or other instrument of conveyance to a Development Tract, Lot, or Dwelling Unit, each Owner hereby agrees and acknowledges (i) the ownership of the Trademarks in Declarant, (ii) all use of the Trademarks in the Development shall inure to the benefit of and be on behalf of Declarant only; (iii) nothing in this Declaration shall give the Community Association or Owner any right, title or interest in the Trademarks other than the non-exclusive right to use the Trademarks in accordance with this Section; and (iv) the great value of the goodwill that Declarant has developed in the Trademarks, and hereby stipulates that such Owner will do nothing to damage such goodwill.

(a) Notwithstanding the foregoing reservation of rights by Declarant, the Community Association and Owners may make reference to the Development under a mark that Declarant may determine (the "**Development Mark**"). The Community Association may use the Development Mark in its name for a period of ten (10) years from the Recording of this Declaration, with automatic consecutive five (5) year extensions unless Declarant, in its sole and exclusive discretion, provides a written "Termination Notice" to the Community Association (which Termination Notice shall be deemed to be notice to each Owner) that it shall no longer be permitted to use the Development Mark to identify the Development or the Community Association. Upon receipt of a Termination Notice, the Community Association and each Owner shall immediately take steps to cease all use of the Development Mark identified in the Termination Notice to identify the Development, and shall immediately take the steps necessary to cease and desist from using any and all references to the Development Mark as soon as possible as further described in the Termination Notice, but in any event, within three (3) months.

(b) The Community Association shall comply with all standards and instructions as Declarant may establish with respect to the style, appearance and manner of use of the Development Mark. The Board shall promptly notify Declarant of any unauthorized use of the Trademarks by any third party and will confer with Declarant about appropriate action. Declarant shall have the sole right to determine whether any unauthorized use of the Trademarks is an infringement and whether to take any action.

(c) Unless otherwise expressly authorized by Declarant in writing, during all periods during which any Improvement at the Development is operated and identified as a certain brand of hotel, luxury spa, fine dining restaurant, in-room entertainment systems or any other nationally or internationally recognized brand, in whole or in part, no Owner other than Declarant or Declarant Affiliate shall use the names or marks of the then current brand name owner (the “**Brand Operator**”) in connection with the promotion or marketing of his, her or its Development Tract, Lot, or Dwelling Unit for sale, resale, lease or rent. In accordance with Section 11.10, each Owner covenants, agrees and acknowledges that such Owner shall not use the principal brand name of the Brand Operator (the “**Brand Name**”) or any of the other names or marks of the Brand Operator, in any printed, electronic or oral promotion of such Owner’s Development Tract, Lot, or Dwelling Unit, or make any commercial use of the Brand Name. Declarant and the Brand Operator shall have the right to sue to enforce the terms of this covenant against any Owner and to seek any remedy available at law or in equity. This Brand Name trademark usage covenant shall not be modified, supplemented or terminated without Declarant’s and the current Brand Operator’s express, written consent.

ARTICLE XI

GENERAL PROVISIONS

11.1. Term. Upon the Recording of a Notice of Annexation pursuant to *Section 10.5*, the terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Community Declaration will run with and bind the portion of the Property described in such notice, and will inure to the benefit of and be enforceable by the Community Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Community Declaration is Recorded, and continuing through and including January 1, 2095, after which time this Community Declaration will be automatically extended for successive periods of ten years unless a change (the word “change” meaning a termination, or change of term or renewal term) is approved by Members entitled to cast at least 67% of the total number of votes of the Community Association. The foregoing sentence shall in no way be interpreted to mean 67% of a quorum as established pursuant to the Bylaws.

11.2. Eminent Domain. In the event it becomes necessary for any public authority to acquire all or any part of the Common Area or Special Common Area for any public purpose during the period this Community Declaration is in effect, the Board is hereby authorized to negotiate with such public authority for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Board need be made a party, and in any event the proceeds received will be held by the Community Association for the benefit of the Owners. In the event any proceeds attributable to acquisition of Common Area are paid to Owners, such payments will be allocated on the basis of Assessment Units and paid jointly to the Owner and the holder of the first Mortgage on the respective Lot or Dwelling Unit. In the event any proceeds attributable to acquisition of Special Common Area are paid to Owners who have been assigned the obligation to pay Special Common Area Assessments attributable to such Special Common Area, such payment will be allocated on the basis of Assessment Units and paid jointly to such Owner and the holder of the first Mortgage on the respective Lot or Dwelling Unit.

11.3. Amendment. Prior to the conveyance of any portion of the Development to any other Person, this Community Declaration may be amended or terminated by the Recording of an instrument executed and acknowledged by Declarant acting alone. Thereafter, this Community Declaration may be amended by the Recording of an instrument executed and acknowledged by two authorized officers of the Community Association setting forth the amendment and certifying that such amendment has been approved by Declarant (until expiration or termination of the Development Period) and Members entitled to cast at least 67% of the total number of votes of the Community Association. The foregoing sentence

shall in no way be interpreted to mean 67% of a quorum as established pursuant to the Bylaws. No amendment will be effective without the written consent of Declarant during the Development Period.

11.4. Enforcement. The Community Association and Declarant will have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, charges and other terms now or hereafter imposed by the provisions of this Community Declaration. Failure to enforce any right, provision, covenant, or condition granted by this Community Declaration will not constitute a waiver of the right to enforce such right, provision, covenants or condition in the future. Failure of Declarant or the Community Association to enforce the terms and provisions of the Documents shall in no event give rise to any claim or liability against Declarant, the Community Association, or any of their partners, directors, officers, or agents. IN ACCORDANCE WITH SECTION 11.10, EACH OWNER, BY ACCEPTING TITLE TO ALL OR ANY PORTION OF THE DEVELOPMENT, HEREBY RELEASES AND SHALL HOLD HARMLESS EACH OF DECLARANT, THE ASSOCIATION, AND THEIR PARTNERS, DIRECTORS, OFFICERS, OR AGENTS FROM AND AGAINST ANY DAMAGES, CLAIMS OR LIABILITY ASSOCIATED WITH THE FAILURE OF DECLARANT OR THE ASSOCIATION TO ENFORCE THE TERMS AND PROVISIONS OF THE DOCUMENTS. IN NO EVENT SHALL THE COMMUNITY ASSOCIATION HAVE THE RIGHT TO PROCEED AGAINST DECLARANT WITH RESPECT TO ANY CLAIM ARISING FROM OR RELATED TO THIS COMMUNITY DECLARATION DURING THE DEVELOPMENT PERIOD WITHOUT DECLARANT'S APPROVAL.

