

After Recording Return to:

**SECOND AMENDED & RESTATED
DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS
FOR PARKWAY VILLAGE TOWNHOMES,
A PLANNED RESIDENTIAL UNIT DEVELOPMENT**

THIS SECOND AMENDED & RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR PARKWAY VILLAGE TOWNHOMES, A PLANNED RESIDENTIAL UNIT DEVELOPMENT (this "Declaration") is hereby adopted by Parkway Village Homeowners Association, Inc. ("Association"), for and on behalf of its Members, and made effective as of the date recorded in the Davis County Recorder's Office.

RECITALS:

(A) This Declaration affects and concerns the real property located in Davis County, Utah and more particularly described in **Exhibit A** attached hereto ("Property").

(B) On or about October 20, 2008, a Plat Map depicting the Parkway Village PRUD was recorded in the Davis County Recorder's Office, as Entry No. 2399598 ("Plat"). The Plat provides that:

- i. All street improvements, the detention basin, and mainline utilities, including water lines and storm drain lines, are to be owned and maintained by the homeowners association. Individual sanitary sewer and culinary water laterals are to be maintained by the individual lot/unit owner.
- ii. The sanitary sewer main-line within 1100 West & 2875 North is to be a public utility. The sanitary sewer main-line within 1150 West & 1175 West is to be owned & maintained by the homeowner's association.
- iii. Should the Common Area fall into disrepair, it is the Association's responsibility to restore the Common Area to its original condition and will not be Layton City's responsibility to maintain or restore the Common Areas.
- iv. The Subdivision shall have a posted speed limit of 15 mph along with no on street parking which must also be posted throughout the Subdivision. No parking signs shall match the Layton City R7-1 sign details and where no parking sign are posted red curb side paint must be applied.

(C) On or about October 20, 2008, a Declaration of Covenants, Conditions and Restrictions of Parkway Village Townhomes P.R.U.D. ("Enabling Declaration") was recorded in the Davis County Recorder's Office, as Entry No. 2399599.

(D) On or about September 22, 2011, an Amended and Restated Declaration of Covenants, Conditions and Restrictions of Parkway Village Townhomes, A Planned Residential Unit Development (“Amended Declaration”) was recorded in the Davis County Recorder’s Office, as Entry No. 2617338, which superseded and replaced the Enabling Declaration.

(E) On or about April 9, 2013, the Bylaws for Parkway Village Homeowners Association (“Original Bylaws”) were recorded in the Davis County Recorder’s Office, as Entry No. 2732118.

(F) The Property is subject to certain protective covenants, conditions, restrictions and easements, as set forth in this Declaration, as amended from time to time, which are deemed to be covenants running with the land mutually burdening and benefitting each of the Lots within the Project. Common Areas and Limited Common Areas are those areas that are depicted as Common Areas and Limited Common Areas in the recorded Plat(s) or as described in this Declaration.

(G) The Association and its Members, consistent with the Enabling Declaration, as amended, hereby adopt this Declaration. This Declaration hereby amends, replaces and supersedes all prior declarations and amendments, rendering the prior declarations and amendments of no further force and effect. This Declaration, along with any future amendment(s), shall be the sole Declaration for the Property.

(H) The Association and its Members desire that the Board amend the existing Articles of Incorporation with the Utah Department of Commerce in conjunction with the adoption of this Declaration. The Association and its Members hereby authorize and approve filing the Amended & Restated Articles of Incorporation of the Parkway Village Homeowners Association, Inc. (“Articles”) with the State of Utah, a copy of which has been previously provided to and approved by the Owners.

(I) The Association and its Members desire that the Board adopt the Amended & Restated Bylaws for the Association and hereby authorize and approve the recording of the Amended & Restated Bylaws of Parkway Village Homeowners Association, Inc., a copy of which is attached hereto as **Exhibit “B”** (“Bylaws”), which shall be recorded in the Davis County Recorder’s Office contemporaneously with the recording of this Declaration. These Bylaws hereby amend, replace and supersedes all prior bylaws and amendments, including the Original Bylaws, rendering the prior bylaws and amendments of no further force and effect. These Bylaws, along with any future amendment(s), shall be the sole Bylaws for the Property.

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

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

CERTIFICATION

Pursuant to the Article 13.02 of the Amended Declaration, this Declaration was approved by no less than owners of record holding not less than a majority of the total membership of the Association. Further, pursuant to Article 11.01 and Utah Code § 57-8a-210, requisite notice was provided to mortgagees of record. By signing below, the Board hereby certifies that the above-described approval was obtained, approving of the Declaration, Bylaws, and Articles.

COVENANTS, CONDITIONS AND RESTRICTIONS

ARTICLE I DEFINITIONS

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

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

(B) “Architectural Control Committee” or “ACC” shall mean the Architectural Control Committee created by this Declaration, the Bylaws, and/or Articles. If no ACC is created, the Board shall assume all duties and authority of the ACC.

(C) “Articles” shall mean the Amended & Restated Articles of Incorporation for the Association, as amended.

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

(E) “Association” shall mean PARKWAY VILLAGE HOMEOWNERS ASSOCIATION, INC. and as the context requires, the officers or directors of that Association.

(F) “Board” or “Board of Directors” shall mean the duly elected and acting Board of Directors of the Association.

(G) “Bylaws” shall mean the Amended & Restated Bylaws of the Association, as amended from time to time, a copy of which is attached hereto as **Exhibit C**. No amendment to the Bylaws shall be effective until it is duly approved and recorded.

(H) “City” shall mean Layton, Utah and its appropriate departments, officials and

committees.

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

(J) "Common Areas" shall mean all property designated on the Plat(s) or described in this Declaration as Common Areas, being intended ultimately to be owned by the Association for the common use and enjoyment of all Owners, together with all improvements thereon and all of the easements appurtenant thereto, including, but not limited to:

1. Private streets, , curbing and sidewalks;
2. Subdivision entrance;
3. Subdivision perimeter fencing;
4. Detention basins;
5. Community mailboxes;
6. Streetlights (not maintained by City);
7. Open space located outside of a Lot;
8. All water meters and other utility installation and equipment serving more than one Dwelling (that is not otherwise maintained by the City) and specifically excluding all utilities that are individually metered to the Dwellings; and
9. All other parts of the Subdivision normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Property owned by the Association for the common benefit of its members.

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

(L) "Declaration" shall mean this Second Amended & Restated Declaration of Covenants, Conditions and Restrictions for Parkway Village Townhomes, A Planned Residential Unit Development together with any subsequent amendments or additions through subsequent recording amendments or supplements.

