

**AMENDED & RESTATED  
DECLARATION OF COVENANTS, CONDITIONS &  
RESTRICTIONS  
AND RESERVATION OF EASEMENTS**

**For  
Lindon Creekside Retirement Community  
(A 55 and Older Adult Community)  
In Utah County, Utah**



ENT 12695:2018 PG 1 of 39  
JEFFERY SMITH  
UTAH COUNTY RECORDER  
2018 Feb 08 10:26 am FEE 139.00 BY BA  
RECORDED FOR LINDON CREEKSIDE RET COM

Located near  
1632 W. 480 North  
Lindon, Utah 84042

[www.lindoncreekside.org](http://www.lindoncreekside.org)

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After Recording Return to:  
Lindon Creekside HOA  
1632 W. 480 North  
Lindon, Utah 84042

**AMENDED & RESTATED DECLARATION  
OF COVENANTS, CONDITIONS & RESTRICTIONS  
AND RESERVATION OF EASEMENTS**

For  
**LINDON CREEKSIDE RETIREMENT COMMUNITY,**  
(A 55 and Older Community)  
in Utah County, Utah

THIS AMENDED & RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR LINDON CREEKSIDE RETIREMENT COMMUNITY, a 55 and older community (this "Declaration") is hereby adopted by Lindon Creekside Home Owners Association, Inc.

("Association"), for and on behalf of its Members, and made effective as of the date recorded in the Utah County Recorder's Office.

**RECITALS:**

(A) This Declaration affects and concerns the real property located in Utah County, Utah and more particularly described as follows ("Property"):

ALL OF LOTS 1 THROUGH 54, INCLUSIVE, IN THE LINDON CREEKSIDE RETIREMENT COMMUNITY, LINDON, UTAH, UTAH, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE UTAH COUNTY RECORDER, UTAH.

TAX I.D. NOS. 65:284:0001 – 65:284:0054.

(B) NOTICE AGE RESTRICTED COMMUNITY: THE LINDON CREEKSIDE RETIREMENT COMMUNITY IS INTENDED, AND SHALL BE MANAGED, TO PROVIDE HOUSING FOR PERSONS 55 YEARS OF AGE OR OLDER PURSUANT TO THE FAIR HOUSING ACT AND HOUSING FOR OLDER PERSONS ACT OF 1995. EACH AND EVERY UNIT WITHIN THE PROPERTY, IF OCCUPIED, SHALL BE OCCUPIED BY AT LEAST ONE PERSON 55 YEARS OF AGE OR OLDER. ALL NEW OWNERS SHALL CERTIFY AND PROVIDE APPROPRIATE DOCUMENTATION TO THE BOARD THAT THE OWNER AND ANY OCCUPANTS MEET THE AGE RESTRICTIONS. THE BOARD HAS THE AUTHORITY TO ADOPT POLICIES AND PROCEDURES RELATED TO GATHERING INFORMATION AND ENFORCEMENT OF THE AGE RESTRICTIONS.

(C) On or about November 13, 2007, a Plat Map depicting the Lindon Creekside Retirement Community was recorded in the Utah County Recorder's Office, as Entry No. 160335:2007.

(D) On or about November 13, 2007, a Declaration of Covenants, Conditions and Restrictions for Creekside Retirement Community ("Enabling Declaration") was recorded in the Utah County Recorder's Office, as Entry No. 160336:2007.

(E) On or about March 12, 2013, an Amended Declaration of Covenants, Conditions & Restrictions of Creekside Retirement Community was recorded in the Utah County Recorder's Office, as Entry No. 23602:2013 ("First Amendment").

(F) On or about April 9, 2013, an Amended Declaration of Covenants, Conditions & Restrictions of Creekside Retirement Community was recorded in the Utah County Recorder's Office, as Entry No. 34122:2013 ("Second Amendment").

(G) On or about July 28, 2017, an Amended Declaration of Covenants, Conditions & Restrictions of Creekside Retirement Community was recorded in the Utah County Recorder's Office, as Entry No. 72769:2017 ("Third Amendment").

(H) The Association and its Members, consistent with the Enabling Declaration and any subsequent amendments (including any not referenced herein), hereby adopt this Declaration. This Declaration hereby amends, replaces and supersedes all prior declarations and amendments, rendering the prior declarations and amendments of no further force and effect. This Declaration, along with any future amendment(s), shall be the sole Declaration for the Property.

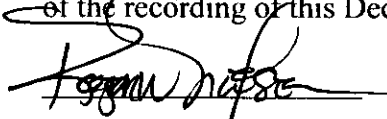
(I) The Property is subject to certain protective covenants, conditions, restrictions and easements, as set forth in this Declaration, as amended from time to time, which are deemed to be covenants running with the land mutually burdening and benefitting each of the Lots within the Community. Common Areas and Limited Common Areas are those areas that are depicted as Common Areas and Limited Common Areas in the recorded Plat Map(s), as well as any future recorded Plat Map(s), or as described in this Declaration. A Plat Map for the Property is attached hereto as **Exhibit A**.

(J) The Association and its Members desire that the Board amend the existing Articles of Incorporation with the Utah Department of Commerce contemporaneously with the recording of this Declaration. The Association and its Members hereby authorize and approve filing the Amended and Restated Articles of Incorporation of Lindon Creekside Home Owners Association, Inc. ("Articles") with the State of Utah, a copy of which has been previously provided to and approved by the Owners.

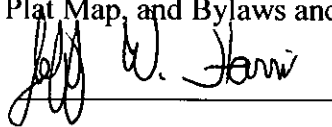
(K) The Association and its Members desire that the Board amend the existing Bylaws for the Association and hereby authorize and approve the Amended and Restated Bylaws ("Bylaws"). The Association and its Members, consistent with any prior, existing bylaws and any subsequent amendments thereto (including any not referenced herein), hereby adopt the Bylaws. These Bylaws hereby amend, replace and supersedes all prior bylaws and amendments, rendering the prior bylaws and amendments of no further force and effect. These Bylaws, along with any future amendment(s), shall be the sole Bylaws for the Property.

### **CERTIFICATION**

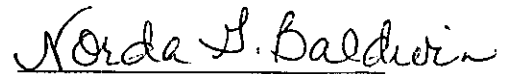
(L) Owners of record, holding not less than sixty-seven percent (67%) of the total voting power of the Association provided their written consent approving and consenting to the recording of this Declaration and the attached Plat Map and Bylaws, and filing of the Articles. Roger W. Nielsen, Jeff W. Harris, and Norda G. Baldwin, of the Board, hereby certify that the requisite number of votes were obtained accepting and approving of the recording of this Declaration, Plat Map, and Bylaws and filing of the Articles.



Roger W. Nielsen



Jeff W. Harris



Norda G. Baldwin

(M) The Association and its Members desire to subject the Property to the terms and conditions of this Declaration, the Utah Community Association Act, Utah Code Ann. § 57-8a-101 *et. seq.*, and the Utah Revised Nonprofit Corporation Act, Utah Code Ann. § 16-6a-101 *et. seq.* The Property does not constitute a cooperative.

(N) The Property shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved, subject to the following easements, restrictions, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Property, in furtherance of a general plan for the protection, maintenance, improvement and sale of the Property or any portion thereof. The covenants, conditions, restrictions, reservations, easements and equitable servitudes set forth herein shall run with each Unit located on the Property, including any additions thereto, and shall be binding upon all persons having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of every portion of the Property and any interest therein;

and shall inure to the benefit of and be binding upon the Association and its members, and its successors in interest; and may be enforced by the Association, any Member, and their successors in interest.

(O) These Recitals are made a part of this Declaration.

## **COVENANTS, CONDITIONS AND RESTRICTIONS**

### **ARTICLE I** **DEFINITIONS**

1.0 Unless the context clearly requires the application of a more general meaning, the following terms, when used in the Declaration, shall have the following meanings:

(A) "Act" means the Community Association Act, Utah Code Ann. Sections 57-8a-101 *et. seq.*

(B) "Architectural Review Committee" or "ARC" shall mean the Architectural Review Committee created by this Declaration, the Bylaws, and/or Articles of Incorporation.

(C) "Articles" shall mean the Articles of Incorporation for the Association, as amended from time to time.

(D) "Assessment" shall mean any monetary charge, fine or fee imposed or levied against an Owner by the Association, as provided in the Governing Documents, regardless of whether said assessment is identified as a regular assessment, special assessment, individual assessment, reserve assessment, capital improvement assessment, fine, late fee or other charge.

(E) "Association" shall mean LINDON CREEKSIDE HOME OWNERS ASSOCIATION, INC., and as the context requires, the officers or directors of that Association.

(F) "Board" or "Board of Directors" shall mean the duly elected and acting Board of Directors of LINDON CREEKSIDE HOME OWNERS ASSOCIATION, INC.