11.5. No Warranty of Enforceability. Declarant makes no warranty or representation as to the present or future validity or enforceability of any restrictive covenants, terms, or provisions contained in this Community Declaration. In accordance with Section 11.10, each Owner covenants, agrees and acknowledges that by acquiring a Lot or Dwelling Unit in reliance on one or more of such restrictive covenants, terms, or provisions such Owner assumes all risks of the validity and enforceability thereof and , agrees to hold Declarant harmless therefrom.

11.6. Higher Authority. The terms and provisions of this Community Declaration are subordinate to Applicable Law and shall be enforceable to the extent they do not violate or conflict with Applicable Law.

11.7. Severability. If any provision of this Community Declaration is held to be invalid by any court of competent jurisdiction, such invalidity will not affect the validity of any other provision of this Community Declaration, or, to the extent permitted by Applicable Law, the validity of such provision as applied to any other Person.

11.8. Conflicts. If there is any conflict between the provisions of this Community Declaration, the Articles, the Bylaws, or any Rules adopted pursuant to the terms of such documents, or any Development Tract Declaration, the provisions of this Community Declaration will govern.

11.9. Gender. Whenever the context so requires, all words herein in the male gender will be deemed to include the female or neuter gender, all singular words will include the plural, and all plural words will include the singular.

11.10. Acceptance by Grantees. Each Owner and Occupant , by the acceptance of a deed of conveyance, lease or any other instrument conveying any interest in a Lot, Dwelling Unit, or other real property interest in the Development, and each subsequent transferee of each such interest , accepts the same subject to all terms, restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction rights and powers created or reserved by this Community Declaration or to whom this Community Declaration is subject, and all rights, benefits and privileges of every character hereby granted,

created, reserved or declared. Furthermore, each such Person agrees that no assignee or successor to Declarant hereunder will have any liability for any act or omission of Declarant which occurred prior to the effective date of any such succession to, or assignment of, Declarant's interest. All impositions and obligations hereby imposed will constitute covenants running with the land within the Development, and will bind any person having at any time any interest or estate in the Development, and will inure to the benefit of each Owner in like manner as though the provisions of this Community Declaration were recited and stipulated at length in each and every deed of conveyance.

11.11. Damage and Destruction.

(a) Claims. Promptly after damage or destruction by fire or other casualty to all or any part of the Common Area or Special Common Area covered by insurance, the Board, or its duly authorized agent, will proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair of the damage. Repair, as used in this *Section 11.11(a)*, means repairing or restoring the Common Area or Special Common Area to substantially the same condition as existed prior to the fire or other casualty.

(b) Repair Obligations. Any damage to or destruction of the Common Area or Special Common Area will be repaired unless a Majority of the Board decides within 60 days after the casualty not to repair such damage or destruction. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair, or both, are not made available to the Community Association within said period, then the period will be extended until such information is made available to the Community Association.

(c) Restoration. In the event that it should be determined by the Board that the damage or destruction of the Common Area or Special Common Area will not be repaired and no alternative Improvements are authorized, then the affected portion of the Common Area or Special Common Area will be restored to its natural state and maintained as an undeveloped portion of the Common Area by the Community Association in a neat and attractive condition.

(d) Special Assessment for Common Area. If insurance proceeds are paid to restore or repair any damaged or destroyed Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board will levy a Special Assessment, as provided in *Article VI*, against all Owners. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

(e) Special Assessment for Special Common Area. If insurance proceeds are paid to restore or repair any damaged or destroyed Special Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board will levy a Special Assessment, as provided in *Article VI*, against all Owners who have been assigned the obligation to pay Special Common Area Assessments attributable to such Special Common Area. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

(f) Proceeds Payable to Owners. In the event that any proceeds of insurance policies are paid to any Owners as a result of any damage or destruction to any Common Area, such payments will be allocated based on Assessment Units and paid jointly to such Owners and the holders of first Mortgages on their Lots or Dwelling Units.

(g) Proceeds Payable to Owners Responsible for Special Common Area. In the event that any proceeds of insurance policies are paid to any Owners as a result of any damage or destruction to Special Common Area, such payments will be allocated based on Assessment Units and will be paid jointly

to the Owners who have been assigned the obligation to pay Special Common Area Assessments attributable to such Special Common Area and the holders of first Mortgages on such Owners' Lots or Dwelling Units.

11.12. No Partition. Except as may be permitted in this Community Declaration or any amendments hereto, no physical partition of the Common Area or Special Common Area or any part thereof will be permitted, nor will any person acquiring any interest in the Development or any part thereof seek any such judicial partition unless all or the portion of the Development in question has been removed from the provisions of this Community Declaration pursuant to *Section 10.4* above. This *Section 11.12* will not be construed to prohibit the Board from acquiring and disposing of tangible personal property or from acquiring title to real property that may or may not be subject to this Community Declaration.

11.13. Notices. Any notice permitted or required to be given to any person pursuant to this Community Declaration must be in writing and may be delivered either personally or by mail, or as otherwise provided in this Community Declaration or required by Applicable Law. If delivery is made by mail, it will be deemed to have been delivered on the third day (other than a Sunday or legal holiday on which the United States Postal Service does not provide delivery of first class mail) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person in writing to the Community Association for the purpose of service of notices. For purposes of notice, the address of each Owner shall be the address of the Lot or Dwelling Unit or such other address as provided by the Owner to the Community Association, and the address of each Eligible Mortgage Holder shall be the address provided to the Community Association; provided, however, that any person shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of 30 days' notice to the Community Association.