(M) "Dwelling" shall mean a structure which is designed and intended for use and occupancy as a single-family residence, whether attached or detached from other residences, together with all Improvements used in conjunction with such residence, such as appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning

apparatus, furnaces, stoves, fixtures and the like, shall be considered part of the Dwelling. All pipes, wires, conduits, or other public utility lines or installations constituting a part of the Dwelling or serving only the Dwelling shall be part of the Dwelling.

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

(O) "Harmonious" shall refer to Improvements and structures within the community that are consistent with the existing character, architectural style, colors, and theme as other Improvements in the community so as to not detract from the theme and character of the community or neighboring property values and should not draw attention as being a deviation from the existing Improvements.

(P) "Improvement" shall mean all structures, Dwelling and appurtenances of every type and kind, including but not limited to buildings, single family homes, dwellings, residences, garages, walkways, retaining walls, driveways, fences, landscaping, decks, stairs, poles, lighting, signs, satellite dishes or other antennas, and any mechanical equipment located on the exterior of any building.

(Q) "Limited Common Areas" shall mean all property designated on the recorded Plat Map(s), or as described in this Declaration as Limited Common Area, being intended ultimately to be owned by the Association but for the exclusive use and enjoyment of one or more appurtenant Lots but fewer than all of the Lots, including the private/shared driveways of the Dwellings.

(R) "Lot" shall mean any numbered building lot shown on any official and recorded Plat(s) of all or a portion of the Project, including any Dwelling or Improvement constructed thereon. If the Project contains Dwellings that share a Party Wall, Lot may also refer to each individually, owned Dwelling.

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

(T) "Owner" shall mean the person or persons having title to any Dwelling. Owner shall mean the person holding fee simple title and buyers under any contract for deed but shall exclude any person or entity holding title for purposes of securing performance of any obligations, including the trustee and/or beneficiary under a deed of trust or mortgagee under a mortgage. In addition, Owner may include a non-natural, but legally recognized entity, such as a limited liability company, corporation, partnership, limited partnership, trust, and/or other legally entity recognized by Utah State law. Accordingly, such an Owner may designate a natural person of its selection as Owner's agent to serve and act in the Owner's place. Notwithstanding the foregoing, an Owner may designate only one natural person to serve as its agent at any one time. Membership in the Association is appurtenant to each Dwelling and an Owner shall be deemed a "Member" of the Association.

1. "Person" shall mean a natural person or any legal entity with a right to hold

title to real property in its own name in the State of Utah.

(U) "Plat(s)" or "Plat Map(s)" shall mean an official and recorded plat of Parkway Village Townhomes, A Planned Residential Unit Development in the Davis County Recorder's Office, as it may be amended from time to time.

(V) "Private Streets" shall mean and refer to all of the roads and streets within the Project that are designated on the Plat(s) as private streets. Private Streets shall for all purposes be deemed to be Common Areas.

(W) "Project" shall mean all phases of Parkway Village Townhomes, A Planned Unit Development and all Lots, Common Areas, Limited Common Areas, and other property within the subdivision, as shown on the Plat(s) and any future Plat(s) covering the Property.

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

ARTICLE II EASEMENTS

2.1 Easement Concerning Common Area. Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Area. Such right and easement shall be appurtenant to and shall pass with title to each Dwelling and in no event shall be separated therefrom, or encumbered, pledged, assigned or otherwise alienated by an Owner. Notwithstanding the foregoing, no Owner shall have any right or interest in any easements forming a portion of the Common Area except for the necessary parking, access, and utility easements for use in common with others.

2.2 Easement Concerning Limited Common Area. The Association shall have a non-exclusive easement for any utility or any required maintenance in and through the Limited Common Area. With the exception of the rights and easements granted to the Association, the Owner(s) of a Dwelling shall have the exclusive use of all Limited Common Area assigned to their Dwelling.

(a) The Association may also adopt Rules with regard to storage and materials that may be in the Limited Common Areas. The Association may, by rule, impose limitations on the use, upkeep, and prohibition of certain activities or prohibited items within the Limited Common Area. Limited Common Area may not be separated from the Ownership or occupation of the Dwelling.

2.3 Delegation of Use. Any Owner may temporarily delegate, in accordance with the Governing Documents, their right of enjoyment to the Common Area located thereon to the members of their family and their tenants and shall be deemed to have delegated said rights to contract purchasers who reside in the Owner's Dwelling.

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

- (a) The right of the Association to govern by Rules the use of the Common Area for the Owners so as to provide for the enjoyment of said Common Areas by every Owner in a manner consistent with the preservation of quiet enjoyment of the Dwellings by every Owner, including the right of the Association to impose reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Area;
- (b) The right of the Association to suspend an Owner's right to the use of the Common Areas, or any amenities included therein, for any period during which an Owner is in violation of the terms and conditions of the Governing Documents or delinquent in the payment of a levied assessment or fee.
- (c) The right of the City, County, and any other governmental or quasi-governmental body having jurisdiction over the Property, to enjoy access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Common Areas for the purpose of providing police and fire protection, utility access/installation, and providing any other governmental or municipal service.
- (d) The right of the Association, as attorney in fact for the Owners, to dedicate, convey or grant easement rights to the Common Areas for such purposes and subject to such conditions as may be agreed to by the Association. No such dedication or transfer, however, may take place without the Association first receiving written approval from the relevant government agency pursuant to all applicable state and city ordinances in effect at the time of such proposed dedication or transfer.

2.5 Easements in Favor of Association. The Dwellings, Limited Common Areas, and Common Areas are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees, and independent contractors:

- (a) For inspection during reasonable hours of the Dwellings, Limited Common Areas, and Common Area in order to verify the performance by Owners or other persons of all items of maintenance and repair for which they are responsible;
- (b) For inspection, maintenance, repair, and replacement of portions of the Dwellings, Limited Common Areas, and/or Common Areas as required by the Declaration;
- (c) For correction of emergency conditions in the Project; and
- (d) The Association shall have an easement and related access rights in order to maintain the Common Area landscaping or any other landscaping that is the Association's responsibility.

2.6 Reservation of Access and Utility Easements. The Association hereby reserve an easement for access and utilities (including but not limited to: electrical, gas, communication, phone, internet, cable, sewer, drainage and water facilities, and secondary water) over, under, along, across and through the Property, together with the right to grant to a City and County, or any other appropriate governmental agency, public utility or other utility corporation or

association, easements for such purposes over, under, across, along and through the Property upon the usual terms and conditions required by the grantee thereof for such easement rights.

