

AMENDED **AND RESTATED** DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS

AND RESERVATION OF EASEMENTS
FOR

SOLANO VALLEJO VILLAS

OWNERS ASSOCIATION INC.

A PLANNED UNIT DEVELOPMENT

GRAND COUNTY, UTAH

January 2014

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**AMENDED AND RESTATED DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
AND RESERVATION OF EASEMENTS FOR
SOLANO VALLEJO VILLAS
OWNERS ASSOCIATION INC.**

(A PLANNED UNIT DEVELOPMENT)

This Amended and Restated Declaration of Covenants, Conditions and Restrictions and Reservation of Easements (For Solano Vallejo Villas Owners Association, Inc. (“Restated Declaration”), is made on this ____ day of _____ 20134, by the members of THE SOLANO VALLEJO VILLAS HOMEOWNERS ASSOCIATION INC. (“Association”), a Utah nonprofit corporation. (“Declarant”), with reference to the following facts:

RECITALS:

~~—Declarant is the~~

- ~~A. The Solano Vallejo Villas HomeeOwners Association Inc (“Solano Vallajo”) is comprised of the Owners of Units in the Project, located in Grand County, Utah, which property is more particularly described in Exhibit “A”, the attached.~~

~~A. — as follows:~~

~~A. —~~

~~See attached Exhibit “A”~~

~~In this Restated Declaration, and until such time as any future phase or phases are annexed to the SOLANO VALLEJO VILLAS PLANNED UNIT DEVELOPMENT as provided herein, the term “Property” shall refer to the real property described in Exhibit “A” Phases One, Two and Three as described on modified Exhibit “B”, which property constitutes Phase One, Two and Three of the SOLANO VALLEJO VILLAS PLANNED UNIT DEVELOPMENT.~~

- B.** ~~The development Solano Vallejo~~ is a ~~fully improved Property~~, a planned unit development, ~~—~~managed, operated, and maintained by ~~the incorporated the incorporated~~ Association ~~of Owners~~, for the benefit of all parts of the Property.
- C.** ~~The development Solano Vallejo~~ shall be hereinafter referred to as the “Project”. The Owner of each Unit ~~shall receive~~ owns fee title to his individual Lot and the residential Dwelling thereon, together with all rights associated with membership in The Solano Vallejo ~~Villas Home~~ Owners Association.
- D.** Solano Vallejo was created by recording the “Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Solano Vallejo Villas, a Planned Unit Development” (“Enabling Declaration”) on January 6, 1994, as Entry No. 430153 in Book 459, Page 296, in the Office of the Grand County Recorder.
- C.E.** The purpose and intent of this Restated Declaration is to restate, replace and amend Solano Vallejo Enabling Declaration, as well as any amendments thereto, and to subject all Lots and Lot Owners within Solano Vallejo to one set of covenants, conditions and restrictions as set forth in this Restated Declaration.

NOW, THEREFORE, to accomplish the Owners’ objectives, this Restated Declaration is hereby adopted. The Enabling Declaration is hereby restated, replaced and amended by this Restated Declaration. It is the intent of the Owners that this Restated Declaration be the sole set of restrictive covenants governing Solano Vallejo and the Association. Regardless of any language herein to the contrary, the following are not renounced, rescinded, revoked, replaced or amended: the Plat Maps (as defined herein); the submission and dedication of the real property described in Exhibit “A” to the provisions of this Restated Declaration; the ratification, approval and incorporation of Solano Vallejo Villas ~~Home~~ Owners Association Inc., a Utah nonprofit corporation, and the Articles of Incorporation on file with the State of Utah; and, any other provision, paragraph, or section that is required to maintain the legal status of the Project which, if repealed, would nullify or impair the legal status of the Project.

It is hereby declared that the Property shall be held, sold, conveyed, leased, rented, encumbered and used, subject to the following Restated Declaration and its covenants, restrictions, limitations, and conditions, all of which shall constitute covenants which run with the land and shall be binding on and be for the benefit of the Association and all Lot Owners and of all or any part of the Property, together with their grantees, successors, heirs, executors, administrators, devisees and assigns, all as set forth herein.

The statements set forth in the above recitals are hereby approved and accepted as being accurate and shall constitute part of this Restated Declaration.

~~Declarant hereby declares that the Property within the Association shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to the following declarations, limitations, covenants, conditions, restrictions, and easements, all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property, and the Project, and every part thereof, in accordance with the plan for the improvement, sale, and operation of the Property as a planned unit development. All of the limitations, covenants, conditions, restrictions, and easements shall constitute covenants and encumbrances which shall run with the land and shall be perpetually binding upon Declarant and its successors in interest and assigns, and all parties having or acquiring any right, title, or interest in or to any part of the Property or the Project.~~ARTICLE 1

RESTATED DECLARATION

ARTICLE I

~~Declarant intends by this document to impose upon the Property mutually beneficial restrictions under a general plan of improvement for the benefit of all the said Units and the Owners thereof.~~

DEFINITIONS

Unless otherwise expressly provided, the following words and ~~phases~~phrases, when used in this **Restated** Declaration and in the Project Documents, shall have the following meanings:

- ~~1.1~~**1.01** **Architectural Committee:** The Architectural Committee created pursuant to Article 4 of this **Restated** Declaration.
- ~~1.2~~**1.02** **Articles:** The Articles of Incorporation of the Association as amended from time to time.
- ~~1.3~~**1.03** **Assessment:** That portion of the cost of maintaining, improving, repairing, operating, and managing the Property which is to be paid by the Unit Owners as determined by the Association under this **Restated** Declaration. Assessments may be designated as Regular Assessments, Extraordinary Assessments, or Special Assessments, as those terms are more specifically defined in Article ~~7~~ ~~06~~ of this **Restated** Declaration.
- ~~1.4~~**1.04** **Association** ~~or Declarant (synonymous):~~ ~~THE SOLANO VALLEJO VILLAS OWNERS ASSOCIATION INC.~~The Solano Vallejo Villas HomeOwners Association Inc., a Utah nonprofit corporation, which was formed in

conjunction with the establishment of the planned unit development, the members of which are the Owners of Units in the Project.

~~1.5~~1.05 **Board or ~~Board of Trustees~~Board of Directors:** The governing body of the Association.

~~1.6~~1.06 **Bylaws:** The Bylaws of the Association as amended from time to time, attached here as Exhibit “B”, and adopted in connection with this Restated Declaration. ~~The Bylaws shall be as adopted by the incorporating members of the Board of Trustees.~~

~~1.7~~1.07 **Common Area:** All the real property and improvements located within the Property, other than the Lots and Dwellings, as shown on the official plat for the Project, including without limitation, any ~~Restricted—Common Area~~Limited Common Area, recreational facilities, landscaped areas, and private walkways, all of which shall be owned in common by Owners of Units in the Project, for the common use and enjoyment of all Owners. The Common Area is designated as such on the Plat Map, as defined below.

~~1.8~~1.08 **Common Expenses:** The actual and estimated expenses of maintenance, improvement, repair, operation, insurance, and management of the Common Area and of the exterior and structural components of the Dwellings, expenses of administration of the Association, and any reasonable reserve for such purposes as determined by the Board, and all sums designated Common Expenses by or pursuant to the Project Documents. Without limiting the generality of the foregoing, Common Expenses shall also include: any commonly metered utility charges for the Property; any costs for trash collection and removal not already provided for by the City of Moab or Grand County; compensation paid by the Association to managers, accountants, attorneys and other employees; the costs of all maintenance, gardening, security and other services benefiting the Common Area; the costs of fire insurance, errors and omissions and director, officer and agent liability insurance, and other insurance covering the Property and the directors, officers and agents of the Association; and any other costs incurred by the Association pursuant to its authority for any reason whatsoever, for the common benefit of The Association.

~~1.11~~1.09 **~~1.9~~Common Wall:** Any wall which is common to and separates any two attached Dwellings

~~1.12~~1.10 **Dwelling:** That portion of any building (including garage and other improvements) which is located on a single Lot and which is designed and intended for use and occupancy ~~as a~~for residential or over-night accommodation purposes. ~~residence by a single family Unit.~~

- ~~1.01~~1.11 **Limited Common Area:** Those portions of the Common Area set aside for exclusive use of a Unit Owner or Owners, pursuant to Article 3 hereof.
- ~~1.13~~1.12 **Lot:** Any residential Lot shown upon the recorded Plat Map of the Project, created for the construction of a private Dwelling. The term “Lot” does not include any portion of the Common Area.
- ~~1.14~~1.13 **Member:** A person entitled to membership in the Association as provided herein.
- ~~1.15~~1.14 **Mortgage:** Includes a recorded mortgage, deed of trust, real estate contract, or other instrument creating a security interest in any Unit.
- ~~1.16~~1.15 **Mortgagee:** Includes a mortgagee, beneficiary or holder of a deed of trust, real estate contract vendor, or other holder of a mortgage on any Unit.
- ~~1.17~~1.16 **Mortgagor:** Includes a mortgagor, the trustor of a deed of trust, real estate contract vendee or other individual granting a security interest in any Unit.
- ~~1.18~~1.17 **Owner or Owners:** The record holder or holders of title to or a contract vendee’s interest in a Unit, but shall exclude persons or entities having any interest merely as security for the performance of any obligation. Further, if a Unit is sold under a recorded contract of sale to a purchaser, the purchaser, rather than the fee owner, shall be considered the “Owner”, and the fee owner would be considered as a mortgagee.
- ~~1.19~~1.18 **Person:** Any natural person, corporation, partnership, association, trustee, or other legal entity.
- ~~1.20~~1.19 **Plat Map:** The recorded map or maps ~~prepared by or for Declarant~~ showing the surface of the Property and the division thereof into Lots and Common Area, as amended and/or supplemented from time to time.
- ~~1.21~~ ~~Phase: a particular parcel of property which is or shall become part of the Project pursuant to the recordation of an appropriate Declaration of Annexation. As indicated in Paragraph A of the Recitals above, the term “Property” as used in this Restated Declaration shall refer only to Phase One, unless and until a Declaration of Annexation is recorded with respect to any additional property annexed to the SOLANO VALLEJO VILLAS PLANNED Unit DEVELOPMENT, subjecting that annexed property to the terms of this Restated Declaration. Until such time, the property located within Exhibit “A” which is not part of the Phase One Property shall be deemed unaffected and unencumbered by this Restated Declaration.~~

~~1.22~~1.20 **Project Documents:** ~~this~~This Restated Declaration, the Plat Map, and the Articles and Bylaws of the Association, as each shall be amended from time to time.

~~1.23~~1.21 **Property or Project:** The real property covered by this Restated Declaration, (~~including any additional property when and if annexed pursuant to this Restated Declaration~~), all easements, rights and appurtenances belonging thereto, and all improvements erected or to be erected thereon.