ARTICLE XII

DISPUTE RESOLUTION

This *Article XII* is intended to encourage the resolution of disputes involving the Property. A dispute regarding the Development Tracts, Lots, Dwelling Units, Common Area, Special Common Area, and/or Improvements can create significant financial exposure for the Community Association and its Members, interfere with the resale and refinancing of Development Tracts, Lots, and Dwelling Units, and increase strife and tension among the Owners, the Board and the Community Association's management. Since disputes may have a direct effect on each Owner's use and enjoyment of their Lot or Dwelling Unit, the Common Area, and the Special Common Area, this *Article XII* requires Owner transparency and participation in certain circumstances. Transparency means that the Owners are informed in advance about a dispute, the proposed arrangement between the Community Association and a law firm or attorney who will represent the Community Association in the dispute, and that each Owner will have an opportunity to participate in the decision-making process prior to initiating the dispute resolution process. **Notwithstanding anything to the contrary contained in this Article XII, neither Declarant nor the Community Association during the Development Period shall be bound by this Article XII.**

12.1. Introduction and Definitions. The Community Association, the Owners, the Designated non-Owners (as hereafter defined), Declarant (as hereafter defined), all persons subject to this Community Declaration, and each person not otherwise subject to this Community Declaration who agrees to submit to this *Article XII* by written instrument delivered to the Claimant (as hereafter defined), which may include, but is not limited to, a Homebuilder, Residential Developer, a general contractor, sub-contractor, design professional, or other person who participated in the design or construction of Lots or Dwelling Units, Common Area, Special Common Area, or any Improvement within, serving or forming a part of the Development (individually, a "**Party**" and collectively, the "**Parties**") agree to encourage the amicable resolution of disputes involving the Development and the Common Area or Special Common Area to avoid

the emotional and financial costs of litigation and arbitration if at all possible. Accordingly, each Party hereby covenants and agrees that this *Article XII* applies to all Claims (as hereafter defined). This *Article XII* may only be amended with the prior written approval of Declarant, the Community Association (acting through a Majority of the Board), and Members holding 100% of the votes in the Community Association. As used in this *Article XII* only, the following words, when capitalized, have the following specified meanings:

(a) **“Claim”** means:

(i) Claims relating to the rights and/or duties of Declarant, the Community Association, Owners, the Architectural Control Reviewer, or the ACC under this Community Declaration and related Documents;

(ii) Claims relating to the acts or omissions of Declarant, the Community Association or a Board member or officer of the Community Association during Declarant’s control and administration of the Community Association, and any claim asserted against the ACC or the Architectural Control Reviewer;

(iii) Claims relating to the design or construction of Improvements located on the Common Area, Special Common Area, Lots or Dwelling Units; or

(iv) Claims by Designated non-Owners (as hereafter defined) arising from or relating to their use of or access to any Dwelling Unit, Lot, Common Area, Special Common Area, or other part of the Development , or any Improvements, Amenities, facilities, services or accommodations associated therewith.

(v) **“Claim”** includes initial claims, counterclaims, cross-claims, and third-party claims. **“Claim”** also includes disputes based upon contract, tort, constitution, statute, regulation, ordinance and other Applicable Law. However, **“Claim”** does not include any dispute or controversy about the validity, enforceability or scope of the arbitration agreement in *Section 12.8* or any part thereof (including, without limitation, the Class Action Waiver in *Section 12.8(f)*); all such disputes or controversies are for a court and not an arbitrator to decide. Any dispute or controversy that concerns the validity, enforceability or scope of the Community Declaration as a whole is for the arbitrator, not a court, to decide.

(b) **“Claimant”** means any Party having a Claim against any other Party.

(c) **“Declarant”** means, solely for purposes of being a Claimant or Respondent under *Section 12.8* of this *Article XII*, Declarant, its subsidiaries, affiliates, successors, and assigns and all of their employees, officers, and directors, all of whom are intended beneficiaries of *Section 12.8*.

(d) **“Designated non-Owner”** shall mean a resident, occupant, or authorized or permitted user, as the case may be, other than an Owner, of any Dwelling Unit, Lot, Common Area, Special Common Area, or other part of the Property, or any Improvements, Amenities, facilities, services or accommodations associated therewith.

(e) **“Respondent”** means any Party against which a Claim has been asserted by a Claimant.

12.2. Mandatory Procedures. Claimant may not initiate any proceeding before any judge, jury, arbitrator or any judicial or administrative tribunal seeking redress or resolution of its Claim until Claimant

has complied with the procedures of this *Article XII*. As provided in *Section 12.8* below, a Claim must be resolved by binding arbitration. It is the intent of this Community Declaration that Designated non-Owners, in order to further the purposes of this Community Declaration and as consideration for the privilege of using or gaining access to any Dwelling Unit, Lot, Common Area, Special Common Area, or other part of the Property, or any Improvements, Amenities, facilities, services or accommodations associated therewith, as the case may be, shall also be obligated to resolve any Claims they may have by binding arbitration pursuant to terms set forth (or that will be set forth) in other agreements or governing documents relating to the subject matter hereof. Designated non-Owners shall be bound to arbitrate Claims regardless of whether they have separately signed or are formal parties to any such agreements or governing documents.

12.3. Claims Affecting Common Areas or Special Common Areas. No Lot Owner or Dwelling Unit Owner shall have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area or Special Common Area. Each Lot Owner and Dwelling Unit Owner, by accepting an interest in or to title to a Lot or Dwelling Unit, hereby grants to the Community Association the exclusive right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area or Special Common Area. In the event the Community Association asserts a Claim related to the Common Area or Special Common Area, as a precondition to providing the Notice defined in *Section 12.5*, initiating the mandatory dispute resolution procedures set forth in this *Article XII*, or taking any other action to prosecute a Claim related to the Common Area or Special Common Area, the Community Association must proceed in accordance with the provisions set forth below.