(G) "City" shall mean Lindon, Utah and its appropriate departments, officials and committees.

(H) "Community" means all of the land described in the Plat (attached as Exhibit A).

(I) "Community Wide Standard" means the generally accepted and approved standard of conduct, maintenance, or other activities generally prevailing in the Community. This Community Standard may be more specifically defined by the Board of Directors from time to time and shall serve as a standard against which behavioral, architectural and landscaping restrictions and infractions of same are determined.

(J) "County" shall mean Utah County, Utah and its appropriate departments, officials and committees.

(K) "Common Expenses" means any and all costs, expenses and liabilities incurred by or on behalf of the Association, including, without limitation, costs, expenses and liabilities for (1) managing, operating, insuring, improving, repairing, replacing and maintaining the Common Areas; (2) managing, operating, insuring, improving, repairing, replacing and maintaining those portions or items of Limited Common Areas that are the responsibility of the Association; (3) providing facilities, services and other benefits to Owners as set forth in this Declaration; (4) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; (5) levying, collecting and enforcing the assessments; (6) operating the Association; and (7) creating reserves for any such costs, expenses and liability as required by this Declaration or the Act

(L) "Declaration" shall mean this Amended & Restated Declaration of Covenants, Conditions and Restrictions for the Lindon Creekside Retirement Community, together with any subsequent amendments or additions through subsequent recording amendments or supplements.

(M) "Governing Documents" shall mean this Declaration, Bylaws, Articles, Rules, and any other documents or agreements binding upon an Owner.

(N) "Limited Common Areas" shall mean all property designated on the recorded Plat Map(s), or as described in this Declaration as Limited Common Area, being intended ultimately to be owned by the

Association but for the exclusive use and enjoyment of one or more appurtenant Lots but fewer than all of the Lots.

(O) "Lot" shall mean any numbered building pad, including any privately owned real property not included as Common Area or Limited Common Area, shown on any official and recorded Plat(s), including all Improvements located thereon. If the Community contains Improvements that share a Party Wall, Lot or Unit may also refer to each individually owned Unit.

(P) "Manager" shall mean any entity or person engaged by the Board of Directors to manage the Community.

(Q) "Member" means every person or entity that holds membership in the Association. Every member is an owner, and every owner is a member.

(R) "Party Wall" shall mean a wall which is built as a part of the original construction of a Unit within the Community and placed on the dividing line between two connected Units shall constitute a Party Wall.

(S) "Person" shall mean a natural person or any legal entity with a right to hold title to real property in its own name in the State of Utah.

(T) "Qualified Resident" shall mean a person of age 55 or greater who is the primary resident of a unit in the community.

(U) "Rules" mean any instrument adopted by the Board for the regulation and management of the Association as provided in the Governing Documents.

(V) "Subdivision" shall mean all phases of the Lindon Creekside Retirement Community and all Lots, Common Areas, Limited Common Area, and other property within the Community, as shown on the Plat(s) and any future Plat(s) covering the Property.

(W) "Unit" shall mean any numbered Unit (including Units that share a Party Wall and the existing detached residences, including applicable Limited Common Area) shown on any official and recorded Plat(s) of all or a portion of the Community whether or not it contains an Improvement. If the Community contains Improvements that share a Party Wall, Unit may also refer to each individually owned residence. Unit also includes all mechanical equipment and appurtenances located within any one Unit or located without said Unit but designated and designed to serve only that Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, furnaces, stoves, fixtures and the like, shall be considered part of the Unit, as shall all decorated interiors, all surfaces of interior structural walls, floors and ceilings, windows and window frames, doors and door frames, and trim, consisting of, inter alia and as appropriate, wallpaper, paint, flooring, carpeting and tile. All pipes, wires, conduits, or other public utility lines or installations constituting a part of the Unit and serving only the Unit, and any other property of any kind, including fixtures and appliances within any Unit, which are within the Unit but are removable without jeopardizing the soundness, safety or usefulness of the remainder of the building within which the Unit is situated shall be considered part of the Unit.

## **ARTICLE II**

### **AGE RESTRICTED COMMUNITY**

2.1 Age Restrictions: The Lindon Creekside Retirement Community is intended and shall be managed to provide housing for persons 55 years of age or older. Therefore, it is intended that each and every unit within the community, if occupied, shall be occupied by at least one person 55 years of age or older ("Qualified Resident"). A limited number of exceptions to this rule are listed here in this section. In order to comply with the Fair Housing Act and Housing for Older Persons Act of 1995, all new owners shall certify and provide appropriate documentation to the Board that the occupants of their unit meet the age restriction identified herein. The Board has the authority and responsibility to adopt policies and procedures related to the gathering of information related to the age restrictions and the enforcement of the age restrictions.

(a) Nothing construed herein shall limit the ability of a person 55 years of age or older to co-habitat with a spouse or partner who is less than 55 years of age.

(b) Any spouse or partner of a qualified resident who is not 55 years of age or older and is living with the qualified resident at the time of the qualifying resident's death may not be required to move out of the community due to age. This exception only applies to the surviving spouse if they remain as a full-time occupant of the unit and does not extend to any future occupants of the unit.

(c) Persons under the age of 55 may not reside in the community for more than 90 days within a twelve (12) month period.

(d) Person(s) under the age of 18 may reside within the community with qualified resident if such older person possesses legal guardianship due to that minor person's age. Acceptable documentation must be provided to the Board and kept current with the Age Audit Forms.

(e) Any adult child who has been living with a parent, who is a qualified resident, continuously from age 18 on and has maintained a legal residence with the parent may continue to live with that parent until they reach the age of 23 years old.

(f) A person under the age of 55 may reside within the community with a qualified resident if such older person possesses legal guardianship of such person due to that person's disability or if the qualified resident provides documentation from a medical professional that explains the need for the person under 55 to reside with the qualified resident. Acceptable documentation must be provided to the Board and kept current with the Age Audit Forms.

(g) A person under the age of 55 may reside within the community with a qualified resident as a caregiver for that qualified resident or his or her spouse provided the person needing care provides documentation from a medical professional that explains the need for the caregiver. Acceptable documentation must be provided to the Board and kept current with the Age Audit Forms.

(h) The Owners of the following five (5) Units identified below purchased their respective Units during Declarant's period of administrative control and did not have a primary occupant over the age of 55 residing in the Unit at the time this Third Amendment as recorded on July 28, 2017. These Units are identified as follows:

1577 W. 480 N. - 1647 W. 480 N. - 484 N. 1510 W. - 1603 W. 430 N. - 1648 W. 430 N.

Given the unique circumstances and timing involved with the purchase of the above listed Units, the requisite number of Owners, as set forth within the Recitals, has requested and approved a limited exception for the primary occupant of these five Units, as set forth herein.

(i) Provided that the Owners and occupants of these five Units are in compliance with all other terms and conditions of the governing documents, the primary occupant of these five Units, as of the date this Third Amendment as recorded, may be under the age of 55. Notwithstanding this limited exemption for the primary occupant, all other age restriction requirements apply to the occupants of these five Units. Upon the sale, transfer, lease or occupation by persons not currently residing in these five Units, such exemption for the primary occupant shall cease and all age restrictions shall return and apply to these five Units equally, as with all other Units in the Community. All new Owners and/or occupants of these five Units shall not be allowed the exemption and shall be required to comply with all age restrictions.

### **ARTICLE III** **EASEMENTS**

3.1 Easement Concerning Common Area. Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Area. Such right and easement shall be appurtenant to and shall pass with title to each Unit and in no event shall be separated therefrom, or encumbered, pledged, assigned or otherwise alienated by an Owner. Any Owner may temporarily delegate the right and easement of use and

enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such Owner's Unit. Notwithstanding the foregoing, no Owner shall have any right or interest in any easements forming a portion of the Common Area except for the necessary parking, access, and utility easements for use in common with others.

3.2 Easement Concerning Limited Common Area. The Association shall have a non-exclusive drainage and public utility easement and an easement for maintenance in and to the Limited Common Area. With the exception of the rights and easements granted to the Association, the Owner(s) of a Unit shall have the exclusive use of all Limited Common Area appurtenant to their Unit.

3.3 Limitation on Easement. An Owner's right and easement of use and enjoyment concerning the Common Area shall be subject to the following:

(a) The right of the Association to govern by Rules the use of the Common Area for the Owners so as to provide for the enjoyment of said Common Areas by every Owner in a manner consistent with the preservation of quiet enjoyment of the Lots by every Owner, including the right of the Association to impose reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Area;

(b) The right of the Association to suspend an Owner's right to the use of the Common Areas, or any amenities included therein, for any period during which an Owner is in violation of the terms and conditions of the Governing Documents or delinquent in the payment of a levied assessment or fee.