2.7 Easements for Encroachments. If any part of the Common Areas or Limited Common Area, as constructed, encroaches upon any other Dwelling or upon any portion of the Common Area or Limited Common Area, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure on any Dwelling shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon any other Dwelling or upon any portion of the Common Area or Limited Common Area due to such reconstruction shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

2.8 Utility Metering. Any utility that is not individually billed to a Dwelling may be proportionately allocated to a Dwelling by the Association.

2.9 Prior Declarant Easements. The Declarant's control period has ended, along with any special easement, access, voting or development rights on the Property.

ARTICLE III
COMMON AREAS, LIMITED COMMON AREAS, DWELLINGS
& MAINTENANCE RESPONSIBILITIES

3.1 Maintenance of Common Areas. The Association, or its duly designated agent, shall maintain all Common Areas in good order and repair and shall otherwise manage and operate all Common Areas as it deems necessary and appropriate, including, but not limited to the following:

- (a) Landscape. The Association shall perform general landscaping maintenance in the Subdivision, as originally installed by the developer, including the areas surrounding the Dwelling, which will generally include mowing, edging, blowing of grass, raking and disposal of leaves, and maintenance of trees and bushes. The Association shall maintain the original sprinkler system, as originally installed. Owner is responsible for any approved changes in sprinkler system, or other modifications to the landscaping from the original installation. The Association may adopt Rules to add further detail with regard specific landscape maintenance provided by the Association and those responsibilities of Owners concerning such items including, but not limited to: gardens, flowerbeds, and other landscaping elements. Prior written permission must be obtained by the Board to materially modify exterior landscaping on any Dwelling.
- (b) Snow Removal. The Association shall make reasonable and prudent efforts to contract with a third party for the removal of snow from relevant Common Areas within the Project. Owners shall be responsible for removing snow from entryways, porches, patio areas, and other applicable areas on their Lot. Owners shall be responsible and take reasonable precautions with respect to ice and ice accumulation. The work of removing snow will be delegated to a third party, who

will utilize its discretion in the frequency of the snow removal and the amount of accumulation meriting removal. To the extent allowed by law, the Association shall not be responsible or liable for said third party's discretion and removal of snow.

- i. The Association may be rule determine the responsibility for snow removal on driveways, sidewalks and other relevant locations in the Project.

3.2 Limited Common Areas. The Limited Common Areas shall be and are hereby conveyed to the Association, a Utah non-profit corporation, subject to this Declaration and subject to all easements as set forth in this Declaration. The Association shall maintain, repair and replace the Limited Common Areas.

3.3 Association's Responsibility for Maintenance of Dwellings. The Association shall maintain, repair and replace the following components of the Dwellings:

- (a) Roofs, rain gutters, and down spouts;
- (b) Outside exterior surfaces of Dwellings (specifically excluding structural damage or repairs);
- (c) Concrete foundations and pad;
- (d) Exterior light fixtures and automatic light sensors; and
- (e) Chimneys and chimney caps.

3.4 Owner's Responsibility for Maintenance of Dwellings. With exception of those items identified in ¶ 3.3, each Owner, at such Owner's sole cost and expense, shall maintain and/or replace all Improvements on the Lot, including the Dwelling and related components in good order and repair, uncluttered at all times in order to preserve and enhance the enjoyment of the Project, and as further set forth in this Declaration. Such exterior items include, but are not limited to:

- (a) Entryways, porches, and decks;
- (b) All exterior doors, including frames, locks, hinges, door jams and garage doors;
- (c) Skylights, windows, window sills, window frames, glass, screens, and patio doors;
- (d) Sewer and drainage pipes, wiring, power, water and other utility lines within their Dwelling;
- (e) Appliances, heaters, furnaces, fireplaces, vents, chimneys, HVAC systems, compressors, condensers, ducting, air conditioning units, water spigots, lighting fixtures, pipes, and similar appliances, fixtures and pipes that exclusively serve an Owner's Dwelling(s); and
- (g) Any of the following located wherever they might be located (inside or outside of the Dwelling) that serve an Owner's Dwelling exclusively: replacement light bulbs, fans, plumbing fixtures (other than pipes located outside of a Dwelling and that do not exclusively serve that Dwelling), stoves, refrigerators, hot water heaters, air conditioning units (including compressors, condensers, ducting, and forced air units). Intercoms, security systems, water spigots and bibs, vents, chimneys and

fireplaces, and such other appliances, fixtures, and decorations as an Owner may install as permitted in this Declaration;

Enclosed herewith as **Exhibit C** is a Building Maintenance Chart for quick reference to the corresponding responsibilities between the Association and Owners.

3.5 Fencing. Any fencing within the Lot must receive prior written approval from the ACC and must be constructed of high-quality white vinyl fence, six feet above grade or lower. Owner is responsible to take the necessary steps to determine the legal boundaries of his/her lot. Owners remain responsible for fencing on their lot, including any boundary or dividing fence. (The Association remains responsible for community perimeter fencing).

3.6 Repairs by Association. In the event that an Owner permits his Dwelling or Improvements to fall into a state of disrepair that is dangerous, unsafe, unsanitary or unsightly condition or fails to comply with any other covenant or restriction in violation of this Declaration, the Association may give written notice to the Owner describing the condition complained of and demand that the Owner correct the condition within 15 days. If the Owner fails to take corrective action, the Association shall have the right, but not the obligation, to enter upon the offending Owner's Dwelling and take corrective action to abate the condition. All costs of abatement shall be charged to the Owner, who agrees to promptly pay the reasonable costs of any work performed under this provision, plus 15%. In addition, each Owner hereby grants to the Association a lien on the Dwelling and any Improvements to secure repayment of any sums advanced pursuant to this section, which lien may be foreclosed at any time by the Association in the manner prescribed in Utah for the foreclosure of mortgages. Alternatively, without requiring foreclosure, the Association may seek collection of sums advanced directly from the Owner of the Dwelling in question. Unpaid amounts will bear interest from the date advanced at the lawful judgment rate under applicable state law.

3.7 Repair Following Damage. In the event of casualty loss or damage to the improvements, the Owner will be entitled to reconstruct the Improvements as they existed prior to the damage or loss without review by the Board, provided however that alterations or deviations from the original approved plans will require review. Nothing in this Declaration is intended to prevent an Owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent injury or dangerous conditions following loss or damage before re-construction begins. Such temporary measures may be taken without the consent or approval of the Board, provided that any such measure must be of a temporary nature, and repair or reconstruction must begin as soon as circumstances will permit. Unless delayed by City/County approval or insurance carrier approval, no damaged structure will be permitted to remain on any Dwelling for more than 90 days without repairs commencing and any damaged structure which does remain unrepaired after 90 days following the occurrence of damage is deemed a nuisance which may be abated by the Association.