(a) Obtain Owner Approval of Engagement. The requirements related to Owner approval set forth in this *Section 12.3(a)* are intended to ensure that the Community Association and the Owners approve and are fully informed of the financial arrangements between the Community Association and a law firm or attorney engaged by the Community Association to prosecute a Claim relating to the design or construction of the Common Area or Special Common Area. The engagement agreement between the Community Association and the law firm or attorney may include requirements that the Community Association pay costs, fees, and expenses to the law firm or attorney which will be paid through Assessments levied against Owners. The financial agreement between the Community Association and the law firm or attorney may also include obligations related to payment, and the conditions and circumstances when the payment obligations arise, if the relationship between the Community Association and the law firm or attorney is terminated or if the Community Association agrees to settle the Claim. In addition, the financial arrangement between the Community Association and the law firm or attorney may include additional costs, expenses, and interest charges. This financial obligation can be significant. The Board may not engage a law firm or attorney to prosecute a Claim relating to the design or construction of the Common Area or Special Common Area or execute a written agreement between the Community Association and a law firm or attorney for the purpose of prosecuting a Claim relating to the design or construction of Common Area or Special Common Area unless the law firm or attorney and the financial arrangements between the Community Association and the law firm or attorney are approved by the Owners in accordance with this *Section 12.3(a)*.

Unless otherwise approved by Members holding 80% of the votes in the Community Association, the Community Association, acting through its Board, shall in no event have the authority to engage a law firm or attorney to prosecute a Claim relating to the design or construction of the Common Area or Special Common Area if the agreement between the Community Association and law firm or attorney includes any provision or requirement that would obligate the Community Association to pay any costs, expenses, fees, or other charges to the law firm or attorney, including but not limited to, costs, expenses, fees, or other charges payable by the Community Association: (i) if the Community Association terminates the engagement with the law firm or attorney or engages another firm or third-party to assist with the Claim; (ii) if the Community Association agrees to settle the Claim for a cash payment or in exchange for repairs

or remediation performed by the Respondent or any other third-party; (iii) if the Community Association agrees to pay interest on any costs or expenses incurred by the law firm or attorney; and/or (iv) for consultants, expert witnesses, and/or general contractors hired by the law firm or attorney. For avoidance of doubt, it is intended that Members holding 80% of the votes in the Community Association must approve the law firm and attorney who will prosecute the Claim and the written agreement between the Community Association and the law firm and/or attorney.

The approval of the Members required under this *Section 12.3(a)* must be obtained at a meeting of Members called in accordance with the Bylaws. The notice of Member meeting will be provided pursuant to the Bylaws but the notice must also include: (a) the name of the law firm and attorney; (b) a copy of the proposed written agreement between the Community Association and the law firm and/or attorney; (c) a narrative summary of the types of costs, expenses, fees, or other charges that may be required to be paid by the Community Association; (d) the conditions upon which such types of costs, expenses, fees, or other charges are required to be paid by the Community Association; (e) an estimate of the costs, expenses, fees, or other charges that may be required to be paid by the Community Association if the conditions for payment occur, which estimate shall be expressed as a range for each type of cost, expense, fee, or other charge; and (f) a description of the process the law firm and/or attorney will use to evaluate the Claim and whether destructive testing will be required (*i.e.*, the removal of all or portions of the Common Area, Special Common Area, or Improvements on the Development). If destructive testing will be required or is likely to occur, the notice shall include a description of the destructive testing, likely locations of the destructive testing, whether the Owner's use of their Lots and Dwelling Units, or the Common Area or Special Common Area will be affected by such testing, and if the destructive testing occurs the means or method the Community Association will use to repair the Common Area, Special Common Area, or Improvements affected by such testing and the estimated costs thereof. The notice required by this *Section 12.3(a)* must be prepared and signed by a person other than the law firm or attorney who is a party to the proposed agreement being approved by the Members. In the event Members holding 80% of the votes in the Community Association approve the law firm and/or attorney who will prosecute the Claim and the written agreement between the Community Association and the law firm and/or attorney, the Board shall have the authority to engage the law firm and/or attorney and enter into the written agreement approved by the Members.

(b) Provide Notice of the Inspection. As provided in *Section 12.3(c)* below, a Common Area Report is a written inspection report issued by an Inspection Company. Before conducting an inspection that is required to be memorialized by a Common Area Report, the Community Association must provide at least ten days prior written notice of the date on which the inspection will occur to each Respondent, which notice shall identify the Inspection Company preparing the Common Area Report, the specific Common Areas or Special Common Areas to be inspected, and the date and time the inspection will occur. Each Respondent may attend the inspection, personally or through an agent.

(c) Obtain a Common Area Report. The requirements related to the Common Area Report set forth in this *Section 12.3(c)* are intended to provide assurance to the Claimant, Respondent, and the Owners that the substance and conclusions of the Common Area Report and recommendations are not affected by influences that may compromise the professional judgement of the Inspection Company preparing the Common Area Report, and to avoid circumstances which would create the appearance that the professional judgment of the Inspection Company preparing the Common Area Report is compromised.

With respect to a Claim, the Community Association shall obtain a written independent third-party report for the Common Area or Special Common Area (the "**Common Area Report**") from a professional engineer licensed by the Utah Board of Professional Engineers with an office located in Grand County, Utah (the "**Inspection Company**"). The Common Area Report must include: (i) a description with photographs of the Common Area or Special Common Area subject to the Claim; (ii) a description of the

present physical condition of the Common Area or Special Common Area subject to the Claim; (iii) a detailed description of any modifications, maintenance, or repairs to the Common Area or Special Common Area performed by the Community Association or a third party, including any Respondent; and (iv) specific and detailed recommendations regarding remediation and/or repair of the Common Area or Special Common Area subject to the Claim. For the purpose of subsection (iv) of the previous sentence, the specific and detailed recommendations must also include the specific process, procedure, materials, and/or improvements necessary and required to remediate and/or repair the deficient or defective condition identified in the Common Area Report and the estimated costs necessary to effect such remediation and/or repairs. The estimate of costs required by the previous sentence shall be obtained from third-party contractors with an office located in Grand County, Utah and each such contractor providing the estimate must hold all necessary or required licenses from the applicable state or County licensing agency or otherwise required by Applicable Law for the work to which the cost estimate relates.