~~1.24~~ **Restated Declaration:** ~~this amended~~This Restated Declaration of Covenants, Conditions and Restrictions and Reservation of Easements, as it may be amended from time to time.

~~1.25~~1.22 **Restricted Common Area:** ~~Those portions of the Common Area set aside for exclusive use of a Unit Owner or Owners, pursuant to Article 3 hereof.~~

1.23 **Unit:** All elements of individual ownership of a residential interest in the Project, including ownership of a Lot and Dwelling thereon, exclusive use of the appurtenant ~~Restricted Common Area~~Limited Common Area, nonexclusive use of the remainder of the Common Area, and all rights of membership in the association.

~~1.26~~1.24 **Voting Power:** The total votes of all Unit Owners, each Unit having one vote.

ARTICLE II ASSOCIATION, ADMINISTRATION, MEMBERSHIP AND VOTING RIGHTS

~~2.1~~—Organization of Association.

2.01 -The Association is incorporated under the name of Solano Vallejo Villas Homeowners Association Inc., in accordance with the requirements of the Utah Revised Non-Profit Corporation ~~and Co-operative Association~~ Act.

~~2.2~~—Duties and Powers.

2.02 The duties and powers of the Association are those set forth in this Restated Declaration, the Articles and Bylaws, together with its general and implied powers of a nonprofit corporation, generally to do any and all things that a corporation organized under the laws of the State of Utah may lawfully do which are necessary or proper in operating for the peace, health, comfort,

safety and general welfare of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in this **Restated Declaration**, the Articles and Bylaws.

~~2.3~~—Membership.

- 2.03** The Owner of a Unit shall automatically, upon becoming the Owner of that Unit, be a Member of the Association, and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease. Membership shall be in accordance with the Articles and Bylaws of the Association.

~~2.4~~—Transferred Membership.

- 2.04** Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership of the Unit to which it is appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer is void. In the event the Owner of any Unit should fail or refuse to transfer the membership registered in his name to the purchaser of his Unit, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

~~2.5~~—Membership Meetings.

- 2.05** Regular and special meetings of Members of the Association shall be held with the frequency, at the time and place, and in accordance with the provisions of the Bylaws of the Association.

~~2.6~~—~~Board of Trustees~~Board of Directors.****

- 2.06** The affairs of the Association shall be managed by a ~~Board of Trustees~~**Board of Directors**, which shall be established and which shall conduct regular and special meetings according to the provisions of the Bylaws of the Association.

**ARTICLE III
RIGHTS IN COMMON AREA**

~~3.1~~—Common Area.

- 3.01** The Common Area shall include all real property and improvements within the Property, other than the Lots and Dwellings, including without limitation,

all ~~Restricted Common Area~~**Limited Common Area**, and all recreational facilities, landscaped areas, and private walkways, all of which shall be owned in common by Unit Owners in the Project for the common use and enjoyment of all Owners. The Common Area shall be operated, maintained, and insured by the Association for the use and benefit of Owners of Units in the Project, subject to reasonable rules and regulations enacted according to the Bylaws. Each Unit Owner, through membership in the Association, shall have a nonexclusive right to use the Common Area in accordance with purposes for which it is intended without hindering the exercise of or encroaching upon the lawful rights of any other Unit Owners. ~~Notwithstanding the foregoing, the Declarant shall reserve and hereby reserves in itself and its successors in interest and assigns, an easement (and the right to grant further easements) over and onto the Common Area for ingress to and from the Project for the purpose of necessary construction, maintenance, or repair work, and for ingress and egress to and from the adjacent property in connection with the development, use, and occupancy thereof.~~

~~3.2~~ **Restricted-Limited Common Area.**

- 3.02** -Portions of the Common Area referred to as “~~Restricted Common Area~~**Limited Common Area**” are hereby set aside and allocated for the exclusive use of the Owners of individual Units. The rights of an individual Owner in the ~~Restricted Common Area~~**Limited Common Area** shall consist of (1) an exclusive easement to accommodate the projection of eaves and other structural components of a Dwelling into the Common Area, according to the original design and construction; (2) an exclusive easement for the use and enjoyment of any balcony, patio, and/or deck, as the case may be, as may be appurtenant to such Owner’s Dwelling, according to the original design and construction; and (3) an exclusive easement for the use and enjoyment of all private walkways between the residential and garage portions of such Owner’s Dwelling, according to the original design and construction. The exclusive rights in the ~~Restricted Common Area~~**Limited Common Area**, and the fee title to the respective Units conveyed therewith, shall not be separated or separately conveyed, and each such exclusive easement shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the Unit.

~~3.3~~ **Partition of Common Area Prohibited.**

- 3.03** No Owner shall bring any action for partition or division of any part of the Common Area, it being agreed that this restriction is necessary in order to preserve the rights of the Owners with respect to the operation, management, use, and enjoyment of the Common Area.

3.4—Extent of Easements.

3.04 The rights and easements of use and enjoyment of the Common Area created by this **Restated** Declaration shall be subject to such rules and regulations as may be adopted by the ~~Board of Trustees~~**Board of Directors** according to the Bylaws. Without limiting the generality of the Board's authority to enact reasonable rules and regulations, such easements shall be subject to the following:

3.4.1a. The right or the Board to suspend the rights and easement of any Member, and the persons deriving such rights and easements from any Member, for use and enjoyment of any recreational facilities located within the Common Area, for any period during which the payment of any Assessment against the Member and his Unit remains delinquent **for more than 30 days past the date it is due**; provided, however, that any suspension for either nonpayment of any assessment or breach of any provision in the Project Documents shall not constitute a waiver or discharge of the Member's obligation to pay assessments as provided in this **Restated** Declaration;

3.4.2b. The right of the Association to consent to or otherwise cause the construction of additional improvements on the Common Area and to Consent to or otherwise cause the alteration or removal of any existing improvements on the Common Area for the benefit of the Members of the Association;

3.4.3c. The right of the Association, acting through the Board, to consent to or join in the grant or conveyance of easements, licenses or rights of way in, on or over the Common Area for purposes not inconsistent with the intended use of the Property as a residential planned development; and

3.4.4d. The right of the Board to control the volume and frequency of use of the recreational facilities within the Common Area (including without limitation, the right to control the hours and manner of use, the availability of the facilities for guest use, and the right of an Owner to delegate rights of use to tenants and subtenants of his Dwelling).

3.5—Damage by Member.

3.05 Each Member shall be liable to the Association for any damage to the Common Area not fully reimbursed to the Association by insurance, if the

damage is sustained because of the negligence or willful misconduct of the Member, his guests, tenants, or invitees, or any other persons deriving their right and easement of use and enjoyment of the Common Area from the Member, or his or their respective family and guests, both minor and adult. However, the Association, acting through the Board, reserves the right to determine whether any claim shall be made upon the insurance maintained by the Association, and the Association further reserves the right to levy a Special Assessment equal to the increase, if any, in insurance premiums directly attributable to the damage caused by the Member or the person for whom the Member may be liable as described above. The cost of correcting the damage to the extent not reimbursed to the Association by insurance shall be a Special Assessment against the Unit **and Unit Owner** and may be enforced as provided hereby for the enforcement of any other Assessment.

ARTICLE IV

ARCHITECTURAL CONTROL

4.1—Architectural Committee.

- 4.01 The Architectural Committee shall consist of the ~~Board of Trustees~~**Board of Directors**, unless ~~and until~~ a **separate** Committee is appointed by the Board. -

4.2—Prohibition of Alteration and Improvement.

- 4.02 ~~Subject to the exemption of Declarant hereunder, no~~ **No** changes to the exterior of any Unit of Dwelling in the Project (including painting) shall be commenced or erected, until the same has been approved in writing by the Board or the Architectural Committee.

4.3—Plans and Approval.

- 4.03 Plans and specifications showing the nature, kind, shape, color, size, materials and location of any such change or alteration shall be submitted to the Board of Committee for approval as to quality of workmanship and design and harmony of external design with existing structures. No permission or approval shall be required to rebuild in accordance with plans and specifications previously approved by the Board or Committee.

—The Board or Committee shall consider and act upon any and all plans and specifications submitted for its approval under this Article and perform such other duties as from time to time shall be assigned to it by the Board,

including the inspection of construction in progress to assure its conformance with plans approved by the Board or Committee. Any application submitted to the Board or Committee pursuant to this Article shall be deemed approved, unless written disapproval or a request for additional information or materials by the Board or Committee shall have been transmitted to the applicant within forty-five (45) days after the date of receipt by the Board or Committee of all required materials.

~~4.4~~—Non-Liability of Committee Members.

4.04 Neither the Architectural Committee nor any member thereof shall be liable to the Association, or to any Owner for any loss, damage or injury arising out of, or in any way connected with the performance of the Committee's duties hereunder unless due to the willful misconduct or bad faith of the Committee or member. The Committee shall review and approve or disapprove all plans submitted to it for any proposed change or alteration, solely on the basis of aesthetic considerations and the overall benefit or detriment which would result to the immediate vicinity and the Project generally, but shall not be responsible for reviewing nor shall its approval of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or conformance with building or other codes.

END OF ARTICLE 4

ARCHITECTURAL CONTROL

ARTICLE 5

ARTICLE V REPAIR AND MAINTENANCE

~~5.1~~—Repair and Maintenance Rights and Duties of Association.

5.01 Subject to the Maintenance Chart attached as Exhibit "~~C~~" "C" and the provisions in this Restated Declaration pertaining to eminent domain and destruction of improvements, the Association shall paint, maintain, repair and replace the ~~Association~~-Common Area ~~of all Dwellings~~, or shall contract for such maintenance, repair and replacement to assure maintenance of such areas in good condition, reasonable wear and tear excepted. However, the Association shall not be responsible for, or obligated to perform those items of maintenance, repair or improvement which are the responsibility of the Owners as provided in Paragraph 5.02 below. **The Association shall also maintain, repair and replace the following exterior surfaces of the Dwellings:**

(a) the Dwelling's exterior ~~plaster~~stucco, but not including the backing to which the ~~plaster~~stucco is affixed, and (b) the roof of each Dwelling, including only the roof membrane and the plywood undersurface to which the membrane is attached. Maintenance, repair and replacement of all other structural parts of the Dwelling shall remain the responsibility of the Unit Owner, unless repair or replacement is covered by the Association's insurance. ~~However,~~ In the event an Owner fails to maintain his Dwelling or to provide other maintenance or repair as provided herein in a manner which the Board deems necessary to preserve the appearance and value of the Property, the Board may notify the Owner of the work required and request it be done within sixty (60) days from the giving of such notice. In the event the Owner fails to carry out such maintenance within such period, the Board may cause such work to be done and may specially assess the cost thereof to such Owner, and, if necessary, lien his Unit for the amount thereof.