(c) The right of the City, County, and any other governmental or quasi-governmental body having jurisdiction over the Property, to enjoy access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Common Areas for the purpose of providing police and fire protection, transporting school children, utility access/installation, and providing any other governmental or municipal service; and

(d) The right of the Association to dedicate or transfer any part of the Common Areas to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association, provided that such dedication or transfer must first be assented to in writing by the Owners of at least sixty-seven percent (67%) of the Lots. No such dedication or transfer, however, may take place without the Association first receiving written approval from City and/or County pursuant to all applicable state and city laws, rules and ordinances in effect at the time of such proposed dedication or transfer.

3.4 Reservation of Access and Utility Easements. The Association hereby reserves an easement for access and utilities (including but not limited to: electrical, gas, communication, phone, internet, cable, sewer, drainage and water facilities) over, under, along, across and through the Property, together with the right to grant to a City and County, or any other appropriate governmental agency, public utility or other utility corporation or association, easements for such purposes over, under, across, along and through the Property upon the usual terms and conditions required by the grantee thereof for such easement rights, provided, however, that such easement rights must be exercised in such manner as not to interfere unreasonably with the use of the Property by the Owners and the Association and those claiming by, through or under the Owners or the Association; and in connection with the installation, maintenance or repair of any facilities as provided for in any of such easements, the Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the approximate condition of the Property immediately prior to the exercise thereof. Each Owner in accepting the deed to a Unit expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way.

3.5 Easements for Encroachments. If any part of the Common Area or Limited Common Area now existing upon any Unit or hereinafter constructed by Association encroaches upon a Unit, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any Common Area or



Limited Common Area improvement on any Unit shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon a Unit or upon any portion of the Common Area or Limited Common Area due to such reconstruction shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

**3.6 Easement in Favor of Association.** The Lots, Common Area and Limited Common Area are hereby made subject to the following easements in favor of the Association and its directors, officers, agents and independent contractors:

(a) For inspection during reasonable hours of the Lots, Common Area and Limited Common Area in order to verify the performance by Owners or other persons of all items of maintenance and repair for which they are responsible;

(b) For inspection, maintenance, repair and replacement of portions of the Common Area and Limited Common Area;

(c) For correction of emergency conditions on one or more Lots or on portions of the Common Area and Limited Common Area;

(d) For the purpose of enabling the Association, the Architectural Review Committee or any other committees appointed by the Association to exercise and discharge during reasonable hours their respective rights, powers and duties;

(e) For inspection during reasonable hours of the Lots, Common Area and Limited Common Area in order to verify that the Owners and occupants, and their guests, tenants and invitees, are complying with the provisions of the Governing Documents.

## **ARTICLE IV** **COMMON AREAS**

**4.1 Common Areas.** The Common Areas consist of areas designated as Common Areas on the recorded Plat(s), including any structures related to the operation or maintenance of the Common Areas, together with any rights of way and utilities, as shown on the recorded Plat(s), including but not limited to private roads and open space. The Association shall maintain the Common Areas.

## **ARTICLE V** **LIMITED COMMON AREAS**

**5.1 Limited Common Areas.** The Limited Common Areas consists of the areas designated as Limited Common Areas on the recorded Plat(s), or described in this Declaration, for the exclusive use of one or more appurtenant Units but fewer than all of the Units. Limited Common Areas include the area between the existing privacy fence (installed between two Units) extending to the middle point of the adjacent Lot at a point equidistance between any two adjacent Units or Lots, then extending from the rear of the residence until meeting the horizontal fencing that runs parallel to the Units and continuing the length of the Common Area, including any patio, deck or other improvements within this rectangle-shaped area.

## **ARTICLE VI** **MAINTENANCE OF COMMON AREAS,** **LIMITED COMMON AREAS AND UNITS**

**6.1 Subdivision.** The Community consists of fifty (50) attached residences sharing a Party Wall and four (4) detached residences.

6.2 Maintenance by the Association of Common Areas. The Association shall maintain all Common Areas in good order and repair and shall otherwise manage and operate all Common Areas, as it deems necessary and appropriate. The Association shall furnish and be responsible for, at the Association's expense, the maintenance, repair and replacement of the Common Areas, which include the following:

(a) Snow Removal. The Association shall make reasonable and prudent efforts to contract with a third party for the removal of snow from private roads, sidewalks, driveways and other relevant Common Areas within the Community. Owners shall be responsible for removing snow from entryways, porches, patio areas, and other applicable areas on their Unit. Owners shall be responsible and take reasonable precautions with respect to ice and ice accumulation. The work of removing snow may be delegated to a third party, who will utilize its discretion in the frequency of the snow removal and the amount of accumulation meriting removal. The Association shall not be responsible or liable for said third party's discretion and removal of snow.

(b) Landscaping. The Association shall perform general landscaping maintenance of the Units' yard (including front, side and back yards), which shall include mowing, edging, blowing of grass, raking and disposal of leaves, and necessary tree and bush trimming. The Association shall maintain the original sprinkler system, as originally installed, in the front, side, and back yards. Owner is responsible for any approved changes in sprinkler modification or landscaping. Owners shall be responsible for providing necessary access to the landscaping in any fenced Limited Common Area. If access is denied, the work will not be performed.

(c) Repair, maintenance and replacement of the perimeter fence around the Community, the east-west fence running between 430 North and 480 North, and the short fences that are an extension of the party wall between physically attached units.

(d) Asphalt repair, maintenance and replacement of any private roads within the Community.

(e) Any light poles.

(f) Any community mailboxes.

(g) Driveways, walkways and sidewalks, which are not the responsibility of the City or County.

(h) Private utility lines/infrastructure that serves more than one Unit and is not the responsibility of the City or County;

#### 6.4 Association's Responsibility for Maintenance of the Units:

(a) Roofs and rain gutters;

(b) Foundations (excluding any concrete pad within a Unit);

(c) Structural components, framing and insulation in Party Walls, and any exterior or bearing walls;

(d) Sewer and drainage pipes, water, and utility lines to the extent said utilities serve two or more Units;

(e) Outside exterior surfaces of Units.

6.5 Owner's Responsibility for Maintenance of Units and Limited Common Areas. Each Owner, at such Owner's sole cost and expense, shall maintain and/or replace such Limited Common Areas and Owner's Unit, and the Improvements constituting a part thereof, in good order and repair, including:

(a) Entryways, decks, rear steps, patios and porches;

(b) All interior and exterior doors, including frames, locks, hinges, door jams and garage doors;

(c) Finished interior of the Unit, including: flooring, tiles, wallpaper, paint, carpet, wood, fireplaces, other material comprising finished interior floors, walls or ceilings;

(d) Framing and insulation associated with interior walls;

(e) Drywall, wallboard and similar materials within a Unit;

(f) Skylights, windows, window wells, window sills, window frames, shutters, glass, screens, and patio doors;

(g) Sewer and drainage pipes, wiring, power, water and other utility lines to the extent located within an Owner's Unit or serves only that Owner's Unit;

(h) Concrete pads within Unit(s) or garage(s);

(i) Plumbing fixtures, fans, stoves, refrigerators, appliances, heaters, furnaces, fireplaces, vents, chimneys, HVAC systems, compressors, condensers, ducting, air conditioning, water spigots, hose bibs, lighting fixtures, pipes, and similar appliances, fixtures and pipes that exclusively serve an Owner's Unit(s);

(j) All other items that are owner improvements, including attic vents, and roof-mounted equipment and devices (and necessary attachments and water seals therefore);

(k) Any of the following located wherever they might be located (inside or outside of the Unit) that serve an Owner's Unit exclusively: lighting fixtures (including lighting attached to exterior walls, but not including Association security lights), fans, plumbing fixtures (other than pipes located outside of a Unit and that do not exclusively serve that Unit), stoves, refrigerators, hot water heaters, air conditioning units (including compressors, condensers, ducting, and forced air units). Intercoms, security systems, water spigots and bibs, vents, chimneys and fireplaces, and such other appliances, fixtures, and decorations as an Owner may install as permitted in this Declaration;

(l) Owners shall be responsible for their "personal garden area" as defined and established by the Board, whether or not shown on any Plat Map.

(m) The Limited Common Area including all fencing and improvements not maintained by the association.

(n) Even though the association is responsible for much of the maintenance in our community, it is expected that all residents will be good stewards of their units and property. The costs of any maintenance that is required due to the negligence of an individual owner or a guest in their Unit will be assessed to the owner of the Unit in question.