The Common Area Report must be obtained by the Community Association. A Common Area Report will not satisfy the requirements of this *Section 12.3* and is not an “independent” report if: (a) the Inspection Company has an arrangement or other agreement to provide consulting and/or engineering services with the law firm or attorney that presently represents the Community Association or proposes to represent the Community Association; (b) the costs and expenses for preparing the Common Area Report are not required to be paid directly by the Community Association to the Inspection Company at the time the Common Area Report is finalized and delivered to the Community Association; or (c) the law firm or attorney that presently represents the Community Association or proposes to represent the Community Association has agreed to reimburse (whether unconditional or conditional and based on the satisfaction of requirements set forth in the Community Association’s agreement with the law firm or attorney) the Community Association for the costs and expenses for preparing the Common Area Report. For avoidance of doubt, an “independent” report means that the Community Association has independently contracted with the Inspection Company on an arms-length basis based on customary terms for the preparation of engineering reports and that the Community Association will directly pay for the report at the time the Common Area Report is finalized and delivered to the Community Association.

(d) Provide a Copy of Common Area Report to all Respondents and Owners. Upon completion of the Common Area Report, and in any event no later than three days after the Community Association has been provided a copy of the Common Area Report, the Community Association will provide a full and complete copy of the Common Area Report to each Respondent and to each affected Owner. The Community Association shall maintain a written record of each Respondent and Owner who was provided a copy of the Common Area Report, which record will include the date the Common Area Report was provided.

(e) Provide a Right to Cure Defects and/or Deficiencies Noted on Common Area Report. Commencing on the date the Common Area Report has been completed and continuing for a period of 90 days thereafter, each Respondent shall have the right to: (i) inspect any condition identified in the Common Area Report; (ii) contact the Inspection Company for additional information necessary and required to clarify any information in the Common Area Report; and (iii) correct any condition identified in the Common Area Report. As provided in *Section 9.14* above, Declarant has an easement throughout the Development for itself, and its successors, assigns, architects, engineers, other design professionals, each Homebuilder, other builders, and general contractors that may be utilized during such 90 day period and any additional period needed thereafter to correct a condition identified in the Common Area Report.

(f) Hold Member Meeting and Obtain Approval. In addition to obtaining approval from Members for the terms of the attorney or law firm engagement agreement, the Community Association must obtain approval from Members holding 80% of the votes in the Community Association to provide the Notice described in *Section 12.5*, initiate the mandatory dispute resolution procedures set forth in this

Article XII, or take any other action to prosecute a Claim, which approval from Members must be obtained at a meeting of Members called in accordance with the Bylaws. The notice of meeting required hereunder will be provided pursuant to the Bylaws but the notice must also include: (i) the nature of the Claim, the relief sought, the anticipated duration of prosecuting the Claim, and the likelihood of success; (ii) a copy of the Common Area Report; (iii) a copy of any engagement letter between the Community Association and the law firm and/or attorney selected by the Community Association to assert or provide assistance with the Claim; (iv) a description of the attorney fees, consultant fees, expert witness fees, and court costs, whether incurred by the Community Association directly or for which the Community Association may be liable as a result of prosecuting the Claim; (v) a summary of the steps previously taken by the Community Association to resolve the Claim; (vi) a statement that initiating the lawsuit or arbitration proceeding to resolve the Claim may affect the market value, marketability, or refinancing of a Lot or Dwelling Unit while the Claim is prosecuted; and (vii) a description of the manner in which the Community Association proposes to fund the cost of prosecuting the Claim. The notice required by this paragraph must be prepared and signed by a person who is not (a) the attorney who represents or will represent the Community Association in the Claim; (b) a member of the law firm of the attorney who represents or will represent the Community Association in the Claim; or (c) employed by or otherwise affiliated with the law firm of the attorney who represents or will represent the Community Association in the Claim. In the event Members approve providing the Notice described in *Section 12.5*, or taking any other action to prosecute a Claim, the Members holding a Majority of the votes in the Community Association, at a special meeting called in accordance with the Bylaws, may elect to discontinue prosecution or pursuit of the Claim.

12.4. Claim by Owners – Improvements on Lots and/or Dwelling Units. Notwithstanding anything contained herein to the contrary, in the event a warranty is provided to an Owner by Declarant or a Homebuilder relating to the design or construction of any Improvements located on a Lot or Dwelling Unit, then this *Article XII* will only apply to the extent that this *Article XII* is more restrictive than such Owner's warranty, as determined in Declarant's sole discretion. If a warranty has not been provided to an Owner relating to the design or construction of any Improvements located on such Owner's Lot or Dwelling Unit, then this *Article XII* will apply. Class action proceedings are prohibited, and, in accordance with *Section 11.10*, each Owner covenants, agrees and acknowledges that such Owner shall not be entitled to prosecute, participate, initiate, or join any litigation, arbitration or other proceedings as a class member or class representative in any such proceedings under this Community Declaration. If an Owner brings a Claim, as defined in *Section 12.1(a)*, relating to the design or construction of any Improvements located on a Lot or Dwelling Unit (whether one or more), as a precondition to providing the Notice defined in *Section 12.5*, initiating the mandatory dispute resolution procedures set forth in this *Article XII*, or taking any other action to prosecute a Claim, the Owner must:

(a) Provide Notice of the Inspection. As provided in *Section 12.4(b)* below, an Owner Improvement Report is a written inspection report issued by the Inspection Company. Before conducting an inspection that is required to be memorialized by the Owner Improvement Report, the Owner must have provided at least ten days prior written notice of the date on which the inspection will occur to each Respondent, which notice shall identify the Inspection Company preparing the Owner Improvement Report, the Improvements and areas of the Improvements to be inspected, and the date and time the inspection will occur. Each Respondent may attend the inspection, personally or through an agent.

(b) Obtain an Owner Improvement Report. The requirements related to the Owner Improvement Report set forth in this *Section 12.4(b)* are intended to provide assurance to the Claimant and Respondent that the substance and conclusions of the Owner Improvement Report and recommendations are not affected by influences that may compromise the professional judgement of the party preparing the Owner Improvement Report, and to avoid circumstances which would create the appearance that the professional judgment of the party preparing the Owner Improvement Report is compromised.