3.8 Alterations of Exterior Appearance & Dwellings. The Owners will maintain their Lots and Improvements in substantially the same condition and appearance that existed when

initially constructed. Without prior, written approval from the Board, an Owner may not make any repairs, modifications or alterations to any part of the exterior of a Dwelling. Similarly, without prior, written approval from the Board, an owner may not conduct any interior remodels of the Dwelling that impact existing walls, structures or other items that may impact the integrity of the Dwelling, such as: walls, shared walls, shared roofing and similar structures. This provision is not intended to prevent an owner from interior remodeling, decorating, painting, or conducting similar activities without the prior written permission of the Board. The Board may require that such modification or repairs be made in a particular manner and with qualified persons to maintain conformity within the Project and be Harmonious with existing Improvements on the Property.

(a) Without prior approval of the Board, none of the following shall occur at any time: (1) any use of the Common Aea for staging, storage, assembly, or construction, (2) any nuisance as established by law or by the Governing Documents, (3) any blocking of the Common Area by vehicles, materials, or persons, or (4) any use of the Association's garbage and disposal facilities for the disposal of debris, materials, or other items related to remodeling.

(b) The Board shall have no authority to approve of any remodeling: (1) inconsistent with the Governing Documents (2) that modifies the exterior dimensions of any Dwelling from the original construction (unless any such modification is approved of as otherwise provided herein), or (3) that would cause unsafe conditions.

(c) All remodeling and other repairs and modifications to Dwellings must be completed in compliance with all applicable building codes, laws, and the manufacturer's specifications for any materials, equipment, and fixtures.

(d) The Association may require indemnification agreements from an Owner with respect to any approved modification that impacts the roof of other shared components.

ARTICLE IV PARTY WALLS

4.1 Insurance. Given the existence of Party Walls within the Subdivision, the Association will provide blanket property insurance coverage, as required by the Governing Documents and/or Act

4.2 General Rules of Law to Apply. Each wall which comprises a portion of a Dwelling and which is built as a part of the original construction upon the Property and placed on the boundary line between any Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

4.3 Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

4.4 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, then, to the extent said destruction or damage is not covered by insurance

and repaired out of the proceeds of the same, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

4.5 Weatherproofing. Notwithstanding any other provision of this section, an Owner who by his negligent or willful acts causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements to the extent that said protection is not covered by insurance and paid for out of the proceeds of the same.

4.6 Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

ARTICLE V **MEMBERSHIP & VOTING**

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

5.2 Only an Owner that is current on all assessments and/or other fees shall be entitled to vote at any annual or special meeting. The Association shall have one class of voting membership, and each Owner shall be entitled to one (1) equal vote for each Lot in which they are an Owner. Since an Owner may be more than one Person, if only one of such Person(s) is present at the meeting of the Association that Person shall be entitled to cast all votes appertaining to that Lot. But if more than one of such Person(s) is present, the votes appertaining to that Lot shall be cast only in accordance with the agreement of a majority of them, and such consent shall be conclusively presumed if any one of them purports to cast the votes appertaining to that Lot without protest being made forthwith by any of the others to the person presiding over the meeting. The votes appurtenant to any one Lot may not be divided between Owners of such Lot or with respect to matters before the Association, and all such votes appurtenant to any one Lot shall be voted in one block. If the vote of a majority of the owners of a Lot cannot be determined, no vote shall be cast in relation to such Lot.

ARTICLE VI - ASSOCIATION & ASSESSMENTS

6.1 Organization. The Association has been created to effectively enforce the Governing Documents and shall operate as a non-profit corporation.

6.2 Enforcement Powers. The Association shall have all powers granted to it by the Governing Documents and the Act to enforce these covenants and restrictions by actions in law or equity brought in the name of the Association, and the power to retain professional services needed to the enforcement of the Governing Documents and to incur expenses for that purpose, including but not limited to: (1) record, lien, non-judicial and judicially foreclose and other enforcement and collection actions against an Owner and their Dwelling; (2) initiate legal or similar proceedings; (3) impose fines; (4) collect any rents directly from tenant for past due assessments; (5) terminate an Owners' right to receive utility service paid as a Common Expense; (6) terminate an Owner's right to utilize Common Area and/or amenities; and (7) any other action or remedy allowed by the Governing Documents or Utah law.

- (a) The Association shall have the exclusive right to initiate enforcement actions in the name of the Association. The Association may appear and represent the interest of the Project at all public meetings concerning zoning, variances, or other matters of general application and interest to the Owners.
- (b) The Association shall have the authority to initiate and compromise claims and litigation on behalf of the Association resulting from the enforcement of the Governing Documents. In the event that the Association initiates legal action against a specific Owner or Owners to enforce these Governing Document, whether or not such action results in the commencement of a formal legal proceeding, the Association shall have the right to assess the costs of such litigation, dispute, or enforcement action, including reasonable attorney fees, against the Owner(s) or Dwelling(s) in question and collect those assessment in any manner authorized in the Governing Documents or Utah law.
- (c) The Board shall be afforded discretion to utilize its reasonable judgment to determine whether and how to: impose fines, record liens, pursue legal action; otherwise enforce the Governing Documents; or when and how to settle or compromise claims.

6.3 Association Rules. The Board from time to time and subject to the provisions of the Governing Documents, may adopt, amend, repeal and enforce Rules governing the Project. The Association's rulemaking authority may govern conduct and activities upon the Common Areas, Limited Common Areas, and individual Dwellings.

6.4 Violation Deemed a Nuisance. Any violation of the Governing Documents that is permitted to remain on the Property is deemed a nuisance and is subject to abatement by the Association.

- (a) Any single or continuing violation of the covenants contained in this

Governing Documents may be enjoined in an action brought by the Association. In any action brought to enforce these covenants, the prevailing party shall be entitled to recover as part of its judgment the reasonable costs of enforcement, including reasonable attorney fees and court costs.

- (b) Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state or local laws and ordinances for the abatement of nuisances, health and safety, or other matters. This Declaration is to be construed as being in addition to those remedies available at law.
- (c) The remedies available under this Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.
- (d) The failure to take enforcement action shall not be construed as a waiver of the contents contained in this Declaration in the future or against other similar violations.