—For the purpose of performing any maintenance, repair or replacement as authorized by this Article, or for purposes of making emergency repairs necessary to prevent damage to the Common Area or to other Dwellings, or for any other purpose reasonably related to the performance by the Board of its responsibilities under this **Restated** Declaration, the Association (and its agents and employees) shall have an irrevocable easement over and onto all portions of the Common Area, and shall also have the irrevocable right, after reasonable notice to the Owner, and at reasonable hours, to enter any Lot and/or Dwelling **for the purpose of maintaining, repairing or replacing those portions of the Dwelling, Unit or Lot for which it has maintenance responsibility.**

5.2—Repair and Maintenance Rights and Duties of Owners.

5.02 Except for those portions of the Property which the Association is required or elects to maintain and repair, **and in accordance with the Maintenance Chart attached as Exhibit "C" "C"**, each Unit Owner shall, at his sole cost and expense, maintain and repair all interior ~~and non-structural~~ components of his Dwelling, keeping the same in good condition, and shall repair all damage to the Common Area for which the Owner is responsible under Paragraph 3.05 above. Additionally, each Owner shall maintain, repair and replace as necessary, **the foundation of his Dwelling, all structural portions of his Dwelling except as set forth in 5.01 above,** all doors and windows (and appurtenant hardware and accessories) to his Dwelling, and any separate air conditioning, water heating, or other separate utility Unit which services his Dwelling. Each Owner shall have the exclusive right to paint, plaster, panel, tile, wax, paper or otherwise refinish and decorate the inner surfaces of the walls, ceilings, floors, windows and doors bounding his Dwelling.

Notwithstanding any provision in this Restated Declaration to the contrary, each Owner of a Dwelling that has a deck installed on the roof of the Dwelling, whether the deck installation was authorized or unauthorized, shall be responsible for all costs, expenses and damages connected to or in any way associated with the deck, including but not limited to the maintenance, repair and replacement of (a) the deck, (b) the deck support structure, and/or (b) the roof on which the deck has been constructed. The Dwellings to which this paragraph applies at the time this Restated Declaration was adopted are numbers 3298, 3299 & 3349.

ARTICLE VI PEST CONTROL

- 6.01 **Responsibility.** The Owner of each Unit is responsible for keeping the Owner's Unit free from pests that may enter the Unit, including but not limited to the following "Pests": termites, mice and other rodents, cockroaches, spiders, flies, fleas, moths, beetles, or any other small insect or small animal that may enter a Unit. As part of this responsibility, each Owner shall pay all costs and expenses associated with properly inspecting his Unit for Pests and properly treating his Unit to have Pests removed from the Unit.
- 6.02 **Common Wall.** In the event that Pests exist in a common wall shared by two or more Units, or in the event Pests enter one or more Units through a common wall, the Owners sharing a common wall shall share the costs and expenses associated with proper Pest inspection, treatment and removal from the common wall.
- 6.03 **Interior Nonbearing Wall.** Inasmuch as Pests may be inside of or may infest a Unit's interior nonbearing wall, and for purposes of inspecting and treating a Unit for Pests and this Article 6, an "interior nonbearing wall" shall be considered part of the Unit and shall be maintained by the Unit Owner.
- 6.04 **Exterior Walls.** Unit Owners are responsible for inspection, treatment and removal of Pests from the exterior walls of an Owner's Unit. The Association will not be responsible to spray and otherwise provide treatment to remove Pests from the surrounding exterior property outside of a Unit.
- 6.05 **Widespread Infestation.** Nothing contained herein shall prevent the Association from using Association funds to treat a widespread Pest infestation in the event the Board determines the Pest problem can be addressed most economically and effectively by treating all the Units in Solano Vallejo simultaneously.

ARTICLE VII
ASSOCIATION MAINTENANCE FUNDS AND ASSESSMENTS

~~6.1~~—Creation of the Lien and Personal Obligation of Assessments.

7.01 ~~The Declarant, for each~~**Each** Unit owner within the Project hereby covenants, and each Owner of any Unit by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association the following Assessments, which shall be established and collected as provided herein and in the Bylaws of the Association:

- ~~6.1.1~~**a.** Regular Assessments;
- b.** ~~6.1.2~~—Extraordinary Assessments; and
- c.** ~~6.1.3~~—Special Assessments.

—All Assessments, together with interest, costs, penalties, and actual attorney fees, shall be a charge and a continuing lien upon the Unit against which each Assessment is made. Each such Assessment, together with interest, costs, penalties, and actual attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Unit at the time when the Assessment fell due. No Owner of a Unit may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Area or by the abandonment of his Unit.

~~6.2~~—Purpose of Assessment.

7.02 The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of all the residents in the entire Project, for the improvement and maintenance of the Common Area, and for the common good of the Project. The Regular Assessments shall include an adequate reserve fund for maintenance, repairs and replacement of those portions of the Common Area and the exterior and structural components of all Dwellings which must be replaced on a periodic basis.

~~6.3~~—Regular Assessments.

7.03 ~~Until the end of the Association's fiscal year immediately following the closing of the sale of the first Unit in the Project, the annual maximum Regular Assessment per Unit shall be such amount as is set forth in the Project budget prepared by Declarant,~~

~~payable in monthly installments. Each Unit's share for the first fiscal year shall also be prorated based on the number of months remaining in that fiscal year. Thereafter,~~ **The** Board shall determine and fix the amount of the maximum annual Regular Assessment against each Unit at least sixty (60) days in advance of the start of each fiscal year; provided, however, that the maximum annual Regular Assessment may not be increased by more than twenty percent (20%) above the maximum annual Regular Assessment for the immediately preceding fiscal year, without the vote or written assent of a majority of the ~~voting power~~ **Voting Power** of the Association.

6.4—Extraordinary Assessments.

7.04 In addition to the Regular Assessments authorized above, the Board may levy, in any fiscal year, an Extraordinary Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or of any exterior or structural component of any Dwelling, or to defray any unanticipated or underestimated expense not covered by the Regular Assessment (and, where necessary, for taxes assessed against the Common Area); provided, however, that the aggregate Extraordinary Assessments for any fiscal year shall not exceed ten percent (10%) of the budgeted gross expenses of the Association (excluding reserves) for that ~~fiscal~~ **fiscal** year, without the vote or written assent of a majority of the ~~voting power~~ **Voting Power** of the Association.

6.5—Special Assessment.

7.05 In addition to the Regular and Extraordinary Assessments authorized above, the Board may levy Special Assessments (without limitation as to amount or frequency) against an individual Unit and its Owner to reimburse the Association for costs incurred in bringing that Owner and his Unit into compliance with the provisions of this **Restated** Declaration and the Bylaws, including actual attorney fees and costs.

6.6—Allocation of Assessments; ~~Limited Exemption of Declarant.~~

7.06 . Each Unit, ~~including Units owner by Declarant,~~ shall be assessed based on the **square footage of the Unit, resulting in the following ~~ratio~~ percentages:**

A Units 2.16536.42%
B Units 15.946898%

An "A" Units shall be classified as a Unit built with three Bedrooms. A "B" Unit shall be classified as a Unit with 2 bedrooms.

~~Provided, however, that Declarant and any other Owner of a Unit which does not include a completed Dwelling shall be exempted from the payment of that portion of any Assessment which is for the purpose of defraying expenses and reserves directly attributable to the existence and use of such Dwelling. This exemption shall include, but shall not necessarily be limited to that portion of any Assessment attributable to roof replacement, exterior maintenance, exterior Common Area lighting, refuse disposal, domestic water, and other utilities supplied to completed Dwellings. This exemption shall be in effect only until a certificate of occupancy or its equivalent for the Dwelling has been issued or until one hundred eighty (180) days after the issuance of a building permit for the Dwelling, whichever first occurs.~~

~~6.7~~—Date of Commencement of Assessment; Due Dates.

7.07 The Regular Assessments provided for herein shall commence as to all Units in the Project on the first day of the month ~~and shall be late if not paid within 30 days following closing of the sale of the first Unit in the Project.~~ Assessments shall be due on the first day of each quarter (on January 1st, April 1st, July 1st and October 1st). ~~Due dates of Assessment shall be the first day of every calendar month.~~ No notice of such Assessment shall be required other than an annual notice setting forth the amount of the ~~monthly~~ quarterly Assessment.

~~6.8~~—Transfer of Unit by Sale of Foreclosure.

7.08 -The sale or transfer of any Unit shall not affect any Assessment lien, or relieve the Unit for any liability therefore, whether the lien pertains to payments becoming due prior or subsequent to such sale or transfer. Notwithstanding the foregoing, the sale or transfer of any Unit pursuant to foreclosure ~~or by deed in lieu of foreclosure of a recorded first mortgage given in good faith and for value~~ shall extinguish the lien of all such Assessments as to payments which became due prior to such sale or transfer (except for Assessment liens arising prior to the recordation of the mortgage). Sale or transfer pursuant to mortgage foreclosure shall not, however, affect the personal liability of the Owner for unpaid Assessments. Any Assessments for which the liens are extinguished pursuant to this Paragraph shall be deemed to be Common Expenses collectible from all of the Units including the Unit for which the lien was extinguished. In a voluntary conveyance of a Unit, the grantee of the same shall be jointly and severally liable with the grantor for all unpaid Assessments by the Association against the latter up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. However, any such

grantee shall be entitled to a statement from the Board, setting forth the amount of the unpaid Assessments due the Association, and such grantee shall not be liable for, nor shall the Unit conveyed by subject to a lien for, any unpaid Assessments made by the Association against the grantor in excess of the amount set forth in the statement; provided, however, the grantee shall be liable for any such Assessment becoming due after the date of any statement.

6.9—Enforcement of Assessment Obligation; Priorities; Discipline.