The Owner asserting a Claim shall obtain a written independent third-party report for the Improvements (the “**Owner Improvement Report**”) from an Inspection Company. The Owner Improvement Report must include: (i) a description with photographs of the Improvements subject to the Claim; (ii) a description of the present physical condition of the Improvements; (iii) a detailed description of any modifications, maintenance, or repairs to the Improvements performed by the Owner or a third party, including any Respondent; and (iv) specific and detailed recommendations regarding remediation and/or repair of the Improvements. For the purpose of subsection (iv) of the previous sentence, the specific and detailed recommendations must also include the specific process, procedure, materials, and/or improvements necessary and required to remediate and/or repair the deficient or defective condition identified in the Owner Improvement Report and the estimated costs necessary to effect such remediation and/or repairs. The estimate of costs required by the previous sentence shall be obtained from third-party contractors with an office located in Grand County, Utah, and each such contractor providing the estimate must hold all necessary or required licenses from the applicable state or County licensing agency or otherwise required by Applicable Law for the work to which the cost estimate relates.

The Owner Improvement Report must be obtained by the Owner. An Owner Improvement Report will not satisfy the requirements of this *Section 12.4* and is not an “independent” report if: (a) the Inspection Company has an arrangement or other agreement to provide consulting and/or engineering services with the law firm or attorney that presently represents the Owner or proposes to represent the Owner; (b) the costs and expenses for preparation of the Owner Improvement Report are not directly paid by the Owner to the Inspection Company no later than the date the Owner Improvement Report is finalized and delivered to the Owner; or (c) the law firm or attorney that presently represents the Owner or proposes to represent the Owner has agreed to reimburse (whether unconditional or conditional and based on the satisfaction of requirements set forth in the Owner’s agreement with the law firm or attorney) the Owner for the costs and expenses for preparation of the Owner Improvement Report. For avoidance of doubt, an “independent” report means that the Owner has independently contracted with the Inspection Company on an arms-length basis based on customary terms for the preparation of engineering reports and that the Owner will directly pay for the report no later than the date the Owner Improvement Report is finalized and delivered to the Owner.

(c) Provide a Copy of Owner Improvement Report to all Respondents. Upon completion of the Owner Improvement Report, and in any event no later than three days after the Owner has been provided a copy of the Owner Improvement Report, the Owner will provide a full and complete copy of the Owner Improvement Report to each Respondent. The Owner shall maintain a written record of each Respondent who was provided a copy of the Owner Improvement Report, which record will include the date the Owner Improvement Report was provided.

(d) Right to Cure Defects and/or Deficiencies Noted on Owner Improvement Report. Commencing on the date the Owner Improvement Report has been completed and continuing for a period of 90 days thereafter, each Respondent shall have the right to: (i) inspect any condition identified in the Owner Improvement Report; (ii) contact the Inspection Company for additional information necessary and required to clarify any information in the Owner Improvement Report; and (iii) correct any condition identified in the Owner Improvement Report. As provided in *Section 9.15* above, Declarant has an easement throughout the Development for itself, and its successors, assigns, architects, engineers, other design professionals, each Homebuilder, other builders, and general contractors that may be utilized during such 90 day period and any additional period needed thereafter to correct a condition identified in the Owner Improvement Report.

(e) Claims Pertaining to the Common Area or Special Common Area. Pursuant to *Section 12.3* above, an Owner does not have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common

Area or Special Common Area. In the event that a court of competent jurisdiction or arbitrator determines that an Owner does have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area or Special Common Area, such Owner shall be required, since a Claim affecting the Common Area or Special Common Area could affect all Owners, as a precondition to providing the Notice defined in *Section 12.5*, initiating the mandatory dispute resolution procedures set forth in this *Article XII*, or taking any other action to prosecute a Claim, to comply with the requirements imposed by the Community Association in accordance with *Section 12.3(b)* (Provide Notice of Inspection), *Section 12.3(c)* (Obtain a Common Area Report), *Section 12.3(d)* (Provide a Copy of Common Area Report to all Respondents and Owners), *Section 12.3(e)* (Provide Right to Cure Defects and/or Deficiencies Noted on Common Area Report), *Section 12.3(f)* (Owner Meeting and Approval), and *Section 12.5* (Notice).

12.5. Notice. Claimant must notify Respondent in writing of the Claim (the “Notice”), stating plainly and concisely: (i) the nature of the Claim, including date, time, location, persons involved, and Respondent’s role in the Claim; (ii) the basis of the Claim (i.e., the authority out of which the Claim arises); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that the Notice is given pursuant to this *Section 12.5*. The 120 day period for mediation set forth in *Section 12.7* below, is intended to provide the Claimant and Respondent with sufficient time to resolve the Claim in the event resolution is not accomplished during negotiation. If the Claim is not resolved during negotiation, mediation pursuant to *Section 12.7* is required without regard to the monetary amount of the Claim.

If the Claimant is the Community Association, the Notice will also include: (a) if the Claim relates to the design or construction of the Common Area or Special Common Area, a true and correct copy of the Common Area Report and any and all other reports, studies, analyses, and recommendations obtained by the Community Association related to the Common Area or Special Common Area; (b) a copy of any engagement letter between the Community Association and the law firm and/or attorney selected by the Community Association to assert or provide assistance with the Claim; (c) if the Claim relates to the design or construction of the Common Area or Special Common Area, reasonable and credible evidence confirming that Members holding 80% of the votes in the Community Association approved the law firm and attorney and the written agreement between the Community Association and the law firm and/or attorney in accordance with *Section 12.3(a)*; (d) a true and correct copy of the special meeting notice provided to Members in accordance with *Section 12.3(f)* above; and (e) reasonable and credible evidence confirming that Members holding 80% of the votes in the Community Association approved providing the Notice. If the Claimant is not the Community Association and pertains to the Common Areas or Special Common Areas, the Notice will also include a true and correct copy of the Common Area Report. If the Claimant is not the Community Association and relates to the design or construction of Improvements on a Lot or Dwelling Unit, the Notice will also include a true and correct copy of the Owner Improvement Report.