**6.6 Maintenance by Owner/Repairs by Association.** It is the obligation of each Owner to maintain his Lot and Unit at all times in order to preserve and enhance the enjoyment of the Community. In the event that an Owner permits his/her Unit or Improvements to fall into a state of disrepair that is dangerous, unsafe, unsanitary or unsightly condition or fails to comply with any other covenant or restriction in violation of this Declaration, the Association may give written notice to the Owner describing the condition complained of and demand that the Owner correct the condition within 30 days. If the Owner fails to take corrective action, the Association shall have the right, but not the obligation, to enter upon the offending Owner's Unit and take corrective action to abate the condition. All costs of abatement shall be charged to the Owner, who agrees to promptly pay the reasonable costs of any work performed under this provision. In addition, each Owner hereby grants to the Association a lien on the Unit and any improvements to secure repayment of any sums advanced pursuant to this section, which lien may be foreclosed at any time by the Association in the manner prescribed in Utah for the foreclosure of mortgages. Alternatively, without requiring foreclosure, the Association may seek collection of sums advanced directly from the Owner of the Unit in question. Unpaid amounts will bear interest from the date advanced at the lawful judgment rate under applicable state law.

**6.7 Alterations of Exterior Appearance.** The Owners will maintain their Units and Improvements in substantially the same condition and appearance as that approved by the ARC. No subsequent exterior alterations, improvements or remodeling, whether structural or changes in landscaping, paint color or materials will be made without the advance consent of the ARC and the **written approval of the Board of Directors.**

**6.8 Repair Following Damage.** In the event of casualty loss or damage to the improvements, the Owner will be entitled to reconstruct the Improvements as they existed prior to the damage or loss without review by the ARC, provided however that alterations or deviations from the original approved plans will require review. Nothing in this Declaration is intended to prevent an Owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent injury or dangerous conditions following loss or damage, before re-construction begins. Such temporary measures may be taken without the consent or approval of the ARC, provided that any such measure must be of a temporary nature, and repair or reconstruction must begin as soon as circumstances will permit. No damaged structure will be permitted to remain on any Unit for

more than 90 days without repairs commencing and any damaged structure which does remain unrepaired after 90 days following the occurrence of damage is deemed a nuisance which may be abated by the Association.

## **ARTICLE VII**

### **MEMBERSHIP AND VOTING**

7.1 Membership. Membership in the Association shall at all times consist exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner has an ownership interest in a Unit and such membership shall automatically terminate when the Owner ceases to have an ownership interest in the Unit. Upon the transfer of an ownership interest in a Unit the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Unit is held.

7.2 Voting. Voting shall be conducted as set forth in the Bylaws.

## **ARTICLE VIII**

### **HOME OWNER ASSOCIATION**

8.1 Organization. The Lindon Creekside Home Owners Association, Inc. has been created to effectively enforce the Governing Documents and shall operate as a non-profit corporation. The Association shall be comprised of the Owners within the Community, and is established for the benefit of the Owners and the enforcement of the Governing Documents. Membership in the Association is deemed an appurtenance to the Unit, and is transferable only in conjunction with the transfer of the title to the Unit. The Association shall serve as the organizational body for all Owners. The affairs of the Association shall be governed by a Board of Directors as provided in the Bylaws.

#### 8.2 Enforcement Powers.

(a) The Association shall have all powers granted to it by the Governing Documents and the Act to enforce these covenants and restrictions by actions in law or equity brought in the name of the Association, and the power to retain professional services needed to the enforcement of the Governing Documents and to incur expenses for that purpose, including but not limited to (i) record, lien, foreclose and other enforcement and collection actions against an Owner and their Unit; (ii) initiate legal or similar proceedings; (iii) impose fines; (iv) collect any rents directly from tenant for past due assessments; (v) terminate an Owners' right to receive utility service paid as a common expense; (vi) terminate an Owner's right to utilize Common Area and/or amenities; and (vii) any other action or remedy allowed by the Governing Documents or Utah law.

(b) The Association shall have the exclusive right to initiate enforcement actions in the name of the Association. The Association may appear and represent the interest of the Community at all public meetings concerning zoning, variances, or other matters of general application and interest to the Owners.

(c) The Association shall have the authority to initiate and compromise claims and litigation on behalf of the Association resulting from the enforcement of the Governing Documents. In the event that the Association initiates legal action against a specific Owner or Owners to enforce these Governing Document, whether or not such action results in the commencement of a formal legal proceeding, the Association shall have the right to assess the costs of such litigation, dispute, or enforcement action, including reasonable attorney fees, against the Owner(s) or Unit(s) in question and collect those assessment in any manner authorized in the Governing Documents or Utah law.

(d) The Board shall be afforded discretion to utilize its reasonable judgment to determine whether and how to: impose fines, record liens, pursue legal action; otherwise enforce the Governing Documents; or when and how to settle or compromise claims.

**8.3 Assessments.** Assessments will be made to meet the anticipated and recurring costs, expenses and Common Expenses of the Association. The Association has the power to levy assessments against each Unit as necessary to carry out its functions. Assessments shall be levied against all Lots in the Community. Each Owner shall by acquiring or in any way becoming vested with his/her interest in a Unit, be deemed to covenant and agree to pay to the Association the assessments described in these covenants, together with late payment fees, interest and costs of collection (including reasonable attorney fees), if and when applicable. All such amounts shall be, constitute and remain: (i) a charge and continuing lien upon the Unit with respect to which such assessment is made until fully paid; and (ii) the personal, joint and several obligations of the Owner or Owners of such Unit at the time the assessment falls due. No Owner may exempt himself or his Unit from liability for payment of assessments by waiver of his rights in the Common Areas or by abandonment of his Unit. In a voluntary conveyance of a Unit, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments, late payment fees, interest and costs of collection (including reasonable attorney fees) which shall be a charge on the Unit at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee.

(a) The Association may levy individual assessments on every Unit, Owner or occupant that shall cause any damage within the Community or otherwise causes the Association to incur any individual expense for maintenance, repairs, or enforcement action taken under the provisions of the Governing Documents. The amount of any such individual assessments shall be determined by the cost of such repairs, maintenance or enforcement action, including all overhead and administrative costs (including reasonable attorney fees), and shall be allocated among the affected Owner(s) or Unit(s) according to the cause of damage, maintenance, repair work or enforcement action, as the case may be, which individual assessment may be levied in advance of the performance of work.

(b) The Association may levy special assessments for the purpose of defraying, in whole or in part, any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments, or the cost of any construction, reconstruction, or unexpectedly required repairs or replacement of the Common Areas or Limited Common Areas.

(c) The Association may levy a reserve fund assessment, as set forth in this article.

(d) The Association may levy other assessments or fees, as authorized by the Governing Documents.

**8.4 Budget.** The Board is authorized and required to adopt a budget for each fiscal year. The adopted budget shall be presented to the Owners at or before each annual meeting.

(a) The Board may revise the approved budget from time to time as necessary to accurately reflect actual and/or anticipated expenses that are materially greater than previously budgeted.

(b) Unless otherwise established by the Board, regular Assessments shall be paid in equal monthly installments.

**8.5 Reserve Fund Analysis.** The Board shall cause a reserve analysis to be conducted no less frequently than every six (6) years to analyze the cost of repairing, replacing or restoring Common Area and Limited Common Areas that have a useful life of three years or more and a remaining useful life of less than 30 years. This reserve analysis should be reviewed no less frequently than every three (3) years and updated if necessary. The Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the reserve analysis.

**8.6 Use of Reserve Funds.** The Board may not use money in a reserve fund for daily maintenance expenses or for any purpose other than the purpose for which the reserve fund was established, unless a

majority of the Owners vote to approve the use of reserve fund money for that purpose. In the event that the Association experiences a surplus in any fiscal year, the Board may elect to place said surplus in the reserve fund account.

8.7 Reserve Fund Account Creation. The Board shall create a reserve fund account that is separate and distinct from the Association's general account, which account shall be funded from the reserve fund assessments. The amount of the reserve fund assessment shall be a separate line item in the approved budget. The Board shall cause an assessment to be made against all Owners in an amount sufficient, within the Board's discretion, to fund the reserve account.

8.8 Reinvestment Fee. The Board shall have power to levy a one-time reinvestment fee when a change in ownership of a Unit occurs in an amount equal to two (2) regular monthly assessments, unless a lesser amount is determined by the Board.

8.9 Date of Commencement of Assessments. The assessments provided for herein shall commence as to each Unit on the first day of the first month following the effective date of the first budget. Assessments shall be due and payable in a manner and on a schedule, as the Board may provide.

8.10 Fines. Following notice as required by the Act, the Association shall have the power to assess a fine against an Owner and/or their Unit for a violation of the terms and conditions of the Governing Documents in an amount set by the Board.

8.11 Hearing Process. The Board shall have authority to create a reasonable hearing process applicable when the Association takes an adverse action related to any particular Owner(s) in accordance with the Act.

8.12 Association Rules and Regulations. The Board from time to time and subject to the provisions of the Governing Documents, may adopt, amend, repeal and enforce Rules governing:

- (a) the use of the Common Areas and Limited Common Areas;
- (b) the use of any facilities owned by the Association;
- (c) the collection and disposal of refuse;
- (d) the maintenance of animals within the Community;
- (e) collection policies and procedures; and

(f) other matters concerning the use and enjoyment of the Community and the conduct of residents, as deemed necessary by the Board. The Rules may supplement, clarify and add detail to issues addressed in Governing Documents. However, the Rules may not contradict the Governing Documents. Reasonable fines may be levied and collected as an assessment for violations of said Rules and Regulations.