7.09 If any part of any Assessment is not paid and received by the Association or its designated agent within ten (10) days after the due date, an automatic late charge **in an amount of not more than ~~Ten~~Fifty Dollars (\$~~10~~50.00)** shall be assessed **for each month an Assessment remains unpaid. The exact amount of the late charge shall be established by the Board and be a uniform amount for all Owners;** thereafter all amounts delinquent shall bear interest at the rate of eighteen percent (18%) per annum until paid. Each unpaid Assessment shall constitute a lien on each respective Unit prior and superior 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 mortgage of record made in good faith and for value. Such lien, when delinquent, may be **recorded at the Grand County Recorder's Office and** enforced by sale by the Association, its attorney or other person authorized by this **Restated Declaration** or by law to make the sale, after failure of the Owner to pay such Assessment, in accordance with the provisions of Utah law applicable to the exercise of powers of sale in deeds of trust, or by judicial foreclosure as a mortgage, or in any other manner permitted by law. **The Association shall have the power to conduct nonjudicial foreclosure in order to collect delinquent Assessments as authorized by Utah Code Section 57-8a-302. Each Owner hereby appoints the Association's attorney, Richard W. Jones, as trustee, or such substitute trustee as is designated pursuant to Utah Code Section 57-1-22. Additionally, such Owner empowers such trustee to enforce a lien and to foreclose the lien by the private power of sale provided in Utah Code Section 57-1-27, or by judicial foreclosure. Each Owner further grants to the trustee the power and authority to sell the Lot of any defaulting Owner to the highest bidder to satisfy such lien as provided for in Civil Code section 57-8a-301 through 306.** The Association, acting on behalf of the Unit Owners, shall have the power to bid for the Unit at the foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. The foreclosing party shall have the right to reduce or eliminate any redemption rights of the defaulting Owner as allowed by law. Suit to recover a money judgment for unpaid Assessments, rent and attorney fees shall be maintainable without foreclosing or waiving the lien securing the same. The Board may impose reasonable monetary penalties including actual attorney fees and costs, and may temporarily suspend the Association membership rights of a Unit Owner who is in default in payment of any Assessment, after notice and hearing according to the Bylaws.

~~6.10~~—Payment of Taxes Assessed Against Common Area or Personal Property of Association.

~~1.02~~**7.10** In the event that any taxes are assessed against the Common Area, or the personal property of the Association, rather than against the Units, said taxes shall be included in the Assessments made under the provisions of this Article, and, if necessary, an Extraordinary Assessment may be levied against the Units in an amount equal to said taxes (regardless of the limitation on Extraordinary Assessments set forth in Paragraph ~~76.04~~ above), to be paid in two (2) installments, thirty (30) days prior to the due date of each tax installment.

**~~ARTICLE H~~ARTICLE VIII
EASEMENTS AND COMMON WALLS**

~~2.01~~**8.01** **Access, Use and Maintenance Easements.** ~~There is~~ expressly reserveds for the benefit of the Owners, reciprocal, ~~non-exclusive~~**nonexclusive** easements for access, ingress and egress over all of the Common Area (exclusive of ~~Restricted Common Area~~**Limited Common Area**) and for the use and enjoyment of all recreational facilities thereon, including any private driveways currently existing in the Property, or subsequently added to it, which easements shall be deemed granted ~~by Declarant~~ to the Owners and to the Association ~~for so long as Declarant owns any interest in the Property~~. Subject to the provisions of this Declaration governing use and enjoyment thereof, the easements may be used by ~~Declarant, its~~ **the Owners, their** successors, purchasers and ~~all Owners,~~ their guests, tenants and invitees, residing on or temporarily visiting the Property, for walkways, vehicular access and such other purposes reasonably necessary for use and enjoyment of a Unit in the Project.

~~Easement for Association.~~

8.02 ~~Declarant also~~**There is** expressly reserveds for the benefit of the Board of ~~Trustees~~**Directors** and all agents, officers and employees of the Association, nonexclusive easements over the Common Area (including the ~~Restricted Common Area~~**Limited Common Area**) and all Lots and Dwellings as necessary to maintain and repair the Common Area, and to perform all other tasks in accordance with the provisions of this Declaration. Such easements over the Common Area shall be appurtenant to, binding upon and shall pass with title to, every Unit conveyed, as more fully described in Paragraph 5.1 above.

8.03 **Enroachments and Utility Easements.** Each Unit within the Property is hereby declared to have an easement over all adjoining Units and the Common Area for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of any

encroachments as long as they exist, and the rights and obligations of Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of an Owner or Owners if said encroachment occurred due to the willful misconduct of said Owner or Owners. In the event a structure is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Unit agree that minor encroachments over adjoining Units or Common Area shall be permitted and that there shall be a valid easement for the maintenance of said encroachments so long as they shall exist.

Owners' Rights and Duties with Respect to Utilities. —~~Declarant also expressly reserves for the benefit of itself and its successors in interest and assigns, including the Association, easements over and under the entire Property (together with the right to grant and transfer the same) for the installation, repair, and maintenance of sanitary sewer, water, electric, gas, telephone, television and other utility lines and services, as may be deemed appropriate to service the Project.~~

~~7.1~~—

8.04 The rights and duties of Owners of Units within the Project with respect to utilities shall be as follows:

~~7.1.1~~—Whenever sanitary sewer, water, electric, gas, television receiving, or

- a. telephone lines or connections, heating or air conditioning conduits, ducts, flues or other utility or service connections are located or installed within the Project, which connections, or any portion thereof, lie in or upon or beneath Lots or Dwellings owned by other than the Owner of a Dwelling served by said connections, the Owners of any Dwellings served by said connections shall have the right, and are hereby granted an easement to the full extent necessary therefore, to enter upon the Dwelling or to have the utility companies enter upon the Dwellings in or upon or below which said connections, or any portion thereof lie, to repair, replace and generally maintain said connections as and when necessary.
- b. Whenever sanitary sewer, water, electric, gas, television receiving, or telephone lines or connections, heating or air conditioning conduits, ducts, flues or other utility or service connections are located or installed within the Project, which connections serve more than one Dwelling, the Owner of each Dwelling served by said connection shall be entitled to

the full use and enjoyment of such portions of said connections as service his Dwelling.

~~7.1.2 Whenever sanitary sewer, water, electric, gas, television receiving, or telephone lines or connections, heating or air conditioning conduits, ducts, flues or other utility or service connections are located or installed within the Project, which connections serve more than one Dwelling, the Owner of each Dwelling served by said connection shall be entitled to the full use and enjoyment of such portions of said connections as service his Dwelling.~~

~~7.1.3c.~~ In the event of a dispute between Owners with respect to the repair or rebuilding of said connections, or with respect to the sharing of the cost thereof, then, upon written request of one of such Owners addresses to the Association, the matter shall be submitted to the Board, which shall decide the dispute, and the decision of the Board shall be final and conclusive on the parties.

~~7.2~~ **Owner's Rights and Duties With Respect to Common Walls.**

8.05 The Owner of any Dwelling which shares a Common Wall with another Dwelling shall be deemed to own the one-half (1/2) of the wall nearest his Dwelling, and shall have an exclusive and perpetual easement over the remainder of the Common Wall for support and maintenance. Any such Common Wall shall be deemed a structural component of the building in which it is located, and shall therefore be **jointly** maintained by the ~~Association~~ **adjoining Owners**, subject to the Unit Owner's responsibility to repair damage caused by negligence or willful misconduct as described in Paragraph 3.05.

~~ARTICLE III~~ **ARTICLE IX** **RESIDENCE AND USE RESTRICTIONS**

—In addition to all of the covenants contained herein, the use of the Property and each Unit therein is subject to the following:

~~8.1~~ **ARTICLE Use of Individual Dwellings.**

~~3.01~~**9.01** All Dwellings may be used for residential and over-night accommodation purposes as permitted by Grand County ordinances. ~~No Dwelling shall be occupied and used except for single family residential purposes by the Owners, their tenants, and social guests, and no trade or business shall be conducted therein.~~ No timeshare interest of any Unit in the Project as defined

in Utah Code Annotated Section 57-19-2(187) shall be allowed. No commercial vehicles larger than a standard size four door pickup, passenger car or van, shall be parked or stored on the Property, and no more than one such commercial vehicle shall be at a unit at any one time. No pickup trucks with camper tops installed on them shall be stored on the property. No vehicle shall be plugged into a Unit excepts for the purpose of charging a battery. An Owner shall have the right to rent out his Unit to a tenant or tenants, under such terms and conditions as may be deemed appropriate by the Owner; provided that any tenant shall occupy the Unit subject to all terms and conditions of the Project Documents. ~~As used herein "single family" shall mean a) a single person living alone or with the person's children, b) up to three unrelated persons, or c) a husband/wife relationship, with or without children.~~

~~8.2~~ — Nuisances.

- 9.02 No noxious, illegal, or offensive activities shall be carried on in any Dwelling, or in any part of the Property, nor shall anything be done thereon which may be or may become an annoyance or a nuisance to or which may in any way interfere with the quiet enjoyment of each of the Owners of his respective Dwelling, or which shall in any way increase the rate of insurance for the Project, or cause any insurance policy to be cancelled or to cause a refusal to renew the same, or which will impair the structural integrity of any building.

~~8.3~~ — Signs.

- 9.03 Signs advertising Units for sale or rent may be displayed on the Property without prior specific approval of the Board of the Architectural Committee, provided that such signs shall be of reasonable and customary size, shall be displayed only at such location or locations within the Common Area as shall be designated for such purpose by the Board, and shall comply with any and all local ordinances, pertaining to signs. Except as expressly permitted by this Paragraph, no signs shall be displayed to the public view on any Dwelling or on any portion of the Property, unless first approved by the Board or the Architectural Committee, and unless such signs comply with any and all local ordinances. ~~Until such time as all the Units in the Property are sold, Declarant may place in and around the Property, such marketing and advertising signs as are acceptable under the local municipal ordinances. Furthermore, until such time as all the Units in the Property are sold, Declarant may use on or more Units as model Units and sales offices.~~

8.4—Animals.

- 9.04 No animals or birds of any kind shall be raised, bred, or kept in any Dwelling, or on any portion of the Property; except that two (2) usual and ordinary household pet such as a dog, cat, or bird may be kept within the Property or in a Unit. All such pets shall be kept under reasonable control at all times **and will never be allowed to freely roam in the Common Areas.** Any ~~such dog or cat~~ shall be kept on a leash at all times **while** ~~that the dog is~~ in the Common Area. Owners shall prevent their pets from soiling any portions of the Common Area and in the event a pet does soil a portion of the Common Area, the Owner or person in control of such pet shall immediately clean up after the pet. The Board may enact reasonable rules respecting the keeping of animals within the Project **in accordance with Article 132 of this Restated Declaration** and may designate certain areas in which animals may not be taken or kept. If, in the opinion of the Association, a specific pet or a group of pets become a general annoyance to other Unit owners, the Association may require that specific animals not be allowed on any part of the Property.

8.5—Garbage and Refuse Disposal.

- 9.05 All rubbish, trash and garbage shall be regularly removed from the Property, and shall not be allowed to accumulate thereon. Trash, garbage and other waste shall not be kept except in sanitary containers. All equipment, garbage cans, wood piles, or storage piles shall be kept screened and concealed from view of other Dwellings, streets and the Common Area. ~~Any Owner who does not comply with this paragraph shall be subject to a fine in accordance with Article 123 of this Restated Declaration.~~

8.6—Radio and Television Antennas.