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

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

6.7 Assessments. Assessments will be made to meet the anticipated and recurring costs, expenses, and Common Expenses of the Association. The Association has the power to levy assessments against each Dwelling as necessary to carry out its functions. The Association may also utilize credit, lending, and other options when necessary. Assessments shall be levied against all Dwellings in the Property, whether vacant or improved. Each Owner shall by acquiring or in any way becoming vested with their interest in a Dwelling, be deemed to covenant and agree to pay to the Association the assessments described in these covenants, together with late payment fees, interest, and costs of collection (including reasonable attorney fees), if and when applicable.

- (a) All such amounts shall be, constitute and remain: (a) a charge and continuing lien upon the Dwelling with respect to which such assessment is made until fully paid; and (b) the personal, joint and several obligations of the Owner or Owners of such Dwelling at the time the assessment falls due. No Owner may exempt their Dwelling from liability for payment of assessments by waiver of their rights in the Common Areas or by abandonment of their Dwelling. In a voluntary conveyance of a Dwelling, the grantee shall be jointly and severally liable with the grantor for all unpaid assessments, late payment fees, interest, and costs of collection (including reasonable attorney fees) which shall be a charge on the Dwelling at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

- (b) **Special Assessment.** The Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required repairs or replacement of the Common Areas.
- (c) **Individual Assessment.** The Association may levy individual assessments on every Dwelling, Owner or occupant that shall cause any damage to the Project or otherwise causes the Association to incur any individual expense for maintenance, repairs, or enforcement action taken under the provisions of the Governing Documents. The amount of any such individual assessments shall be determined by the cost of such repairs, maintenance, or enforcement action, including all overhead and administrative costs (including reasonable attorney fees), and shall be allocated among the affected Owner(s) or Dwelling(s) according to the cause of damage, maintenance, repair work or enforcement action, as the case may be, which individual assessment may be levied in advance of the performance of work.
- (d) **Reserve Fund.** The Association may levy a reserve fund assessment.
- (e) The Association may levy other assessments or fees, as authorized by the Governing Documents.

6.8 **Budget.** The Board is authorized and required to adopt a budget annually. The Board may revise the approved budget from time to time as necessary to accurately reflect actual and/or anticipated expenses that are materially greater than previously budget. The budget shall estimate and include the total amount for the Common Expenses, shall contain an appropriate amount for reserves, and may include an amount for other contingencies. The budget shall also be broken down into reasonably detailed expense and income categories. Unless otherwise established by the Board, regular Assessments shall be paid in equal monthly installments.

6.9 **Reserve Fund Analysis.** The Board may cause a reserve analysis to be conducted from time to time to analyze the cost of repairing, replacing, or restoring Common Area. The Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the reserve analysis.

6.10 **Reinvestment Fee.** The Association may levy a one-time reinvestment fee when a change in ownership of a Dwelling occurs in the amount of one-half of one percent (.005) of the sale price of the Dwelling unless a lesser amount is adopted by the Board.

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

6.12 **Due Date, Charges & Interest.** The Board may adopt Rules and policies to provide further detail or that expressly modify this section. Unless otherwise established by the Board,

monthly assessments shall be due and payable on the first of each month and late if not received by the 10th of each month. The Board may charge a late fee in an amount set by the Board, for each unpaid or late assessment. In addition to late fees, interest may accrue on all unpaid balances at 18% per annum. The Board may also impose other reasonable charges imposed by a manager related to collections.

6.13 Lien. Upon recording of a notice of lien on any Dwelling, there shall exist a perfected lien for unpaid assessments prior to all other liens, except liens that by law would be superior thereto.

6.14 Foreclosure Sale. The Association shall have all rights and power of foreclosure granted by the law, including non-judicial foreclosure through power of sale in the same manner as a deed of trust. The Association may also bid for the Dwelling at foreclosure sale, acquire, hold, lease, mortgage, and convey the same. During the period in which a Dwelling is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be charged or levied on it; and (c) each other Dwelling shall be charged, in addition to its usual assessment, its equal pro rata share of any Special Assessment that would have been charged had such Dwelling not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid assessments and attorney fees shall be maintainable without foreclosing or waiving the lien securing the same.

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

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

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

ARTICLE VII ARCHITECTURAL CONTROL COMMITTEE

7.1 Architectural Control Committee ("ACC"). An Architectural Control Committee may be appointed by the Board in accordance with the Bylaws and Articles of the Association to

oversee any construction, re-construction, remodeling or altering of exterior Improvements. If no ACC is appointed, the Board will assume the duties and responsibilities of the ACC.

7.2 Guidelines. Under the direction of the Board, the ACC may adopt Design Guidelines governing Improvements or remodeling in the Subdivision.

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

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

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

ARTICLE VIII **USE LIMITATIONS & RESTRICTIONS**

8.01 General Restrictions and Requirements.

(a) No Improvement, excavation, fill or other work (including the installation of any wall or fence) which in any way alters any Lot from its natural or improved state existing on the date such Lot is first conveyed by Declarant to a purchaser shall be made or done except upon strict compliance with the Declaration.

(b) Lots shall be used only for single-family residential purposes, and no more than one Dwelling shall be constructed on any Lot. The facilities and improvements constituting part of the Common Areas shall be used only for the purposes and uses for which they are designed. Common Areas shall be used only for natural recreational uses which do not injure or scar the Common Areas or the vegetation thereof, increase the cost of maintenance thereof or cause unreasonable embarrassment, disturbance or annoyance to Owners in their enjoyment of their Lots and Dwelling or the Common Areas.

(c) Businesses, professions or trades maybe operated or maintained in a Dwelling

subject to the prior written approval of the Board, which approval shall not be unreasonably withheld, subject to the following limitations (i) any such business, profession or trade may not require heavy equipment or create a nuisance within the Project, (ii) may not noticeably increase the traffic flow to the project, (iii) may not be observable from outside the Lot, and (iv) may only be carried on following approval from Layton City pursuant to all applicable state and city laws, rules and ordinances in effect at the time any such use is requested. Specifically, it is contemplated that certain businesses, professions or trades which rely heavily on the internet and other similar type of technological advances may be operated or maintained within a Lot, subject to the foregoing limitations and all other limitations of this Declaration.

(d) No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done or placed thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance, or annoyance to other Owners in the enjoyment of their Lots and Dwelling or the Common Areas and Limited Common Areas. Without limiting the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively to protect the security of the Lot and Dwelling thereon, shall be placed or used upon any Lot without the prior written approval of the ACC.

(e) No furniture, fixtures, appliances or other goods and chattels shall be stored in such a manner as to be visible from neighboring Lots, roadways or Common Areas and Limited Common Areas.