12.6. Negotiation. Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within sixty days after Respondent’s receipt of the Notice, Respondent and Claimant will meet at a mutually acceptable place and time to discuss the Claim. If the Claim involves all or any portion of the Development, then at such meeting or at some other mutually agreeable time, Respondent and Respondent’s representatives will have full access to the portion of the Development that is subject to the Claim for the purposes of inspection.

12.7. Mediation. If the parties negotiate, but do not resolve the Claim through negotiation within 120 days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have 30 additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least five years of experience serving as a mediator and must have technical knowledge or expertise

appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Respondent will submit the Claim to mediation in accordance with this *Section 12.7*. If the Parties do not settle the Claim within 30 days after submission to mediation, Respondent or Claimant may initiate arbitration proceedings in accordance with *Section 12.8*.

12.8. Binding Arbitration-Claims. All Claims must be settled by binding arbitration. Claimant or Respondent may, by summary proceedings (e.g., a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this *Section 12.8*.

(a) **Governing Rules.** If a Claim has not been resolved after mediation in accordance with *Section 12.7*, the Claim will be resolved by binding arbitration governed by the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1 *et seq.*, in accordance with the terms of this *Section 12.8* and the American Arbitration Association (the "AAA") Commercial Arbitration Rules and, if applicable, the Construction Industry Arbitration Rules and Mediation Procedures, as each are supplemented or modified by the AAA (collectively, the Commercial Arbitration Rules and Construction Industry Arbitration Rules and Mediation Procedures are collectively referred to herein as the "**AAA Rules**"). In the event of any inconsistency between the AAA Rules and this *Section 12.8*, this *Section 12.8* will control. If the AAA is unavailable to administer the arbitration and the Parties cannot agree on a replacement, a court with jurisdiction will appoint the arbitration administrator or arbitrator. However, no arbitration may be administered by any organization or arbitrator that has in place a formal or informal policy that is inconsistent with the terms of this Agreement, including but not limited to the Class Action Waiver set forth below. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal, except as set forth in the FAA, but may be reduced to judgment or enforced in any court having jurisdiction. Unless otherwise agreed to by the Parties or required by the AAA or other administrator, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three arbitrators, to be chosen as follows:

(i) Within thirty (30) days after the failure to resolve the claim by mediation in accordance with *Section 12.7*, one arbitrator shall be selected by Respondent, in its sole and absolute discretion;

(ii) Within thirty (30) days after the failure to resolve the claim by mediation in accordance with *Section 12.7*, one arbitrator shall be selected by the Claimant, in its sole and absolute discretion; and

(iii) Within ten (10) days after the appointment of the arbitrators by Respondent and Claimant, one neutral arbitrator shall be selected by mutual agreement of the arbitrators having been selected by Respondent and the Claimant, in their sole and absolute discretion; provided, however, if either Respondent or Claimant fails to appoint an arbitrator within the period specified above for such appointment, the neutral arbitrator shall be appointed by the sole arbitrator appointed by either of Respondent or Claimant and the arbitration shall be conducted by such two arbitrators.

(b) **Exceptions to Arbitration: Preservation of Remedies.** No provision of, nor the exercise of any rights under, this *Section 12.8* will limit the right of Claimant or Respondent, and Claimant and the Respondent will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal, that is involved in a Claim, including rights and remedies relating to: (i) exercising self-help remedies (including set-off rights); or (ii) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and

maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

(c) Statute of Limitations/Privileges. All statutes of limitation and rules of privilege that would otherwise be applicable shall apply to any arbitration proceeding under this *Section 12.8*.

(d) Scope of Award; Modification or Vacation of Award. The arbitrators shall resolve all Claims in accordance with Applicable Law. The arbitrators may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of this *Section 12.8* and subject to *Section 12.9* below; provided, however, attorney's fees and costs may not be awarded by the arbitrators to either Claimant or Respondent unless applicable law requires otherwise. Any injunctive, equitable or declaratory relief issued by the arbitrators must be limited to the individual Party seeking relief and only to the extent necessary to provide relief warranted by that Party's individual claim. The arbitrators may not issue public injunctive relief. In addition, for a Claim, or any portion of a Claim, in no event shall the arbitrators award damages which exceed the damages a Claimant would be entitled to under Utah law, except that the arbitrators may not award attorney's fees and/or costs to the Claimant or Respondent. In all arbitration proceedings, the arbitrators shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings the parties shall have the right to seek vacation or modification of any award to the extent permitted under the FAA. In no event may the arbitrators award speculative, special, exemplary, treble, or punitive damages for any Claim unless Applicable Law requires otherwise. No arbitration award involving the Parties will have any preclusive effect as to issues or claims in any dispute involving anyone who is not a Party, nor will an arbitration award in prior disputes involving other Persons have preclusive effect in an arbitration between the Parties.

(e) Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within 180 days of the filing of the Claim for arbitration. Arbitration proceedings hereunder shall be conducted in Salt Lake County, Utah, unless the Parties otherwise agree or the arbitrators require otherwise. Unless otherwise provided by this *Section 12.8*, the arbitrators shall be empowered to impose sanctions and to take such other actions as the arbitrators deem necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Utah Rules of Civil Procedure and Applicable Law. Claimant and Respondent agree to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by Applicable Law. In no event shall Claimant or Respondent discuss with the news media or grant any interviews with the news media regarding a Claim or issue any press release or social media post regarding any Claim without the written consent of the other parties to the Claim.

(f) Class Action Waiver. Claimant and Respondent mutually agree to waive the right for any proceedings to resolve a Claim to be commenced, heard or pursued as a class action, private attorney general action or other representative action, and agree not to assert any class action, private attorney general action or other representative action against the other in mediation, arbitration, court or otherwise. It is the express intent of each Party that class action, private attorney general and other representative action procedures not be asserted or applied with respect to any Claim. The arbitrators shall have no power or authority to conduct a class-wide arbitration, private attorney general arbitration or other representative arbitration. Moreover, unless all Parties otherwise agree in writing, Claims brought by or against one Party may not be joined or consolidated with Claims brought by or against any other Person.