8.13 Statement of Account & Payoff Information. Upon a written request from an Owner that the Association provide the Owner with a statement of his/her account, the Association may charge a reasonable fee for providing such statements. In addition, when a request is made to the Association to provide payoff information needed in connection with the financing, refinancing, or closing of a Unit Owner's sale of his/her Unit, the Association may charge a reasonable fee for this service.

8.14 Availability of Documents. The Association shall make appropriate documents available to Owners (and their lenders, insurers and/or authorized agents) consistent with the Act and the Utah Revised Non-Profit Act. The Board may adopt a record retention policy to govern its record retention procedures.

8.15 Indemnity of Association Board and Officers. The Association will indemnify the officers, agents and Board of the Association against any and all claims arising against them personally which are a result of the good faith exercise of the powers, duties and responsibilities of their office under the Governing Documents.

8.16 Election, Notice of Election, Notice of Meeting and Special Meetings. Election procedures and notice of any meeting shall be conducted as set forth in the Articles of Incorporation and Bylaws of the Association.

8.17 Number of Board, Term of Office. The appointment, election and term of the Members of the Board are set forth in the Articles of Incorporation and Bylaws of the Association. Members of the Board of Directors may serve consecutive terms, and may also serve as officers of the Association.

8.18 Independent Accountant/Bookkeeper. The Association may retain the services of an independent accountant or bookkeeper to assist the Board of Directors and officers to maintain accurate financial records of the Association.

## **ARTICLE IX**

### **NON-PAYMENT OF ASSESSMENTS**

9.1 Delinquent Assessment. Any assessment not timely paid shall be delinquent, and the Association may invoke any and all remedies to recover said delinquent assessments including by: suit, judgment, lien, foreclosure, or other remedy authorized by the Governing Documents or the Act.

9.2 Due Date, Charges & Interest. Unless otherwise established by the Board, monthly assessments shall be due and payable on the first of each month. The assessments shall be considered overdue on the first day of the following month. The Board may adopt a collection policy that charges a late fee in an amount set by the Board for each unpaid or late assessment. In addition to late fees, interest shall accrue on all unpaid balances at 18% per annum or 1.5% per month. The Board may also impose attorney fees and other reasonable charges imposed by a Manager or attorney related to collections.

9.3 Lien. Upon recording of a notice of lien on any Unit, there shall exist a perfected lien for unpaid assessments prior to all other liens, except: (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto; and (2) the lien or charge of any first or second mortgage of record made in good faith and for value recorded prior to a recorded notice of lien by the Association.

9.4 Foreclosure. The Association shall have the power to bid for the Unit at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be charged or levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged had such Unit not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid assessments and attorney fees shall be maintainable without foreclosing or waiving the lien securing the same.

9.5 Other Remedies. All rights and remedies of the Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy. The "One Action Rule" shall not be a defense to the enforcement of all rights and remedies of the Association. The Association may elect to bring an action to recover for a delinquent Assessment against the Owner or other obligee personally. Any attorney fees or costs incurred in these efforts shall also be assessed against the Owner(s), their Unit(s), and/or other obligees jointly and severally.

9.6 Payment by Tenant. The Association shall be entitled to demand and collect from a tenant of any Unit, the amount of any assessment that is more than sixty (60) days past due.

9.7 Attorney Fees. In addition to the recovery of costs and attorney fees as provided herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner breach of the Governing Documents, including meetings, research, memoranda, monitoring and other legal work incurred in response to an Owner breach or violation of the Governing Documents. These fees may be collected by special or individual assessment against the subject Owner(s) or Unit(s).

9.8 Appointment of Trustee. The Association hereby conveys and warrants pursuant to U.C.A. Section 57-1-20 to a person named in a Resolution for appointment of a Trustee, with power of sale of a Unit and all Improvements to the Unit for the purpose of securing payment of assessments under the terms of this Declaration. If a Resolution is not in effect, then the President of the Association will serve as the Trustee.

## **ARTICLE X** **SUBORDINATION OF LIEN**

10.1 The lien of assessments, including interest, late charges (subject to the limitations of Utah law), and costs (including attorney fees) provided for herein, shall be subordinate to the lien of any institutional first or second mortgage of record made in good faith and for value, recorded prior to a recorded notice of lien by the Association. No foreclosure, sale or transfer shall relieve any Owner who was the Owner prior to such foreclosure, sale or transfer from personal liability for any assessments due and owing prior to such foreclosure, sale or transfer.

## **ARTICLE XI** **USE LIMITATIONS AND RESTRICTIONS**

11.1 Residential Use. Lots shall be used solely for residential purposes in accordance with the Governing Documents. Except as provided in this subsection, no trade, craft, business, profession, commercial or similar activities of any kind shall be conducted in any Unit or in any other portion of the Community without the **written consent of the Board of Directors**. Nothing in this section shall be construed so as to prevent or prohibit an Owner from maintaining his or her professional personal library; keeping his or her personal business or professional records or accounts; handling his or her personal business or professional telephone calls; or conferring with business or professional associates, clients, or customers, in such Owner's Unit.

11.2 Drainage System. There shall be no interference with the established drainage patterns or systems over or through any Unit so as to affect any other Unit or any real property outside the Community unless adequate alternative provision is made for proper drainage and is approved by the ARC. The term "established drainage" shall mean the drainage swales, conduits, inlets and outlets designed and constructed for the Property.

11.3 Sprinkler Controls and Timers. The Owners will not tamper with any sprinkler controls, clocks, timers or water settings needed for landscaping. The use and control of sprinklers will be governed by the Board of Directors upon the advice of the Association's landscaper.

11.4 Offensive Activities. No noxious, offensive or unsightly conditions, including, but not limited to, the placement or storage of car parts and appliances, or activities shall be permitted on any Unit or other portion



of the Community, nor shall anything be done in or placed upon any Unit which interferes with or jeopardizes the enjoyment of other Lots or which is a source of annoyance to residents.

11.5 Unlawful Activities. No unlawful use shall be made of the Unit and/or Limited Common Area or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

11.6 Animals.

(a) No animals, livestock, or poultry of any kind may be raised, bred, kept or permitted within any Unit, except a maximum of two household dogs, cats, or other household pets not exceeding 25 pounds provided that they are not kept, bred, or maintained for any commercial purpose. The Owner of any dog or cat must keep such dog or cat on a leash or keep it confined within the Unit and no cat or dog shall be allowed to run free in the Community.

(b) Those animals which are permitted shall not cause any noise or disturbance that would be deemed a nuisance to other Owners or residents within the Community. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective Owners thereof and Owners shall be responsible for removal of wastes of their animals from their and all other Lots.

(c) An Owner may be required to remove a pet upon receipt of a written notice from the Board of Directors given pursuant to a resolution relating to rules and regulations governing pets within the Community and enforcement of such rules and regulations and provisions of this subsection.

11.7 Rubbish and Trash. No part of the Community may be used or maintained as a dumping ground for rubbish, trash, garbage, compost, or any other waste. No garbage, trash, or other waste may be kept or maintained within the Community except in a sanitary container as specified by the Association or within a trash enclosure screened from public view. All such waste and garbage must be promptly and periodically removed.

11.8 Vehicles in Disrepair.

(a) No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked within any part of the Community unless such vehicle is within a garage. A vehicle shall be deemed in an "extreme state of disrepair" when the Board of Directors reasonably determines that its presence offends the occupants of the other Lots.

(b) If an Owner fails to remove a vehicle deemed to be in an extreme state of disrepair within seventy-two (72) hours after the date and time on which written notice is securely placed on such vehicle or delivered to the responsible Owner by the Board of Directors, the Board may have such vehicle removed from the Community and assess the Owner the expense of such removal and any storage necessitated thereby.

11.9 Fences and Hedges. No fences shall be installed by an Owner without the prior written approval of the ARC. The ARC, with the approval of the Board of Directors, may establish a common fencing standard to be applied to all Lots.

11.10 Parking of Automobiles and Other Vehicles. Owners are required to park in accordance with Rules adopted by the Board, which shall be adopted in accordance with the Act, with Owners receiving prior notice and an opportunity to comment concerning Rules governing parking. The Board shall enforce any adopted parking rules through notices, fines, towing and other legal and appropriate action.

(a) There shall be no street parking on the private roads of the community. Parking on the sidewalks is also prohibited as they were not designed with vehicle traffic in mind. This applies to residents and visitors. Vehicles parking in the streets, and/or obstructing or partially obstructing the roadways or sidewalks are in violation. Residents are only allowed to park in their garages or on their driveways. Please insure that no part of your vehicle is overhanging roadways or sidewalks.