- 9.06 No alteration to or modification of a central radio or television antenna system or cable television system, whichever is applicable, shall be permitted. ~~, and no Owners may be permitted to construct, use or operate his own external radio~~**attach a satellite dish or ,television antenna to their Dwelling as permitted by FCC rules, although each Owner is strongly encouraged to install such satellite dish or antenna in a location that has been pre-approved by the Board or the management company. However, any damage to the Dwelling (including but not limited to the exterior plasterstucco or roof) or repairs needed to the Dwelling as a result of any equipment attached to the Dwelling by the Owner, the Owner's agent, or by a former Owner, shall be the sole responsibility of the Owner to repair, including the payment of all expenses or damages in any way connected to or resulting from the attachment to the**

Dwelling of a satellite dish or antenna, or any other type of electronic equipment.~~or other electronic antenna without the consent of the Board.~~ No Citizens Band or other transmission shall be permitted on the Property.

8.7—Deck and Patio Maintenance.

- 9.07 No exterior clothes lines shall be erected or maintained and there shall be no outside laundering or drying of clothes. ~~Declarant desires~~In order to maintain a high quality appearance for the Property.~~In that context,~~ the Association may adopt rules from time to time regarding the maintenance of deck and patio areas. These rules may place reasonable restrictions on the type of exterior patio furnishings placed on the decks or patios. No deck or patio may be used for the storage of equipment and personal belongings. Any plants located on a deck or patio must be maintained so they do not to interfere with the normal use of the deck or patio. In addition, all plants must be a suitable species and size for the available space and should not touch any wall.

8.8—Power Equipment, and Car Maintenance and Parking.

- 9.08 -No power equipment, or car maintenance of any nature whatsoever (other than minor repairs requiring no more than twenty-four (24) hours work) shall be permitted on the Property except with prior written approval of the Board. In deciding whether to grant approval, the Board shall consider the effects of noise, air pollution, dirt or grease, fire hazard, interference with radio or television reception, and similar objections. No unlicensed, inoperable or unregistered vehicles may be parked on the Property for more than ten (10) days in any thirty (30) day period.

8.9—Window Covers.

- ~~3.02~~9.09 Curtains and drapes (with a white lining), shutters, or blinds of a neutral color may be installed as window covers, subject to the Board's absolute discretion. No window shall be covered with aluminum foil or similar material.

~~No Warranty of Enforceability. While Declarant the Association has no reason to believe that any of the restrictive covenants contained in this Article 98 or elsewhere in this Restated Declaration are or may be invalid or unenforceable for any reason or to any extent, Declarant the Association makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, and the Unit owner shall assume all risks of the validity and enforceability thereof, including the~~

~~possibility that any provision herein may be modified by a valid vote of the Owners, and, by acquiring the a Unit agrees to hold Declarant the Association harmless therefrom.~~

9.10 **Businesses.** No business of any kind whatsoever shall be established, conducted, permitted, operated, or maintained at Solano Vallejo except as they meet all of the federal, state and municipal laws, ordinances and licensing requirements, as well as complying with the Solano Vallejo Restated Declaration, Bylaws, rules and regulations. The following are some of the general requirements for home occupation businesses:

- a. Customers, patrons, guests, clients or individuals may come to units for business activity on a very limited scale and no more than one person at a time;
- b. No products may be sold or delivered from or to the unit;
- c. Only services that are done mostly on the telephone and computer, such as consulting, tax preparation, computer or Internet businesses, may be provided at the residence as limited by city ordinance;
- d. Any vehicles used in the business must comply with the Association parking rules.
- e. No business activities may be conducted between the hours of 8:00 p.m. and 8:00 a.m., unless wholly confirmed to the Dwelling.

~~3.03~~9.11 **No Warranty of Enforceability.** While the Association has no reason to believe that any of the restrictive covenants contained in this Article 9 or elsewhere in this Restated Declaration are or may be invalid or unenforceable for any reason or to any extent, the Association makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenants, and the Unit owner shall assume all risks of the validity and enforceability thereof, including the possibility that any provision herein may be modified by a valid vote of the Owners, and, by acquiring a Unit agrees to hold the Association harmless therefrom

END OF ARTICLE 8

RESIDENCE AND USE RESTRICTIONS

ARTICLE 9

**ARTICLE X
INSURANCE**

10.01 **Subject to Utah Law.** The Association, in accordance with the Community Association Act (“Act”), Utah Code Annotated Section 57-8a-402, hereby subjects the Association to the provisions of Utah Code Annotated Sections 57-8a-401 through 407, thereby requiring the Association to maintain property insurance on the Dwellings and Units in a manner similar to condominium insurance.

9.1—Duty to Obtain Insurance; Types.

10.02 The Board shall cause to be obtained and maintained adequate blanket public liability insurance (including medical payments), with such limits as may be considered desirable by the Board, but not less than One Million Dollars (\$1,000,000.00) in combined single limit coverage (taking into consideration the requirements of mortgagees), insuring against liability for bodily injury, death and property damage arising from the activities of the Association and its Members, with respect to the Common Area and any other property under its jurisdiction. The Board shall also cause to be obtained and maintained fire and casualty insurance with extended coverage, without deduction for depreciation, in an amount as near as possible to the full replacement value of the Common Area and all Dwellings and, ~~if economically feasible,~~ those portions of the Dwellings consisting of all fixtures, installations or additions comprising a part of the Dwellings and all built-in or set-in appliances, cabinets and initial basic floor coverings, as initially installed or replacements thereof in accordance with the original plans and specifications for the Project, or as installed by or at the expense of the Owners, **as provided in the Act.** Such insurance shall be maintained for the benefit of the Association, the Owners, and the mortgagees, as their interests may appear as named insured, subject, however, to loss payment requirements as set forth herein. The ~~Board of Trustees~~**Board of Directors** shall purchase such other insurance as necessary, including, but not limited to, errors and omissions, directors’, officers’ and agents’ liability insurance, plate glass insurance, medical payments, malicious mischief, liquor liability and vandalism insurance, fidelity bonds and worker’s compensation, and such other risks as shall be deemed desirable for the Project.

9.2—Waiver of Claim Against Association.

10.03 As to all policies of insurance maintained by or for the benefit of the Association and the Owners, the Association and the Owners hereby waive and release all claims against one another; ~~and the Board of Trustees~~**Board of Directors** ~~and Declarant,~~ to the extent of the insurance proceeds available,

whether or not the insurable damage or injury is caused by the negligence of or breach of any agreement by any of said persons.

9.3—Right and Duty of Owners to Insure.

- 10.04 It is the responsibility of each Owner to provide insurance on his personal property and upon all other property and improvements within his Dwelling ~~that are not covered by the Association's insurance, and to cover the Association's insurance deductible as required by provisions of the Act.~~ Nothing hereby shall preclude any Owner from carrying any public liability insurance as he deems desirable to cover his individual liability for damage to persons or property occurring inside his individual Dwelling or elsewhere upon the Property. Such policies shall not adversely affect or diminish any liability under any insurance obtained by or on behalf of the Association, and duplicate copies of such other policies shall be deposited with the Board upon request. If any loss intended to be covered by insurance carried by or on behalf of the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him to the Association to the extent of such reduction, for application by the Board to the same purposes as the reduced proceeds are to be applied.

9.4—Notice of Expiration Requirements.

- 10.05 If available, all of the policies of insurance maintained by the Association shall contain a provision that said policy or policies shall not be cancelled, terminated or expired by their terms, without twenty (20) days prior written notice to the Board, ~~Declarant,~~ and Owners and their respective first mortgages (provided that ~~Declarant,~~ such Owners or mortgages have filed written requests with the carrier for such notice) and every other person in interest who requests such notice of the insurer.

9.5—Insurance Premiums.

- 10.06 Insurance premiums for any blanket insurance coverage obtained by the Association and any other insurance deemed necessary by the ~~Board of Trustees~~ Board of Directors shall be a Common Expense to be included in the Regular Assessments levied by the Association and collected from the owners.

9.6—Trustee for Policies.

10.07 The Association, acting through its ~~Board of Trustees~~Board of Directors, is hereby appointed and shall be deemed trustee of the interests of all named insured under policies of insurance purchased and maintained by the Association. All insurance proceeds under any such policies as provided for in Paragraph ~~9~~10.01 above shall be paid to the Board as ~~Trustees~~Directors. The Board shall have full power to receive and to receipt for the proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried or otherwise disposed of as provided in Article ~~10~~1 of this Restated Declaration. The Board is hereby granted the authority to negotiate loss settlements with the appropriate insurance carriers, with participation, to the extent they desire of first mortgages who have filed written requests within ten (10) days of receipt of notice of any damage or destruction as provided in this Restated Declaration.

~~9.7~~—Actions as ~~Trustees~~Directors.

10.08 Except as otherwise specifically provided in this Restated Declaration, the Board, acting on behalf of the Association and all Owners shall have the exclusive right to bind such parties in respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance.

~~9.8~~—Required Waivers.

10.09 All policies of physical damage insurance shall provide, if reasonably possible, for waiver of the following rights, to the extent that the respective insurers would have the rights without such waivers:

~~9.8.1~~a. Subrogation of claims against the Owners and tenants of the Owners;

~~9.8.2~~b. Any defense based upon co-insurance;

~~9.8.3~~—Any right of set-off, counterclaim apportionment, proration or
c. contribution by reason of other insurance not carried by the Association;

~~9.8.4~~—Any invalidity, other adverse effect or defense on account of any breach

- d. of warranty or condition caused by the Association, any Owner or any tenant of any Owner, or arising from any act, neglect, or omission of any named insured or the respective agents, contractors and employees of any insured; and

- ~~9.8.5~~—Any right of the insurer to repair, rebuild or replace, and, if the improvement is not repaired, rebuilt or replaced following loss, any right to pay under the insurance an amount less than the replacement value of the improvements insured.

ARTICLE XI

DESTRUCTION OF IMPROVEMENTS

~~10.1~~—**Damage to Common Area.**

- 11.01 Except as otherwise provided in this **Restated** Declaration, in the event of any destruction of any portion of the Common Area, the repair or replacement of which is the responsibility of the Association, it shall be the duty of the Association to restore and repair the same to its former condition, as promptly as practical. The proceeds of any insurance maintained pursuant to Article ~~109~~ hereof for reconstruction or repair of the Property shall be used for such purpose, unless otherwise provided herein. The board shall be authorized to have prepared the necessary documents to effect such reconstruction as promptly as practical. The Property shall be reconstructed or rebuilt substantially in accordance with the original construction plans. If the amount available from the proceeds of such insurance policies for such restoration and repair is inadequate to complete the restoration and repair, the Board shall levy an Extraordinary Assessment for the deficiency and proceed with such restoration and repair.