(f) No Owner shall engage in any activities or permit the storage of any materials on a Lot which would create a fire hazard or nuisance.

(g) All garbage, rubbish, and trash shall be kept in covered containers. The storage, collection and disposal of garbage, rubbish and trash shall be in strict compliance with applicable laws and the rules and regulations of the Board.

(h) No Lot shall be subdivided.

(i) All Improvements shall be constructed in accordance with applicable building line and setback provisions of zoning ordinances.

(j) Roof and materials shall be architectural grade asphalt shingles as approved by the ACC or other high quality roofing materials. All replacement of shingles shall be made by the Association at the expense of the Association so as to maintain uniformity throughout the project.

(k) The exterior covering of all Dwelling shall be of stucco or other materials as determined by the ACC.

(l) No Dwelling or improvement project shall be permitted to remain incomplete for a period in excess of one (1) year from the date of commencement of construction unless any delays are approved by the Design Committee.

(m) No accessory building shall be constructed upon any Lot unless specifically allowed approved by the ACC. In the absence of any architectural standards, no such accessory building shall be allowed.

(n) No exterior lighting of any sort shall be installed or maintained on a Lot if the light source shines directly into a neighboring residence.

(o) No Dwelling shall be occupied until the same is substantially completed.

(p) No Owner of any Lot shall build or permit the building thereon of any structure that is to be used as a model or exhibit unless a permit to do so is first granted by the ACC.

(q) No Improvement which suffers partial or total destruction shall be allowed to remain on any Lot in such a state for more than three (3) months after the date of any such destruction.

(r) No outside toilet, other than self-contained portable toilet units used during construction, shall be placed or constructed on any Lot or the Common Areas. All plumbing fixtures, dishwashers, garbage disposals, toilets and sewage disposal systems shall be connected to a sewage system. No fuel tanks or similar storage facilities shall be constructed or used on any Lot or in the Common Areas.

(s) No fuel tanks or similar storage facilities shall be constructed or used on any Lot or in the Common Areas.

(t) All exterior antenna or satellite dishes shall be approved by the ACC. No activity shall be conducted within the Property which interferes with television or radio reception.

(u) No outside clotheslines and other outside clothes drying or airing facilities shall be maintained on any Lot.

(v) No drilling (except for a water well expressly permitted), refining, quarrying or mining operations of any kind shall be permitted upon any Lot or the Common Areas, and no derrick, structure, pump or equipment designed for use in any such activity shall be erected, maintained or permitted on any Lot or the Common Areas.

(w) There shall be no blasting or discharge of explosives upon any Lot or the Common Areas.

(x) No signs whatsoever shall be erected or maintained upon any Lot, except:

- (i) Such signs as may be required by legal proceedings,
- (ii) One "For Sale" or "For Rent" sign having a maximum face area of fifteen (15) square feet and referring only to the premises on which it is situated.

(y) No mobile home or similar facility shall be placed upon any Lot, the Common Areas or adjoining public streets except for temporary storage in strict accordance with the rules and regulations of the Board. No stripped down, wrecked or junk motor vehicles shall be kept, parked, stored or maintained on any Lot, Common Areas or roadways. No large commercial vehicle, motor home, camping trailer, snowmobile trailer, or the like, shall be parked on any Lot, roadways or Common Areas except as prior approved by the Board.

(z) Maintenance of any animals on any Lot shall be subject to the following restrictions and limitations:

(i) No livestock of any kind, including, but not limited to, pigs, cows, goats, sheep, horses, etc. may be kept or maintained on any Lot.

(ii) No dangerous or nuisance animals, as defined by the Board, may be maintained or kept on any Lot.

(iii) The area of any Lot occupied by an animal shall be properly maintained so as not to create any noxious or offensive odors or conditions which is or may become a nuisance or may cause disturbance or annoyance to other Owners in the Project.

(iv) No animals shall be permitted on the Common Areas except when accompanied by and under the control of the persons to whom they belong.

(v) The use and control of any animals shall be subject to further control by rules and regulations promulgated by the Board.

(vi) Subject to further control by rules and regulations promulgated by the Board, only a reasonable number of generally recognized house pets shall be kept on any Lot. House pets shall be permitted on the Common Areas when accompanied by and under the control of the person to whom they belong. No animals of any kind shall be raised for commercial purposes unless prior written approval is obtained from the Board.

(aa) There shall be no exterior fires, except fires started and controlled by the Association incidental to the maintenance and preservation of any portion of the Property and barbecue and incinerator fires contained within facilities or receptacles designed for such purposes. No Owner shall cause or permit any condition which creates a fire hazard, creates a nuisance, or is in violation of any fire prevention regulations.

(bb) There shall be no camping upon any Lot or Common Areas, except as permitted by the Board by written approval.

(cc) No Owner or guest shall park any vehicle or cause any obstruction in front of a driveway.

- (i) No owner or guest shall park any vehicle on the street except in designated parking areas.
- (ii) Other parking requirements and restrictions shall be in strict compliance with applicable laws and the rules and regulations of the Board.

ARTICLE IX INSURANCE

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

As used in this Article:

- (1) “Covered Loss” means a loss, resulting from a single event or occurrence that is covered by the Association’s property insurance policy.
- (2) “Dwelling Damage” means damage to a Dwelling.
- (3) “Dwelling Damage Percentage” means the percentage of the total damage to the Project for a Covered Loss that is attributable to each Dwelling.

9.2 Property Insurance.

(a) Hazard Insurance.

(i) Blanket Policy of Property Insurance. The Association shall maintain a blanket policy of property insurance covering all Common Areas, Limited Common Areas, and Dwellings.

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

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

(c) Earthquake Insurance. The Association may purchase earthquake insurance to cover earthquakes not otherwise covered by blanket property insurance.

(d) Associations Obligation to Segregate Property Insurance Deductible. The Association shall keep an amount equal to the Association’s property insurance policy

deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.

(e) Association's Right to Not Tender Claims that are Under the Deductible. If, in the exercise of its business judgment, the Board of Directors determines that a claim is likely not to exceed the Association's property insurance policy deductible the Association need not tender the claim to the Association's insurer.

9.3 Comprehensive General Liability (CGL) Insurance. The Association shall obtain CGL Insurance insuring the Association, the agents and employees of the Association, and the Owner, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than One Million Dollars (\$1,000,000) covering all claims for death of or injury to any one person or property damage in any single occurrence.