(g) Jury Trial Waiver. Claimant and Respondent understand and agree that if a Claim is arbitrated, there will be no right to pursue that Claim in court or have a jury decide the Claim.

12.9. Allocation Of Costs. Unless Applicable Law requires otherwise, (a) each Party shall bears all of its own costs incurred prior to and during the proceedings described in *Section 12.5*, *Section 12.6*, *Section 12.7* and *Section 12.8* above, including its attorney's fees, and (b) Respondent and Claimant will equally divide all expenses and fees charged by the mediator and arbitrators.

12.10. General Provisions. A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim.

12.11. Period of Limitation.

(a) For Actions by an Owner or Occupant. The exclusive period of limitation for any of the Parties to bring any Claim, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two years and one day from the date that the Owner or Occupant discovered or reasonably should have discovered evidence of the Claim; (ii) for Claims other than those alleging construction defect or defective design, four years and one day from the date that the Owner or Occupant discovered or reasonably should have discovered evidence of the Claim; or (iii) the applicable statute of limitations for such Claim. In the event that a court of competent jurisdiction determines that an Owner does have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Area or Special Common Area, the exclusive period of limitation for a Claim of construction defect or defective design of the Common Areas or Special Common Areas, shall be the earliest of: (a) two years and one day from the date that the Owner or the Community Association discovered or reasonably should have discovered evidence of the Claim; or (b) the applicable statute of limitations for such Claim. In no event shall this *Section 12.11(a)* be interpreted to extend any period of limitations.

(b) For Actions by the Community Association. The exclusive period of limitation for the Community Association to bring any Claim, including, but not limited to, a Claim of construction defect or defective design of the Common Areas or Special Common Areas, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two years and one day from the date that the Community Association or its Manager, Board members, officers or agents discovered or reasonably should have discovered evidence of the Claim; (ii) for Claims other than those alleging construction defect or defective design of the Common Areas or Special Common Area, four years and one day from the date that the Community Association or its Manager, Board members, officers or agents discovered or reasonably should have discovered evidence of the Claim; or (iii) the applicable statute of limitations for such Claim. In no event shall this *Section 12.11(b)* be interpreted to extend any period of limitations.

12.12. Funding the Resolution of Claims. The Community Association must levy a Special Assessment to fund the estimated costs to resolve a Claim pursuant to this *Article XII*. The Community Association may not use its annual operating income or any reserve funds to fund the costs to resolve a Claim unless the Community Association has previously established and funded a dispute resolution fund.

[Remainder of page intentionally left blank.]

EXECUTED to be effective on the date this instrument is Recorded.

DECLARANT:

KCPD Phase I, LLC,
a Utah limited liability company,

By: M. Trent Arnold
Name: M. Trent Arnold
Title: Manager

THE STATE OF Oregon §
§
COUNTY OF Deschutes §

This instrument was acknowledged before me this 3rd day of July, 2023 by
Michael Arnold Manager of 9/1/3/25, the Manager of KCPD
Phase I, LLC, a Utah limited liability company, on behalf of said company.

(SEAL)

Jennifer R. Clayton
Notary Public Signature

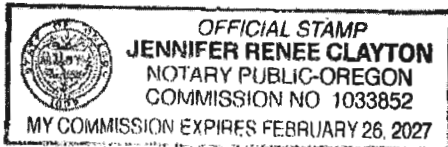


EXHIBIT A
DESCRIPTION OF PROPERTY

Beginning at the Northeast corner of Lot 1, Section 15, Township 26 South, Range 21 East, Salt Lake Base and meridian, said point being North 26°33'38" East 2951.57 feet from the West Quarter corner of Section 15, T26S, R21E, SLB&M, and proceeding thence North 49°53'17" West 132.07 feet; thence with a curve having a radius of 1178.00 feet, to the left with an arc length of 152.44 feet, (a chord bearing of South 35°19'29" West 152.33 feet); thence South 31°37'03" West 176.71 feet; thence with a curve having a radius of 178.00 feet, to the left with an arc length of 94.04 feet, (a chord bearing of South 16°28'59" West 92.95 feet); thence South 00°08'20" West 8.79 feet; thence North 88°46'41" West 44.01 feet; thence North 00°08'19" East 8.40 feet; thence with a curve having a radius of 222.00 feet, to the right with an arc length of 12.65 feet, (a chord bearing of North 02°51'13" East 12.64 feet); thence North 85°31'53" West 32.03 feet; thence North 56°26'09" West 175.83 feet to the meander of the Colorado River; thence with said meander the following three courses: North 31°37'04" East 196.22 feet; thence North 31°37'04" East 147.57 feet; thence North 40°00'29" East 558.82 feet; thence South 49°57'43" East 113.60 feet; thence with a curve having a radius of 466.97 feet, to the right with an arc length of 116.86 feet, (a chord bearing of North 88°34'05" East 116.55 feet); thence South 83°52'27" East 5.70 feet; thence with a curve having a radius of 454.52 feet, to the right with an arc length of 238.97 feet, (a chord bearing of South 68°46'24" East 236.23 feet); thence South 53°43'58" East 57.93 feet; thence North 25°47'17" East 31.88 feet; thence South 65°27'18" East 35.76 feet; thence with a curve having a radius of 975.00 feet, to the left with an arc length of 46.15 feet, (a chord bearing of North 22°51'27" East 46.15 feet); thence North 21°30'05" East 212.01 feet; thence with a curve having a radius of 475.00 feet, to the right with an arc length of 62.71 feet, (a chord bearing of North 25°17'00" East 62.66 feet); thence North 29°03'55" East 30.17 feet; thence South 61°05'04" East 50.00 feet; thence South 65°48'48" East 56.26 feet; thence South 21°34'01" West 85.46 feet; thence South 22°49'39" West 153.51 feet; thence South 30°59'10" West 204.04 feet; thence South 11°08'57" West 264.27 feet to a point on the North line of said Section 15; thence with said Section line North 89°50'30" West 517.06 feet to the point of beginning, having an area of 468,258 square feet, 10.75 acres.