(b) The guest parking spots identified in the community are for guests only. Resident vehicles may not be parked or stored in the guest parking spots. Snow removal may reduce the availability of guest parking, as snow storage during the winter is sometimes necessary. Parking spots are for guests that are visiting residents in the community. If a guest is not here, their car should not be parked in a guest spot.

(c) The maximum period of time in which a vehicle may park in the designated guest parking areas shall be 24 hours, as indicated by the signage of the community. Parking passes for guest parking for extended periods may be available upon request from a Board member.

(d) Additional parking is available on 500 North and can be used by residents or visitors.

11.11 Clothes Lines and Clothing and Materials. No clothes lines, clothes racks, or other apparatus on which clothes, rags, or similar items are exposed for the purpose of drying or airing shall be located within the Community except within a Unit, unless in an area screened from public view. No garments, rugs, rags, laundry, or other clothing or materials shall be allowed to hang from the windows or from any of the facades or any other part of a Unit unless in an area screened from public view.

11.12 Yard Areas. No items of any kind may be stored in front yard areas or other areas of Lots so as to be visible from public view. In order to preserve the attractive appearance of the Community, the Board of Directors, pursuant to rules, may regulate the nature of items which may be placed in front yard areas and others areas of Lots so as to be visible from public view.

11.13 Signs. Unless written approval is first obtained from the Board of Directors, no advertisement or poster of any kind may be posted within the Community except:

(a) Not more than one (1) "For Sale" or "For Rent" sign, not exceeding twenty-four (24) inches in height and thirty-six (36) inches long, may be temporarily placed on a Unit by the Owner, resident or a licensed real estate agent; and

(b) "Political" signs may be temporarily placed on a Unit by the Owner or occupant of the Unit not exceeding twenty-four (24) inches in height and thirty-six (36) inches long; and

11.14 Antennas and Service Facilities. Exterior antennas and satellite dishes shall not be permitted to be placed upon the exterior of the front or sides of any structure, except as permitted by the Board of Directors. The Board of Directors, however, shall comply with all applicable Federal and State laws regarding the placement of antennas and satellite dishes.

11.15 Noise Disturbance. Residents shall exercise extreme care about making noises or the use of musical instruments, radios, televisions, or amplifiers and may not disturb other residents.

11.16 Seasonal Decorations. Residents of the community are allowed and even encouraged to display seasonal decorations that would add to the appearance of the neighborhood. Residents should take care to display decorations only on their own portion of the Community and to be sensitive to the interests of their neighbors so as not to offend. Permanent decorations are not allowed. They must be erected or installed shortly before the appropriate holiday and then removed shortly after the holiday. The Board of Directors will determine the time frames that are reasonable for each holiday.

(a) Lights may be attached to the Units or free standing in the yards. They should be installed in a manner not to leave any permanent damage to the Unit or its yard. In whatever manner they are installed, the resident should take all appropriate safety precautions to preserve and protect individuals and property.

(b) Physical structures placed in yards should be of reasonable size and should be properly maintained during the season. They should be properly anchored to prevent them from blowing around the neighborhood should storms arise.

(c) The costs of any repairs required due to damage caused in the community by the installation of seasonal decorations or the improper use or care of such decorations will be the responsibility of the owners of those decorations.

11.17 Smoking. Consistent with the Utah Clean Air Act, the Community is smoke free. Owners shall not smoke or permit any smoking within the Community. The Board reserves the right to adopt Rules for the enforcement of this restriction. In the event an Owner or occupant violates the prohibition on smoking within the Community, the Board shall have authority to issue Fines and initiate such other legal action as deemed appropriate by the Board.

11.18 Firearms, Incendiary Devices and Graffiti. The use (not the possession) of firearms and incendiary devices within the Community is prohibited except for self-defense or the protection of life and/or property. The term firearms includes, but is not limited to, guns, pistols, handguns, rifles, automatic weapons, semi-automatic weapons, BB guns, pellet guns, air-soft guns, sling shots, wrist-rockets, blow-dart guns, and any other devices regardless of size that may cause injury or bodily harm when pointed at or projected toward another person.

## **ARTICLE XII**

### **RENTAL OR LEASE RESTRICTIONS**

12.1 Restrictions Governing Non-Owner-Occupied Units. Notwithstanding anything to the contrary in the Declaration, any leasing and non-owner occupancy of a Unit shall be governed by this section, Rules consistent with this section, and procedures adopted as allowed Declaration of Covenants, in this section. The Community is an Adult Community pursuant to the Fair Housing Act and Housing for Older Persons Act of 1995, and required age restrictions apply to all Owners and occupants.

12.2 Definitions. For the purpose of this section “Non-Owner-Occupied Unit” means a Unit that is occupied by someone while no Owner occupies the Unit as the Owner’s primary residence or for a Unit owned entirely by one or more entities or trusts, the Unit is occupied by anyone.

12.3 Restriction on Leasing and Non-Owner Occupancy. This Declaration specifies that only one (1) Unit in the community may be rented or leased at any one time. As of the date of this recording, there is one (1) Non-Owner-Occupied Unit (“Existing Rental Unit”) in the Community. It is located at 1574 W. 480 North Lindon, Utah. Further, the ability to lease the Existing Rental Unit expires upon the sale or transfer of ownership of the Unit, or if an Owner re-occupies an Existing Rental Unit. In addition, any qualifying rental Unit must comply with the following restrictions:

- (a) All occupants must meet the age restriction requirements;
- (b) It shall be required that each new owner or purchaser of a Unit within the community must live in and personally occupy that unit for a minimum period of one year prior to it being used as a rental unit.
- (c) Any Lease or agreement for otherwise allowable Non-Owner Occupancy must be in writing, must be for an initial term of at least twelve (12) months, and shall provide as a term of the agreement that the resident shall comply with the Governing Documents, and that any failure to comply shall be a default under the lease or agreement. If a lease or agreement for Non-Owner Occupancy (whether in writing or not) does not include these provisions, they shall nonetheless be deemed to be part of the lease or agreement and binding on the Owner and the Resident;
- (d) A copy of any lease or other agreement for Non-Owner Occupancy shall be delivered to the Association at least fifteen (15) days prior to occupation of the Unit by the Non-Owner Occupant.
- (e) Daily and weekly occupation by Non-Owner Occupants is prohibited (whether pay or not); and

(f) The Owner(s) of a Unit shall be responsible for the occupant's or any guest's compliance with the Governing Documents. In addition to any other remedy for noncompliance with this Declaration, the Association, following notice to the Owner, shall have the right to initiate a forcible entry and unlawful detainer action, or similar such action, with the purpose of removing the offending Non-Owner occupant. The Association, the Board of Directors, and the Manager shall not have any liability for any action taken pursuant to this subparagraph and the Owner shall indemnify and pay the defense costs of the Association, the Board of Directors, and the Manager arising from any claim related to any action taken in good faith by any of them pursuant to this subparagraph. For purposes of this subparagraph, each Owner in accepting the deed to a Unit expressly consents to such authority and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments and pursue any and all remedies available to remove the offending Non-Owner occupant.

**12.4 No Transient Lodging Uses.** The Units are to be used for residential housing purposes only, and shall not be rented in whole or in part for transient lodging purposes, boarding house, treatment facility, bed and breakfast, or other uses for providing accommodations to travelers including, but not limited to: Airbnb, VRBO, Home Away etc.. No Dwelling on a Unit shall be subjected to time interval ownership. No group homes, rehabilitation, substance treatment or similar activities shall be allowed.

**12.5 Exclusions to Non-Owner-Occupied Restrictions.** In the following situations, a Unit may be Non-Owner-Occupied, provided the occupants still meet the age restriction requirements. The units that qualify because of one of the situations identified below could be in addition to the one unit described in section 12.3 above as long as they meet all of the other conditions for leased units listed in section 12.3.

- (a) An Owner in the military for the period of the Owner's deployment.
- (b) A Unit occupied by an Owner's parent, child, or sibling.
- (c) An Owner whose employer has relocated the Owner for no less than two years.
- (d) A Unit owned by a trust or other entity created for the estate planning purposes if the trust or other estate planning entity was created for (i) the estate of a current resident of the Unit or (ii) the parent, child, or sibling of the current resident of the Unit.
- (e) A Unit whose Owner (i) moves due to temporary (three years or less) humanitarian, religious, or charitable activity or service, and (ii) has the intent to return to occupy the Unit when the service has concluded;
- (f) A Unit owned by an Owner who uses the Unit as a primary residence and due to health reasons will be living in an assisted living, rehabilitation, or other long-term healthcare facility for up to two years.