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

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

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

9.6 Association's Right to Negotiate All Claims and Losses and Receive Proceeds. Insurance proceeds for a loss under the Association's property insurance policy shall be payable to the Association, as insurance trustee, and shall not be payable to a holder of a security interest. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any proceeds remaining after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Dwellings. Each Owner hereby appoints

the Association, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and the execution of releases of liability, and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representative, successors or assigns of an Owner.

9.7 Owner Act Cannot Void Coverage under Any Policy. An Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

9.8 Owners' Individual Coverage. **EACH OWNER SHOULD PURCHASE INDIVIDUAL INSURANCE COVERAGE IN THE AMOUNT RECOMMENDED BY THE OWNER'S INSURANCE AGENT.**

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

ARTICLE X - MISCELLANEOUS PROVISIONS

10.1 Condemnation. Whenever all or any part of the Common Areas shall be taken by condemnation (or conveyed in lieu of and under threat of condemnation), the Board may act on behalf of the Association in negotiating and completing such transaction.

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

- (a) Any damage or destruction to the Common Areas shall be repaired or reconstructed unless Owners representing at least seventy-five (75%) percent of the total vote of the Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the costs of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Areas shall be repaired or reconstructed; provided, however, this provision shall not

- apply to construction mortgagees providing construction financing for such damaged property.
- (b) In the event, that it should be determined in the manner described above that the damage or destruction to the Common Areas shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Common Areas shall be restored to their natural state and maintained by the Association, in a neat and attractive condition.
 - (c) If the damage or destruction to the Common Areas for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the members, levy a special assessment against all Owners as provided in the Governing Documents.

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

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

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

10.6 Amendment. This Declaration can be modified by the affirmative vote or written consent of Owners representing not less than sixty-seven (67%) percent of the total eligible votes of the Association. No meeting or voting shall be required for an amendment, if the required, written consent is obtained from the requisite number of Owners.

10.7 Constructive Notice. Every person who owns, occupies, or acquires any right, title or interest in any Dwelling in the Project is conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of each of the provision of this Declaration against their Dwelling, whether or not there is any reference to this Declaration in the instrument by which they acquire interest in any Dwelling.

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

PARKWAY VILLAGE HOMEOWNERS ASSOCIATION, INC.

R. Matt Latta

By:

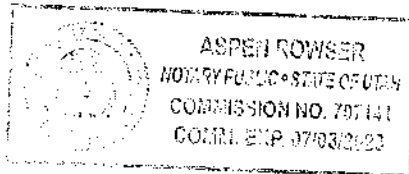
Its: Board Member

STATE OF UTAH)
: ss

COUNTY OF Morgan)

On this 3 day of January, ~~2022~~ ²⁰²³, personally appeared before me Rickard Matt Skitt who being by me duly sworn, did say that he/she is a Board Member of the Parkway Village Homeowners Association, Inc., a Utah non-profit corporation and that the within and foregoing instrument was signed on behalf of said corporation by authority and said individual duly acknowledged to me that said corporation approved the same.

Aspen Rowser
Notary Public

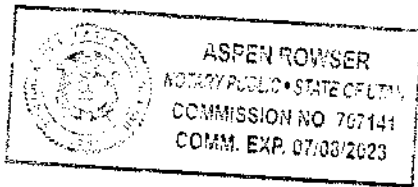


PARKWAY VILLAGE HOMEOWNERS ASSOCIATION, INC.

R. Matt Skite
By: _____
Its: Board Member

STATE OF UTAH)
: SS
COUNTY OF Morgan)

On this 3 day of January, ~~2022~~ ²⁰²³ personally appeared before me R. Matt Skite, who being by me duly sworn, did say that he/she is a Board Member of the Parkway Village Homeowners Association, Inc., a Utah non-profit corporation and that the within and foregoing instrument was signed on behalf of said corporation by authority and said individual duly acknowledged to me that said corporation approved the same.



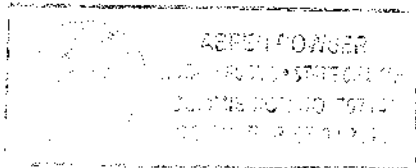
Aspen Rowser
Notary Public

PARKWAY VILLAGE HOMEOWNERS ASSOCIATION, INC.

R. Matt Skite
By: _____
Its: Board Member

STATE OF UTAH)
: SS
COUNTY OF Morgan)

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Aspen Rowser
Notary Public

Exhibit A
Legal Description

ALL OF LOT 1A THROUGH 1F, PARKWAY VILLAGE PRUD.
Tax I.D. [09-372-0001 through 0006]

ALL OF LOT 2A THROUGH 2B, PARKWAY VILLAGE PRUD.
Tax I.D. [09-372-0007 through 0008]

ALL OF LOT 3A THROUGH 3B, PARKWAY VILLAGE PRUD.
Tax I.D. [09-372-0009 through 0010]

ALL OF LOT 4A THROUGH 4F, PARKWAY VILLAGE PRUD.
Tax I.D. [09-372-0011 through 0016]

ALL OF LOT 5A THROUGH 5F, PARKWAY VILLAGE PRUD.
Tax I.D. [09-372-0017 through 0022]

ALL OF LOT 6A THROUGH 6F, PARKWAY VILLAGE PRUD.
Tax I.D. [09-372-0023 through 0028]

ALL OF LOT 7A THROUGH 7F, PARKWAY VILLAGE PRUD.
Tax I.D. [09-372-0029 through 0034]

ALL OF LOT 8A THROUGH 8F, PARKWAY VILLAGE PRUD.
Tax I.D. [09-372-0035 through 0040]

ALL OF LOT 9A THROUGH 9F, PARKWAY VILLAGE PRUD.
Tax I.D. [09-372-0041 through 0046]

ALL OF LOT 10A THROUGH 10F, PARKWAY VILLAGE PRUD.
Tax I.D. [09-372-0047 through 0052]

ALL OF LOT 11A THROUGH 11B, PARKWAY VILLAGE PRUD.
Tax I.D. [09-372-0053 through 0054]

ALL OF LOT 12A THROUGH 12D, PARKWAY VILLAGE PRUD.
Tax I.D. [09-372-0055 through 0058]

ALL OF LOT 13A THROUGH 13F, PARKWAY VILLAGE PRUD.
Tax I.D. [09-372-0059 through 0064]

ALL OF LOT 14A THROUGH 14F, PARKWAY VILLAGE PRUD.

Tax I.D. [09-372-0065 through 0070]

ALL OF LOT 15A THROUGH 15F, PARKWAY VILLAGE PRUD.

Tax I.D. [09-372-0071 through 0076]

ALL OF LOT 16A THROUGH 16F, PARKWAY VILLAGE PRUD.