~~10.2~~—**Damage to Dwellings.**

- 11.02 Except as otherwise provided in this **Restated** Declaration, in the event of any destruction of any Dwelling or Dwellings, it shall be the duty of the Owner(s) of the Dwelling or Dwellings to restore and repair the same to its/their former condition, as promptly as practical, under the supervision of the Board. The proceeds of any insurance maintained pursuant to Article ~~910~~ hereof for reconstruction or repair of the Property shall be made available for such purpose unless otherwise provided herein. The Dwelling or Dwellings shall be reconstructed or rebuilt substantially in accordance with the original construction plans. If the amount available from the proceeds of such insurance policies for such restoration and repair is less than the estimated cost of restoration and repair or if there is a ~~deductable~~ deductible applicable to

such insurance, the Owner(s) of the Dwelling or Dwellings shall be responsible for the deficiency and/or ~~deductable~~deductible, and the Board shall have the power to levy a Special Assessment to secure payment of the deficiency. In the event more than one Dwelling is damaged or destroyed, the available insurance proceeds shall be allocated according to the estimated costs of repair and restoration of each Dwelling.

~~10.3~~—Alternate Plans for Restoration and Repair.

- 11.03 Notwithstanding the provisions of Paragraph ~~110.01~~ and ~~110.02~~, the Association shall have the right, by a vote of seventy-five percent (75%) of the ~~voting power~~Voting Power of the Association, to make alternate arrangements respecting the repair, restoration or demolition of the damaged portion of the Property. The alternate plan may provide for special allocation of insurance proceeds, modification of design, or special allocation of any necessary Assessments. Any plan adopted pursuant to this subparagraph shall be adopted within sixty (60) days of the damage or destruction and shall be supported by the vote of any Owner whose Dwelling has been physically damaged, to the extent the proposed plan affects the reconstruction of such Dwelling.

~~10.4~~—Appraisal of Damage.

- 11.04 -In the event the parties affected by damage or destruction to the Property cannot agree, within twenty (20) days of the date of the damage, on the estimated cost of repair or the allocations referred to in this Article ~~101~~, the Association shall appoint three (3) independent appraisers having at least five (5) years full-time appraisal experience in Grand County, Utah, to appraise the damage and establish allocations among various damaged portions of the Property. Within twenty (20) days after the selection of the appraisers, a majority of the appraisers shall set the estimated and allocations. If a majority of the appraisers are unable to agree within the stipulated period of time, the average of the three (3) appraisals shall be utilized. If, however, the low appraisal and/or the high appraisal are/is more than fifteen percent (15%) lower and/or higher than the middle appraisal, the low appraisal and/or the high appraisal shall be disregarded. If only one appraisal is disregarded, the average of the two remaining appraisals shall be utilized. If both the low appraisal and the high appraisal are disregarded, the middle appraisal shall be utilized. The cost of the appraisals required by this subparagraph shall be paid by the Association and reimbursed by the Owners through an Extraordinary Assessment.

~~10.5~~—Interior Damage.

11.05 With the exception of any casualty or damage insured against by the Association pursuant to Article 910 of this Restated Declaration, restoration and repair of any damage to the interior of any individual Dwelling, including without limitation all fixtures, cabinets and improvements therein, together with restoration and repair of all interior paint, wall coverings and floor coverings, shall, unless covered by the Association's insurance policy, be made by and at the individual expense of the Owner of the Dwelling so damaged. In the event of a determination to rebuild the Property after partial or total destruction as provided in this Article 101, such interior repair and restoration shall be completed as promptly as practical and in a lawful and workmanlike manner, in accordance with plans approved by the Architectural Committee as provided herein.

ARTICLE XII RIGHTS OF MORTGAGEES

In order to induce various lenders and lending agencies to participate in the financing of Units within the Project, this Article 1212 is included in this Restated Declaration. To the extent these added provisions, pertaining to the rights of such lenders and lending agencies conflict with any other provisions of this Restated Declaration or any other of the Project Documents, these added restrictions shall control. For purposes of this Article 1212, the terms "Eligible Holder" and "Eligible Insurer Guarantor" refer to a Holder, Insurer or Guarantor of any first mortgage on a Unit, who has provided a written request to the Association, to be notified of any proposed amendment or action described in Paragraph 1212.05 or Paragraph 1212.06 below.

12.1 ~~12.1~~—**Good Faith.** Notwithstanding any other provision of the Project Documents, no amendment or
12.01 violation of the Project Documents shall operate to defeat or render invalid the rights of any mortgagee of a Unit made in good faith and for value, provided that after the foreclosure of any such mortgage, such Unit shall remain subject to the Project Documents.

~~12.2~~—**Taking Title.** Each first mortgagee of a mortgage encumbering any Unit, which obtains title to
12.02 such Unit pursuant to judicial foreclosure or the powers provided in such mortgage, shall take title to such Unit free and clear of any claims for unpaid Assessments or charges against such Unit which accrued after the time such

mortgagee recorded its mortgage, and prior to the time such mortgagee acquires title to such Unit.

~~12.3~~ **First Mortgagee Rights.** First mortgagees, upon written request, shall have the right to (1) examine the
12.03 books and records of the Association during normal business hours; (2) require from the Association the submission of annual audited financial reports and other financial data; (3) receive written notice of all meetings of the Owners; and (4) designate, in writing, a representative to attend all such meetings.

12.04 **Status Information.** ~~12.4~~ Each Owner hereby authorizes the first mortgagee of a first mortgage on his Unit to furnish information to the Board concerning the status of the first mortgage and the loan which it secures. ~~_____~~

~~12.5~~ **Material Amendments.** Each Owner shall have the right to amend the Project Documents,
12.05 including this Restated Declaration, according to their terms, subject to the rights or Eligible Holders to participate in the amendment process as provided in this Paragraph. Amendments of a “material nature” shall be agreed to by: ~~(i) the Declarant; and (ii)~~ Unit Owners representing at least sixty-seven percent (67%) of the total votes in the Association. Additionally, approval must be obtained from Eligible Holders representing at least fifty-one percent (51%) of the votes of Units that are subject to mortgages held by Eligible Holders. An amendment to the Project Documents, including this Restated Declaration, which changes any of the following, would be considered an amendment of a “material nature”:

~~(a)~~a. -voting rights;

~~(b)~~ b. ~~_____~~ the method for establishing assessments, assessment liens, or subordination of assessment liens;

~~(c)~~ c. ~~(e)~~ the method for establishing reserves for maintenance, repair and replacement of Common Area;

~~(d)~~d. the responsibility for maintenance and repairs;

~~(e)~~ ~~_____~~ a reallocation of interests in the Common Area, or rights to its use
(no

- e. Holder approval shall be required for a reallocation of interests in the Common Area based on an Annexation of additional phases as provided in Section 165 of this Restated Declaration);-
- ~~(f)~~f. the method of expansion or contraction of the Project, or the addition, annexation or withdrawal of property to or from the Project;
- ~~(g)~~g. the convertibility of Units into Common Area or vice-versa;
- ~~(h)~~h. the requirement of insurance or fidelity bonds;
- ~~(i)~~i. the right to lease Units;
- ~~(j)~~—the imposition of any restrictions on a Unit Owner’s right to sell or
- j. transfer his or her Unit;
- ~~(k)~~—a decision by the Association to establish self-management when
- k. professional management had been previously required by an Eligible Holder;
- ~~(l)~~—the restoration or repair of the Project (after a hazard damage or partial
- l. condemnation) in a manner other than that specified in the Project Documents;
- ~~(m)~~—any action to terminate the legal status of the Project after substantial
- m. destruction or condemnation (when Unit Owners are considering termination of the legal status of the Project for reasons other than substantial destruction or condemnation, approval must be obtained from Eligible Holders representing at least sixty-seven percent (67%) of the votes of Units that are subject-~~t~~ to mortgages held by Eligible Holders); or
- ~~(n)~~—any provisions that expressly name mortgage holders as the beneficiary
- n. of that provision.

Failure to Respond.

~~12.6~~—If the Association determines that an addition or amendment to the Project
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12.06 Documents is not a material change, the approval of Eligible Holders shall be implied by the failure of an Eligible Holder to submit a response to a written proposal for an amendment within thirty (30) days after the proposal is made.

~~12.7~~12.07 **Written Notice.** Each Eligible Holder and each Eligible Insurer of Guarantor in entitled to timely written notice of the following:

~~(a)~~a. Any condemnation or casualty loss that affects either a material portion of the Project or the Unit securing its mortgage;

~~(b)~~b. Any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any Unit on which it holds the mortgage;

~~(e)~~c. A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

~~(d)~~d. Any proposed action that requires the consent of a specified percentage of Eligible Holders.

~~12.8~~—**Board Power.** In addition to the foregoing, the Board shall have the power and authority,

12.08 without the vote of the Association, to enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of any generally recognized federal agency of lending institution (e.g., FNMA, GNMA, FHA, VA, or the Mortgage Corporation), so as to allow for the purchase, guaranty or insurance, as the case may be, by such entities of first mortgages encumbering Units. Each Owner hereby agrees that it will benefit the Association and the membership of the Association, as a class of potential mortgage borrowers and potential sellers of their residential Units, if such agencies or lending institutions approve the Property as a qualifying Project under their respective policies, rules and regulations, as adopted from time to time.

ARTICLE XIII FINES

13.01 **Fines; Authorization.** The Association through its Board is hereby authorized to assess a fine against Owners who violate provisions in the Association’s Restated Declaration, Bylaws or Rules and Regulations (“Governing Documents”). The assessment of a fine shall be in accordance with the provisions of this Article ~~12~~3, the Bylaws and the Rules and Regulations adopted by the Board.

13.02 **Written Notice of Violation.** Before assessing a fine, the Board must give a written notice of the violation to the Owner of the violation and inform the Owner that a fine will be imposed if the violation is not cured within the time provided in the written notice. The written notice shall:

- a. contain a description or brief summary of the provision, bylaw, rule or regulation that has been violated; and
- b. a description of the manner in which the bylaw, rule or regulation has been violated.

If a violation is temporarily cured or stopped, but is repeated by the same Owner within 120 days of the date a written notice of violation is first served on the Owner, the violation shall be deemed to be a continuing violation and the Board shall not be required to serve another notice of violation upon the Owner but may rely upon the notice provided in the first written notice.

13.03 **Time to Cure.** In all instances, the violation must be cured within 48 hours of the written notice being delivered to the Owner or the Owner's agent, unless such time period is extended by the Board for good cause. The member of the Board or their agent that serves the written notice of violation on the Owner shall write on the notice of violation the date and time the notice of violation was served on the Owner and the date and time by which the violation must be cured. If an Owner repeats the violation more than 48 hours after receiving the written notice of violation but less than 120 days after receiving the notice, the Owner shall be deemed to have not timely cured the violation.