**12.6 Permitted Rules.** The Board of Directors may adopt Rules requiring:

- (a) Reporting and procedural requirement related to Non-Owner-Occupied Units and the occupants of those Units, including requiring informational forms to be filled out by Owners and/or residents identifying Non-Owner Occupants, their respective ages, vehicles, phone numbers, etc.;
- (b) Other reasonable administrative provisions consistent with, and as it deems appropriate to enforce, the requirements of this Declaration; and
- (c) Procedures for the verification of the age of the occupants of all Units.

**12.7 Tenant Selection.** It shall be landlord's sole responsible to properly screen tenants, which shall include, at a minimum, the below listed categories. The landlord shall attest to the Board that the following criteria were completed by landlord prior to commencement of any lease.

- (a) Age Certification. Comply with age requirements and any age certification required by the Association.
- (b) False Information. Provides false information to the landlord on the Application or otherwise.
- (c) Convictions. Have been convicted of multiple (more than one) drug or alcohol related crimes in the past four years. (Landlord may deny rental at their discretion for a single conviction); any crime related property

damage, prostitution, violence of any kind, assault, or crimes that involve weaponry of any kind in the past four years.

(d) Sex Offender Registry. Appear on the sex offender registry and it is within four years of the date of conviction. Landlords leasing to a sex offender(s) whose conviction is over 4 years old must comply with UCA 77-27-21.7 related to "Protected Areas."

(e) Controlled Substance. Have been convicted of distribution of a controlled substance within the past four years.

(f) Probation and / or Parole. Are on court or Board of Pardons-ordered probation or parole for one of the disqualifying offenses listed above.

### **ARTICLE XIII** **ARCHITECTURAL RESTRICTIONS**

13.1 Improvements. Any improvements to an individuals Limited Common Area should be completed in a timely manner and not be left partially completed for a long period of time. The plan for upgrades submitted to the ARC should include a time table for the project. Contractors are expected to keep the area neat and clean during the construction project so as not to be a blemish on the appearance of the community. If an individual or contractor fails to comply with these requirements, the Board of Directors may at their discretion take appropriate steps to rectify the situation at the cost of the individual home owner.

13.2 Landscaping. That portion of the Unit which is visible from a street shall be landscaped in accordance with a plan approved by the ARC as required under Article XIV below. No landscaping may be modified or changed, without the approval of the ARC and the **written consent of the Board of Directors**, except in the rear personal garden area, such area to be determined by the ARC.

13.3 Temporary Structures. Except with the **written consent of the Board of Directors**, no structure of a temporary nature such as a trailer, recreational vehicle, tent, shack, garage, barn or other outbuilding shall be used on any Unit, lot, or HOA common area at any time as a residence or for storage, either temporarily or permanently.

### **ARTICLE XIV** **ARCHITECTURAL REVIEW COMMITTEE**

14.1 Architectural Review Committee ("ARC"). An Architectural Review Committee may be appointed by the Board in accordance with the Bylaws and Articles of the Association to oversee any construction, re-construction, remodeling or altering of exterior Improvements. If no ARC is appointed, the Board will assume the duties and responsibilities of the ARC.

14.2 Approval by ARC and Board Required. No exterior Improvement of any kind will be constructed or commenced on any Unit(s) without the prior written approval of the ARC and a sign off from the Board of Directors. Approval of the ARC will be sought in the following manner:

(a) Plans Submitted. A written rendering, including a diagram, of the proposed remodeling or construction must be submitted. It may be beneficial to the home owner to have the contractor assist with the preparation of the ARC form so that all three parties will better understand the work to be performed. The Plans shall also include: (i) a description of how debris will be removed; (ii) name, address and phone number of contractor(s) performing the work; (iii) when construction or remodeling will begin and conclude; and (iv) proposal to mitigate any nuisance to other Owner(s).

(b) Review. Within 30 days from receipt of the submitted plans, the ARC will review the plans and respond in writing to the Owner determining whether or not the plans comply with the conditions imposed by the Declaration and are consistent with and in architectural harmony with other Improvements within the

Community. The Board or ARC may: (i) approve the plans; (ii) reject the plans; (iii) request additional information; or (iv) require that certain conditions be met. In addition, the ARC will forward the request to the Board of Directors indicating their decisions to get a sign off from a Board member. There shall be no fees for an application for an architectural review.

(c) Failure to Act. If the ARC fails to respond within sixty (60) business days, the Owner may complete the construction in accordance with the submitted plans. Notwithstanding the Improvement(s) shall not violate the terms and condition of the Declaration and shall be in architectural harmony with the other Improvements within the Community.

#### 14.3 Architectural Standards and Guidelines.

(a) Adoption. The procedure and specific requirements for review and approval of an application required under Section 14.2 above shall be set forth in design guidelines and standards document called "Architectural Standards and Guidelines" adopted from time to time by resolution of the Board of Directors at its sole discretion.

(b) Provisions. The Architectural Standards and Guidelines shall interpret and implement the provisions of this Declaration and the Bylaws for architectural review and guidelines for architectural design of Living Units and other Improvements, including, but not limited to, decks, steps, porches, awnings, carports, garages, and storage structures, color schemes, exterior finishes and materials and similar features which may be used within the Community and landscaping. However, the Architectural Standards and Guidelines may not be in derogation of the minimum standards established by this Declaration and the Bylaws.

14.4 Variances. The ARC cannot grant any variance that has the effect of modifying applicable zoning or building code regulations or directly violates the Governing Documents. The burden of obtaining a variance is entirely on the applicant.

14.5 Board and ARC Not Liable. The Board, ARC and its members shall not be liable to the applicant for any damages, or to the Owners of any Lots within the Community for their actions, inactions, or approval or disapproval of any set of plans submitted for review. The Owners' shall have no claim against the Board or ARC as a result of the performance or failure to perform the duties created by this Declaration. Each Owner has an equal duty and right to enforce these covenants against every other Owner, and may seek independent redress if it believes the Board or ARC has acted improperly.

14.6 Limitations on Review. The ARC's review is limited to those matters expressly granted in this Declaration. The ARC shall have no authority over the enforcement of building codes, zoning ordinances, or other statutes, laws or ordinances affecting the development or improvement of real property and shall have no liability to any Owner whose plans were approved in a manner that included any such violation. Corrections or changes in plans to bring them into conformity with applicable codes must be approved by the ARC prior to construction.

## **ARTICLE XV** **INSURANCE**

15.1 Insurance Requirement. The Association shall obtain insurance as required in this Declaration and as required by the Act. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies. As used in this Article:

(a) "Covered Loss" means a loss, resulting from a single event or occurrence that is covered by the Association's property insurance policy.

(b) "Unit Damage" means damage to any combination of a Unit or a Limited Common Area appurtenant to a Unit.

(c) "Unit Damage Percentage" means the percentage of total damage resulting in covered loss that is attributable to Unit Damage.

### 15.2 Property Insurance.

(a) Blanket Policy of Property Insurance. The Association shall maintain a blanket policy of property insurance covering all Common Areas, Limited Common Areas, Buildings and Units, including the four (4) detached residences.

(i) At a minimum, any required blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by "special form" property coverage.

(ii) Any blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy (including the Units) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.

(iii) A blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost; or (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the Property's insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.

(iv) Each property policy that the Association is required to maintain shall also contain or provide for the following: (1) "Inflation Guard Endorsement," if available (2) "Equipment Breakdown," if the project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installations, which shall provide that the insurer's minimum liability per accident at least equals the lesser of one million dollars (\$1,000,000) or the insurable value of the building containing the equipment.

(b) Owner Responsibility for Payment. If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner:

(i) The Association's policy provides primary insurance coverage;

(ii) The Owner is responsible for the Association's policy deductible;

(iii) The Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.

(iv) An Owner who owns a Unit has suffered Unit Damage as part of a Covered Loss is responsible for an amount calculated by applying the Unit Damage Percentage for that Unit to the amount of the deductible under the Association's property insurance policy.

(v) If an Owner does not pay the amount required under this Article within 30 days after substantial completion of the repairs to, as applicable, the Unit or the Limited Common Area appurtenant to the Unit, the Association may levy an assessment against the Owner for that amount.

(c) Earthquake Insurance. The Association may, if approved by a majority of Owners, purchase earthquake insurance.

(d) Flood Insurance. If the Property insured by the Association is not situated in a Special Flood Hazard Area, the Association may nonetheless, if approved by a majority of Owners, purchase flood insurance to cover water and flooding perils not otherwise covered by blanket property insurance.

(e) Association's Obligation to Segregate Property Insurance Deductible. The Association shall keep in a segregated bank account an amount equal to the Association's property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible. If the amount held in this account is used to pay any deductible, it should be replenished within (12) months.

(f) Association's Right to Not Tender Claims that are Under the Deductible. If, in the exercise of its business judgment, the Board of Directors determines that a claim is likely not to exceed the Association's property insurance policy deductible: (a) the Owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible; (b) an owner who does not have a policy to cover the Association's property insurance policy deductible is responsible for the loss to the amount of the Association's policy deductible; and (c) the Association need not tender the claim to the Association's insurer.