13.04 **Fine.** If the violation is fully and completely cured within the time provided in the written notice of violation, and is not repeated within 120 days of the time the written notice is first served on the Owner, no fine may be assessed by the Board. If the violation is not fully cured within the time provided, the Board shall, after confirming that the violation complained of has not been fully cured, impose a fine as provided herein or in the Governing Documents. If the same violation is repeated more than 48 hours but less than 120 days after the written notice of violation is first given, the Board shall impose a fine as provided herein or in the Governing Documents. The Owner shall receive a written notice of fine from the Board informing the Owner of the amount of the fine imposed.

13.05 **Manner of Providing Notice of Violation and Fine.** The notice of a violation of a bylaw or the rules and regulations of the association and the notice of a fine imposed by the Board may be provided to the Owner in any one or more of the following ways:

- a. Delivering a copy to the Owner personally; or

- b. Sending a copy through certified or registered mail, addressed to the Owner at his or her place of residence, in which case an additional 48 hours shall be allowed to cure the violation; or
- c. Leaving a copy with a person of suitable age and discretion at the Owners ~~H~~LotUnit; or
- d. Affixing a copy in a conspicuous place on the ~~H~~LotUnit if a person of suitable age or discretion could not be found; or
- e. If the person committing the violation is a tenant of the Owner, by (1) personally delivering a copy to the tenant living at the ~~L~~Lot or affixing a copy in a conspicuous place on the ~~L~~Lot if a person of suitable age or discretion could not be found, and by (2) mailing a copy to the Owner at the address provided by the Owner to the association.

13.06 **Non Owner Occupied ~~L~~otUnits: Renters & Guests.** If cases where the ~~L~~otUnit is not occupied by the Owner and the violation of the Governing Documents is committed by a guest or resident of the ~~L~~otUnit, the Owner shall be responsible for the failure of the resident to cure violations of the Governing Documents. For purposes of the lease between the Owner and the resident of the ~~L~~otUnit, the provisions of the Governing Documents and this Article 123 shall be incorporated by reference into the terms of the lease and the Owner may collect from the resident of the ~~H~~LotUnit any fines the Owner becomes obligated to pay by virtue of the resident's actions. The Owner shall be responsible for bringing a separate action to collect any such fines from the Owner's tenant. Residents (defined herein as renters, tenants, guests of Owners or renters, and any person who temporarily or permanently lives in a ~~L~~otUnit, but excluding Owners), are subject to the Association's Governing Documents. Owners are ultimately responsible for the activities of residents who reside in, visit, or in any manner use their ~~L~~ot and the common area. Any fine assessed against a resident will be the responsibility of the Owner of the ~~L~~ot in which the resident resides or is a guest. Because residents are subject to the provisions of the Governing Documents, residents are also subject to fines in the same manner as an Owner. Any fine assessed against a resident may be collected by the Owner from the resident. If a resident violates a bylaw or rule or regulation, both the resident and the Owner shall be served a notice of violation as provided above. It shall be the responsibility of the Owner to see that the resident cures the violation within the time allotted. Failure of the Owner to have the resident timely cure the violation shall subject the Owner to the fine as provided herein as if the Owner committed the violation.

13.07 **Board Action.** Any action by the Board involving a notice of violation or a notice of fine may be taken by any officer of the Board if so authorized or ratified by a quorum of the Board, consisting of 50% or more of the Board present at a meeting either in person or by telephone conference, or if not

present at a meeting, members consenting to the action after conferring with other members of the Board.

- 13.08 **Violations for Which a Fine May be Assessed.** A fine may be assessed for the violation of a provision in the Governing Documents, or for a rule listed on Exhibit "D", which is attached and incorporated by this reference. The list of violations of a rule or regulations listed on Exhibit "D" may be modified by the Board pursuant to their power to enact rules governing conduct within a project as contained in this Restated Declaration. Only those violations listed on Exhibit "D" and those violations of rules adopted by the Board are the offenses which are subject to a fine. Exhibit "D" may be used to incorporate provisions in the Governing Documents for which a violation may be assessed.
- 13.09 **Continuous Violations.** Each day (or 24 hour period) during which a violation of the Governing Documents of the Association, the rules and regulations of the Association, or the rules listed on Exhibit "D", continues after the time period expires during which the Owner is required to cure the violation, constitutes a separate violation and is subject to a fine in the amount listed in Exhibit "D". The violation of a provision in the Governing Documents or a provision listed on Exhibit "D", which is temporarily cured within the time period required in the notice of violation, but which is violated again within 120 days of the date the original notice of violation was served, is deemed to be a continuous violation for which another notice of violation is not required to be served.
- 13.10 **Amount of Fines.** The amount of a fine for a violation of a provision in the Restated Declaration, the rules and regulations, or the provisions listed on Exhibit "D", shall be in the amount listed on Exhibit "D", but in no case shall a single fine exceed \$500.00.
- 13.11 **Late Fees.** Fines not paid within 10 days of being assessed shall accrue interest at the rate of 1% per month and a late fee of \$25.00. An additional late fee shall be assessed for each and every 30 day period the fine remains unpaid after it is assessed. No interest or late fees may accrue until 10 days after a hearing (if requested by the Owner) has been conducted and a final decision has been rendered by the Board.
- 13.12 **Protesting the Fine.** A Owner who is assessed a fine may request an informal hearing to protest or dispute the fine within 30 days from the date the fine is assessed (which is the date written on the notice of fine). The Owner protesting the fine shall request the informal hearing by delivering a written request to any member of the Board stating the grounds for the protest or dispute and setting forth in detail the following:

- a. the grounds for the protest, including any unusual circumstances justifying a reduction in the standard fine;
- b. the facts relied upon by the protesting Owner with respect to the violation or non-violation of the bylaw, rules or regulations;
- c. the amount of the fine the Owner claims should be paid and the reasons supporting that claim; and
- d. any errors made by the Board in calculating, assessing, or collecting the fine.

13.13 **Informal Hearing.** Within 14 days of receiving the written request for hearing, the Board shall schedule an informal hearing at which time the requesting Owner will be given an opportunity to present evidence and witnesses supporting the Owner's position. No formal rules of evidence will be required, and the Board can receive the evidence submitted by the requesting Owner and determine the probative value of such evidence. If it chooses and if it would be of benefit to the requesting Owner, the Board may also produce evidence supporting its decision to fine the Owner. However, the intent of the hearing is listen to the violating Owners explanations and not to have a trial. The Board may terminate the hearing at any time if any individual present becomes unruly, inconsiderate or rude.

13.14 **Decision of the Board.** The Board may, after the requesting Owner has had the opportunity at the hearing to present the evidence desired, may either:

- a. leave the amount of the fine as originally stated;
- b. reduce the fine to an amount agreed upon by a majority of the Board present at the hearing;
- c. reduce the fine to an amount agreed to by the offending Owner with the agreement that the offending Owner will pay the fine within 10 days and not appeal the fine in district court;
- d. suspend all or a portion of the fine conditioned on the Owner not repeating the violation for 180 days; or
- e. forgive the fine.

The Board shall render its written decision no later than ten (10) days after the date of the hearing.

13.15 **Lien.** A fine assessed against an Owner that remains unpaid after the time for appeal has expired becomes a lien against the Owner's interest in the property in accordance with the same standards as a lien for the nonpayment of common expenses under U.C.A. § 57-8a-301.

- 13.16 **Promulgation of Additional Rules and Fines.** The Board is authorized to adopt and to amend the administrative rules and regulations as may be necessary or desirable to insure the property is maintained and used in a manner consistent with the interests of the Owners, to protect and enhance the quality of life in the association, to protect the property values of the Unit-lots, to ensure a quality and enjoyable lifestyle, and to respect the rights and privileges of all residents to be free from the annoyance, disturbance and nuisance of others. The method by which the Board may adopt new rules shall be in accordance with the Community Association Act.

ARTICLE XIV DISPUTE RESOLUTION

- 14.01 **Introduction.** It is in the best interest of the Owners, the Association, the Board and the officers (the “Party” or “Parties”) to encourage the amicable resolution of disputes arising out of the legal rights and obligations described in this Restated Declaration without the emotional and financial costs of litigation. The Parties agree that in lieu of filing suit in any court they will submit to the Alternative Dispute Resolution Procedures (the “ADR Procedures”) set forth below, with respect to any claim, grievance or dispute (the “Claims”) arising out of or relating to the Governing Documents; provided, that a Party may demand arbitration prior to complying with the ADR Procedures if demanding arbitration is required to satisfy the statute of limitations for a Party’s Claim. In such an event, the Party demanding arbitration shall simultaneously stay the arbitration until the ADR Procedures have been satisfied.
- 14.02 **Exceptions.** Notwithstanding the foregoing, the ADR Procedures shall not be required for the following Claims unless all Parties to the matter agree to submit the matter to the ADR Procedures:
- a. Any suit or claim between Members which does not include the Association as a party, if such suit asserts a claim which would constitute a cause of action independent of the Governing Documents;
 - b. Any suit in which any indispensable party is not bound by this Article 14~~3~~;
 - c. Any collection activity, action or suit brought by the Association against an Owner involving the collection of delinquent Assessments, Special Assessments, fines or Common Area fees; and
 - d. Actions brought by the Association to obtain damages for nuisance, a temporary restraining order, preliminary injunctive relief, or other preliminary equitable relief and such ancillary relief as the Association may deem necessary in order to enforce the provisions of this Restated Declaration (an “Enforcement Action”).

14.03 **Procedure for Disputes Between Parties.**

- a. **Good-Faith Discussion.** The aggrieved Party (“Complainant”) shall attempt to resolve the Claim with the other Party (“Respondent”) through good-faith discussion.
- b. **Submission of Complaint.** If the Claim is not resolved through good-faith discussion, Complainant shall provide the Board and each Respondent with a written statement of the material facts of the Claim (the “Complaint”). The Complaint shall include the following:
 - i. the nature of the Claim, including the parties involved and the Respondent’s role in the Claim;
 - ii. a brief description of the discussions of the parties and their attempts to resolve the Claim informally;
 - iii. copies of relevant documents supportive of Complainant’s position; and
 - iv. Complainant’s proposed resolution or remedy.
- c. The Complaint must include all Claims that exist between the Parties at that time. Any Claim not included in the Complaint is expressly waived by the Complainant. Respondent shall have fifteen (15) days from receipt of the Complaint to file a response (the “Response”) with the Complainant and the Board. The Response must include any Claim that the Respondent has concerning the Complainant at the time that the Response is submitted to the Board. Any Claim that is not included in the Response is expressly waived by the Respondent. The Response shall include any documents, descriptions, explanations or other material supporting the Response.