(g) Notice Requirement for Deductible. The Association shall provide notice to each Owner of the Owner's obligation for the Association's policy deductible and of any change in the amount of the deductible. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

15.3 Comprehensive General Liability (CGL) Insurance. The Association shall obtain CGL Insurance insuring the Association, the agents for the Association, and contractors for the Association against liability incident to the use, ownership or maintenance of the Common Area, Limited Common Areas or membership in the Association. The coverage limits under such policy shall not be less than One Million Dollars (\$1,000,000) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which would preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or another Owner.

15.4 Director's and Officer's Insurance. The Association shall obtain Directors' and Officers' liability insurance protecting the Board of Directors, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). The policy shall:

- (a) Include coverage for volunteers;
- (b) Include coverage for monetary and non-monetary claims;
- (c) Provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims; and
- (d) Provide coverage for defamation. In the discretion of the Board of Directors, the policy may also include coverage for any manager and any employees of the manager and may provide that such coverage is secondary to any other policy that covers the manager or any employees of the manager.

15.5 Insurance Coverage for Theft and Embezzlement of Association Funds. The Association may obtain insurance covering the theft or embezzlement of funds that shall:

- (a) Provide coverage for an amount of not less than the sum of three months regular assessment in addition to the prior calendar year's highest monthly balance on all operating and reserve funds; and
- (b) Provide coverage for theft or embezzlement of funds by:
  - (i) Officers and Board of Directors member of the Association;
  - (ii) Volunteers of the Association;
  - (iii) Any manager of the Association; and
  - (iv) Officers, directors and employees of any manager of the Association.

15.6 Certificates. Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association and upon written request, to any Owner or Lender.

15.7 Named Insured. The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under all property and CGL insurance policies.

15.8 Association's Right to Negotiate All Claims and Losses and Receive Proceeds. Insurance proceeds for a loss under the Association's property insurance policy shall be payable the Association; and shall not be



payable to a holder of a security interest. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any proceeds remaining after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Units. Each Owner hereby appoints the Association, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and the execution of releases of liability, and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representative, successors or assigns of an Owner.

15.9 Owner Act Cannot Void Coverage Under Any Policy. Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

15.10 Waiver of Subrogation against Owners and Association. All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association and the Owners and their respective agents and employees.

15.11 Owners' Individual Coverage. Each owner should purchase individual property, fire, and extended coverage in the amount recommended by the owner's independent insurance agent.

## **ARTICLE XVI**

### **DAMAGE AND DESTRUCTION**

16.1 Response to Damage. Immediately after damage or destruction by fire or other casualty to all or any part of the Common Areas and/or Limited Common Areas covered by insurance written in the name of the Association, the Board, or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Common Areas and/or Limited Common Areas. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Common Areas and/or Limited Common Areas to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

16.2 Decision to Repair. Any damage or destruction to the Common Areas and/or Limited Common Areas shall be repaired or reconstructed unless Owners representing at least seventy-five (75%) percent of the total vote of the Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct. 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 costs of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Areas and/or Limited Common Areas shall be repaired or reconstructed; provided, however, this provision shall not apply to construction mortgagees providing construction financing for such damaged property.

16.3 Decision not to Repair. In the event, that it should be determined in the manner described above that the damage or destruction to the Common Areas and/or Limited Common Areas shall not be repaired or

reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Common Areas and/or Limited Common Areas shall be restored to their natural state and maintained by the Association, in a neat and attractive condition.

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

**16.5 Repair and Reconstruction.** If the damage or destruction to the Common Areas and/or Limited Common Areas for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the members, levy a special assessment against all Owners as provided in the Governing Documents.

**16.6 Condemnation.** Whenever all or any part of the Common Areas and/or Limited Common Areas shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of members representing at least sixty-seven percent (67%) of the total Association vote by any authority having the power of condemnation or eminent domain), each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows: if the taking involves a portion of the Common Areas and/or Limited Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking the Owners representing at least sixty-seven percent (67%) of the total vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Areas and/or Limited Common Areas to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If the taking does not involve any improvements of the Common Areas and/or Limited Common Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

## **ARTICLE XVII** **PARTY WALLS**

**17.1 General Rules of Law to Apply.** Each wall which is built as a part of the original construction of a Unit within the Community and placed on the dividing line between two Units shall constitute a Party Wall, and, to the extent not inconsistent with the provisions of the Act, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

**17.2 Repair and Maintenance.** Each Unit that shares a Party Wall, will also share elements of a common roof, a common exterior wall, or other common exterior elements with an adjacent Unit. The Owners acknowledge that certain repairs or maintenance to Units with a Party Wall may become necessary, which repairs or maintenance cannot be performed on one Unit only, but may necessarily involve the other attached Unit. Therefore, all repairs to the roof and exterior walls of all Units will be made by the Association.

**17.3 Insurance.** The existence of Party Walls within the Community will require blanket property insurance coverage as required by the Governing Documents and/or Act.

## **ARTICLE XVIII**

### **MISCELLANEOUS PROVISIONS**

18.1 Violation Deemed a Nuisance. Any violation of these covenants that is permitted to remain within the Community is deemed a nuisance, and is subject to abatement by the Association or by any other Owner.

(a) Any single or continuing violation of the covenants contained in this Declaration may be enjoined in an action brought by an Owner or by the Association. In any action brought to enforce these covenants, the prevailing party shall be entitled to recover as part of its judgment the reasonable costs of enforcement, including reasonable attorney fees and court costs.

(b) Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state or local laws and ordinances for the abatement of nuisances, health and safety, or other matters. This Declaration is to be construed as being in addition to those remedies available at law.

(c) The remedies available under this Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.

(d) The failure to take enforcement action shall not be construed as a waiver of the contents contained in this Declaration in the future or against other similar violations.

18.2 Severability. Each of the covenants contained in this Declaration shall be independent of the others, and in the event that any one is found to be invalid, unenforceable, or illegal by a court of competent jurisdiction, the remaining covenants shall remain in full force and effect.

18.3 Limited Liability. Neither the Board, the Architectural Control Committee, its individual members, nor any Owner shall have personal liability to any other Owner for actions or inactions taken under these covenants, provided that any such actions or inactions are the result of the good faith exercise of their judgment or authority, under these covenants, and without malice.

18.4 Consent, Power of Attorney, Waiver. By acceptance of a deed, lease, or other conveyance of an interest in Unit, each Owner or Occupant consents to the rights reserved to the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process, and record necessary and appropriated documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

18.5 No Representations and Warranties. Each Owner and occupant understands, agrees, and acknowledges through taking title or residing in the Community that the Association and the Board have not made any representations or warranties of any kind related to the Community and that each Owner or occupant has not relied upon any reorientations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose relative to the Community.

18.6 Conflicting Provisions. In the case of any conflict between the Governing Documents, the order of priority from the highest to the lowest shall be the Declaration, the Plat, the Articles, Bylaws, and then the Rules.

18.7 Amendment. At any time while this Declaration is in effect, the covenants herein contained can only be modified by the affirmative vote of the Owners representing not less than sixty-seven (67%) percent of the total votes of the Association. No meeting or voting shall be required for an amendment, if the required, written consent is obtained from the requisite number of Owners.

18.8 Constructive Notice. Every person who owns, occupies or acquires any right, title or interest in any Unit within the Community is conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of each of the provision of this Declaration against his/her Unit, whether or not there is any reference to this Declaration in the instrument by which he/she acquires interest in any Unit.

18.9 Notices. All notices under this Declaration are provided as set forth in the Bylaws.

18.10 Liberal Interpretation. The provisions of this Declaration shall be interpreted liberally to further the goal of creating a uniform plan for the development of the Community. Headings are inserted for convenience only and shall not be considered in interpretation of the provisions. Singular will include plural, and gender is intended to include masculine, feminine and neuter as well.

18.11 Joint Owners. In any case in which two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of anyone or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Board of

Directors, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter in accordance with the Bylaws.

18.12 Lessees and Other Invitees. Lessees, invitees, contractors, family members and other persons entering the Property under rights derived from an Owner shall comply with all of the provisions of this Declaration, the Bylaws and rules and regulations adopted by the Association restricting or regulating the Owner's use, improvement or enjoyment of such Owner's Lot and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

18.13 Nonwaiver. Failure by Declarant, the Association, or any Owner to enforce any covenant or restriction contained in this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

18.14 Waiver, Precedent and Estoppel. No restriction, condition, obligation or provision contained in this Declaration or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Declarant, Association or any Owner by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Declarant, Association or Owner as to any similar matter.

18.15 Notice of Sale, Mortgage, Rental, or Lease. Immediately upon the sale, mortgage, rental, or lease of any Lot, the Owner shall promptly inform the secretary or manager of the name and address of said grantee, vendee, mortgagee, lessee, or tenant.

[illegible]