14.04 **Review by Board.** The Board shall undertake a reasonable review of the Complaint and the Response and shall issue a written decision, including an explanation of the reasons for the decision, within thirty (30) days of receipt of the Response. A copy of the decision shall be sent to the Parties promptly via first class mail or by electronic means. The Board’s Decision shall be the final and binding resolution of the Claims submitted in the Complaint and the Response unless within thirty (30) days from the date that the decision is mailed either Party delivers to the Board and all other Parties a Notice of Objection to the Board’s Decision and Intent to Submit to Mediation.

14.05 **Mediation.**

- a. Within thirty (30) days of receipt of the Notice of Objection to the Board’s Decision and Intent to Submit to Mediation, the Board shall

contact the Parties with proposed mediation dates and a list of potential mediators. A neutral third-party or professional mediator that has been agreed to by the Parties shall conduct the mediation.

- b. The mediation shall be held in the State of Utah at a location agreed upon by the Parties. Unless otherwise agreed by the Parties, the mediation shall take place no later than three (3) months from the date of the Board's Decision. If the Parties do not agree to extend this period and mediation does not occur within this time period, then this requirement is deemed to be satisfied.
- c. Unless otherwise agreed by the Parties, all fees and costs of the mediation shall be borne by the Party submitting the Notice of Objection to the Board's Decision and Intent to Submit to Mediation.

14.06 Arbitration.

- a. All Claims between the Parties not otherwise resolved shall be submitted to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Unless otherwise agreed upon by the Parties in writing, demand for arbitration must be made within thirty (30) days of the mediation or the expiration of the period for holding the mediation as set forth above. Failure to demand arbitration within 30 days is an express waiver of the Notice of Objection to the Board's Decision and Intent to Submit to Mediation, and upon such waiver the Board's Decision becomes the final and binding resolution of the Claims.
- b. In no event shall a Party be entitled to demand arbitration of a Claim after the time for taking legal action on the Claim has expired.
- c. The arbitration shall be held in the State of Utah at a location agreed upon by the Parties or determined by the arbitrator.
- d. The prevailing Party in the arbitration shall be awarded its reasonable attorney fees and costs associated with the dispute. Punitive damages, however, shall not be awarded in any dispute. Judgment upon the award rendered by the arbitrator may be entered in any court within the State of Utah.

14.07 Procedure Subject to Change by Board. The procedures outlined in this Section 13 may be amended from time to time by the Board without the vote of the Owners, as the Board deems necessary, in light of experience, to better accomplish the amicable resolution of disputes arising out of the legal rights and obligations described in the Governing Documents; provided, such modifications shall not take effect until three months after a copy of the new procedures is delivered to the Owners.

- 14.08 **Procedure for Disputes between the Association and Members.** Subject to the provisions of Section 13.02, any Owner who has a dispute with the Association, the Board, or any officer of member representing one of these groups, and who is not satisfied with the decision of the Association or the Board, shall follow the procedures outlined in Section 13.03 above.

ARTICLE XV DURATION AND AMENDMENT

~~13.1—Duration.~~

This **Restated** Declaration shall continue in full force for a term of fifty (50) ~~years~~ **years** from the date

- 15.01 hereof, after which time the same shall be automatically extended for successive periods of ten (10) years, unless a Declaration of Termination is recorded meeting the requirements of an amendment to this **Restated** Declaration as set forth in Paragraph ~~14~~**5.02**. There shall be no severance by sale, conveyance, encumbrance or hypothecation of an interest in any Unit from the concomitant membership of the Association, as long as this **Restated** Declaration shall continue in full force and effect.

~~13.2—Amendment.~~

Amendment. Notice of the subject matter of a proposed amendment to this **Restated** Declaration in reasonably

- 15.02 detailed form shall be included in the notice of any meeting of the Association at which a proposed amendment is to be considered. ~~A resolution adopting a proposed amendment may be proposed by an Owner at a meeting of the Members of the Association.~~ The ~~resolution amendment~~ shall be adopted by the vote, in person or by proxy, or written consent of Members of the Association. ~~The resolution shall be adopted by the vote, in person or by proxy, or written consent of Members~~ representing not less than sixty-seven percent (67%) of ~~a quorum of the total voting power~~ **Voting Power** of the Association.

Notwithstanding the foregoing, the following special voting provisions shall apply:

- ~~(a) Amendments of a material nature shall be enacted in compliance with the provisions of Article 142 of this Restated Declaration;~~

- ~~(b)~~a. The specified percentage of the ~~voting power~~Voting Power necessary to amend a specified provision of this Restated Declaration shall be not less than the percentage of affirmative votes prescribed for action to be taken under that provision;

A certificate, signed and sworn to by two (2) officers of the Association, that the record Owners of the required number of Units have either voted for or consented in writing to any amendment adopted as provided above, when recorded, shall be conclusive evidence of that fact. The Association shall maintain in its files the record of all such votes or written consents for a period of at least ~~four~~-six (46) years. Such a certification reflecting any amendment which requires the written consent of any of the record holders of first mortgages shall be signed and sworn to by such first mortgagees.

ARTICLE XVI GENERAL PROVISIONS

~~14.1~~ **Enforcement.**

The Board, ~~or~~ any Owner, ~~and any governmental or quasi-governmental agency or~~

~~3.04~~16.01 ~~municipality having jurisdiction over the Project~~ shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by this Restated Declaration, and in such action **the prevailing party** shall be entitled to recover costs and reasonable attorney fees as are ordered by the Court. Any such action by the Board shall be taken on behalf of two (2) or more Unit Owners, as their respective interests may appear, with respect to any cause or action relating to the Common Area or more than on Unit. Failure by any such person or entity to enforce any such provision shall in no event be deemed a waiver of the right to do so thereafter.

~~14.2~~ **Invalidity of Any Provision.**

Should any provision of this Restated Declaration be declared invalid or in conflict with any law

16.02 of the jurisdiction where the Project is situated, the validity of all other provisions shall remain unaffected and in full force and effect.

~~14.3~~—**Conflict of Project Documents.**

If there is any conflict among or between the Project Documents, the provisions of this

16.03 Declaration shall prevail; thereafter, priority shall be given to Project Documents in the following order; Plat Map; Articles; Bylaws; and rules and regulations of the Association. Notwithstanding the foregoing, any provision in any of the Project Documents which is for the protection of mortgagees shall have priority over any inconsistent provision in that document or in any other Project Document.

16.04 **Receipt of Service.** The following person will receive Service of Process on behalf of the project and/or Association:

The president of the Solano Vallejo Villas Owners Association Inc. Board.

16.05 **Effective Date.** This Restated Declaration shall take effect upon its being filed for record in the office of the County Recorder of Grand County, Utah

~~The president of the Solano Vallejo Homeowners Association Board.
PO Box Moab, Utah~~

ANNEXATION

~~Additional parcels may be annexed to the Property and become subject to this Declaration by either of the following method.~~

15.1—Annexation Pursuant to Plan.

~~All or any portion of the property located within Exhibit “A”, may be annexed to and~~

~~_____ become a part of the Project, subject to this Restated Declaration, and subject to the jurisdiction of the Association, without the assent of the Association or its Members, on condition that:~~

~~15.1.1—Any annexation pursuant to this Subparagraph shall be made prior to ten (10) years from the date of recordation of this Restated Declaration.
(10) years from the date of recordation of this Declaration.~~

~~15.1.2—A Declaration of Annexation shall be recorded by Declarant covering the _____ property so annexed. Said Declaration shall incorporate this Restated Declaration by reference and may contain such complementary additions and modifications of the covenants and restrictions contained in this Restated Declaration as may be necessary to reflect the different character, if any, of the added property, and as are not inconsistent with the scheme of this Restated Declaration.~~

15.2—Annexation Pursuant to Approval.

~~Upon the vote or written assent of Declarant (while Declarant is an Owner) and of two _____ thirds (2/3) of the total voting power residing in Members of the Association other than Declarant, the Owner of any property who desires to add it to the scheme of this Restated Declaration and to subject it to the jurisdiction of the Association, may record a Declaration of Annexation in the manner described in the preceding Paragraph.~~

~~Upon annexation of additional property, the annexed parcel shall become subject to this Restated Declaration without the necessity of amending individual sections hereof. The Common Area of the new property shall be conveyed lien free to the Association, and Owners of Units in the new property will become Members of the Association, with Assessment obligations being prorated to the date of annexation.~~

~~This Restated Declaration shall take effect upon its being filed for record in the office of the County Recorder of Grand County, Utah~~

~~De-annexation~~**CERTIFICATION**

~~15.3— This Restated Declaration shall take effect upon its being filed for record in the office of the County Recorder of Grand County, Utah. It is hereby certified that Owners holding at least two-thirds (67%) of Parcels.~~

~~Any property, if annexed to the Property pursuant to the plantotal votes of Declarant, in accordance with Paragraph 15.1 above, may be de-annexed by Declarant and removed from the Project and the jurisdiction of the Association have voted to approve this Restated Declaration and the Association at any time by the recordation of an appropriate Declaration of De-annexation; provided that such de-annexation shall take place (1) before any Unit in such Phase has been sold by Declarant to a member of the general public; and (2) before any vote has been exercised on behalf of any such Unit.~~

~~END OF ARTICLE 15~~
~~ANNEXATION~~

The undersigned, being the Declarant herein, has executed this Declaration on _____

DECLARANT:

Solano Vallejo Villas Owners Association Board of Directors

By: ~~signed on original copy~~ _____

IN WITNESS WHEREOF, this ___ day of _____, 2013.

It is hereby certified that Members representing at least two-thirds (67%) the total Voting Power of the Association have voted to approve this Restated Declaration. Two (2) officers of the Association do hereby certify that the record Owners of the required number of Units have either voted for or consented in writing to this amendment which, when recorded, shall be conclusive evidence of that fact.

~~It is hereby certified that Owners holding at least two-thirds (67%) of the total votes of the Association have voted to approve this Restated Declaration.~~

IN WITNESS WHEREOF, this ___ day of _____, 2014.

SOLANO VALLEJO VILLAS ~~HOME~~OWNERS ASSOCIATION INC.

By _____
President

By _____
Vice-President

STATE OF UTAH)
 :SS.
COUNTY OF GRAND)

On this ____ day of _____, 2014, personally appeared before me _____ who, being by me duly sworn, did say that (s)he is President of the Solano Vallejo ~~Home~~owners Association Inc., and that the within and foregoing instrument was signed in behalf of said Association and (s)he duly acknowledged to me (s)he executed the same.

Notary Public

STATE OF UTAH)
 :SS.
COUNTY OF GRAND)

On this ____ day of _____, 2014, personally appeared before me _____ who, being by me duly sworn, did say that (s)he is Vice-President of the Solano Vallejo Villas Owners Association Inc., and that the within and foregoing instrument was signed in behalf of said Association and (s)he duly acknowledged to me (s)he executed the same.

Notary Public