Tax I.D. [09-372-0077 through 0082]

ALL OF LOT 17A THROUGH 17F, PARKWAY VILLAGE PRUD.

Tax I.D. [09-372-0083 through 0088]

ALL OF LOT 18A THROUGH 18F, PARKWAY VILLAGE PRUD.

Tax I.D. [09-372-0089 through 0094]

COMMON AREA:

ALL COMMON AREA OF PARKWAY VILLAGE PRUD. CONT. 5.25000 ACRES (THE INFORMATION SHOWN ON THIS PARCEL NUMBER IS FOR REFERENCE PURPOSES ONLY AND THIS PARCEL IS NOT TO BE CONSTRUED AS A SEPARATELY TAXABLE PARCEL OF LAND.)

Tax I.D. 09-372-0095

Exhibit B
Bylaws

AMENDED & RESTATED BYLAWS OF PARKWAY VILLAGE HOMEOWNERS ASSOCIATION

The following are the Amended & Restated Bylaws of Parkway Village Homeowners Association (“Bylaws”), a Utah nonprofit corporation (“Association”). These Bylaws shall replace any prior bylaws, whether or not recorded, and any amendments thereto, through the date these Bylaws are recorded with the Davis County Recorder. Upon recordation of these Bylaws, they are binding upon the Association and all present and future Owners and/or occupants.

RECITALS

- (A) The initial Bylaws of the Association were recorded in the Davis County Recorder’s Office on April 9, 2013, as Entry No. 2732118 (“Original Bylaws”).
- (B) Pursuant to Article 7 of the Bylaws, the Association received approval from no less than a majority of the total membership approving and consenting to the adoption and recording of these Bylaws.
- (C) These Bylaws shall hereby supersede and replace all prior bylaws whether or not recorded.
- (D) These Recitals are made a part of these Bylaws.

ARTICLE I DEFINITIONS

Section 1.1 Definitions. All terms used but not defined herein shall have the meanings given them under that certain Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Parkway Village Townhomes, A Planned Residential Unit Development recorded in the Official Records of the Davis County Recorder’s Office, as amended (“Declaration”).

ARTICLE II MEETINGS OF OWNERS

Section 2.1 Annual Meetings. An annual meeting of the Owners shall be held no less than once each calendar year at a location and time designated by the Board. The Board may set the date, time and location of the annual meeting in accordance with Section 2.3 below, which locations may include virtual or electronically held meetings through available technology.

Section 2.2 Special Meetings. Special meetings of the Owners may be called at the request of the Board, or upon written request of the Owners holding at least twenty-five percent (25%) of the total eligible voting interest in the Association. Notwithstanding, the Board remains the only authorized body to act for and on behalf of the Association.

Section 2.3 Notice of Meetings. Unless an Owner requests in writing that all notices be provided to said Owner by U.S. mail, all notices shall be given by, or at the direction of, the Board via email or electronic communication. Notice shall be provided at least ten (10) days before a meeting to each Owner at the email or electronic address provided by the Owner. Said notice is effective upon sending the email or electronic communication. Notices provided by U.S. mail shall be sent via U.S. First Class Mail and effective upon deposit in the mail. Such notice shall specify the location, day, and time of the meeting, and, in the case of a special meeting, the purpose of the meeting.

- (a) Such notice shall specify the location, day and time of the meeting, and, in the case of a special meeting, the purpose of the meeting.
- (b) Upon becoming an Owner of the Association, or upon the written request by the Association, Owners shall provide a valid email address or other requested electronic information for purpose of notification related to the Association unless the Owner has opted out by providing a written request for notice by U.S. Mail.

Section 2.4 Quorum. Unless otherwise specifically set forth in the Governing Documents, at any meeting of Owners, a quorum shall be established by those Owners present, in person or by proxy, at a properly noticed meeting. Notwithstanding, the Board remains the only authorized body to act for and on behalf of the Association. Further, a majority of those Owners present in person or proxy at such meeting may, by motion of the Board on its sole discretion, vote to reschedule the meeting based upon low attendance. Otherwise, the meeting shall proceed as scheduled.

Section 2.5 Proxies. At all meetings of Owners, each Owner may vote in person or by proxy. All proxies shall be in writing, signed by the Owner, and filed with the Board at or before said meeting. Notwithstanding, any proxy delivered to the Board at the meeting must be provided no later than any point in the meeting announced as the final time to deliver proxies. The proxy form provided with any notice of meeting may also provide additional requirements and a deadline to return proxies. Every proxy shall be revocable and shall automatically terminate upon conveyance by the Owner of their Dwelling. If conflicting proxy votes for an Owner or Dwelling exist, said proxy votes will not be counted.

Section 2.6 Conduct of Meetings. The Board, or its authorized representatives, shall preside over all meetings. The Secretary or other authorized person shall keep and maintain minutes of all meetings. The Board may adopt further policies and procedures with regard to conduct at an Association meeting.

- (a) **Recording.** No person, whether an Owner, occupant, owner representative, or other third party is permitted to record (whether audio, video, transcription, or combination) any Association meeting, work session, event, get-together, or similar event regardless of the location of such event without permission from the Association.

Section 2.7 Action Taken Without a Meeting/Action by Written Consent. Under the Direction of the Board, any action that may be taken at any annual or special meetings of

Owners may be taken without a meeting if the requisite written consents are obtained from Owners having not less than the minimum voting power that would be necessary to authorize or take such action at a meeting at which all Owners eligible to vote on the action were present and voted - unless a different percentage for the action is specifically required in the Declaration (*i.e.* Declaration amendment). The Board may obtain such approvals and conduct business through mail or email/electronic ballots.

- (a) Ballots shall set forth each proposed action and provide the option of voting for or against each proposed action. The ballot must specify the period of time, up to 90 days, during which the Association shall accept written ballots. Following this period, the Association shall provide notice if such action was approved.

Section 2.8 Voting Eligibility. Only an Owner that is current on all assessments and charges due and owing at least thirty (30) days in advance of the meeting, ballot or vote shall be deemed in good standing and eligible to vote..

ARTICLE III BOARD, SELECTION AND TERM OF OFFICE

Section 3.1 Number & Tenure. The affairs of the Master Association shall be managed by a Board of Directors composed of three (3) individuals (“Board”), as determined by the Board. Directors shall serve for a term of three years; provided, however, that initially the Board shall identify at least one of the Directors to serve for a two-year term. Thereafter, all Directors elected shall serve for a three-year term resulting in a staggered term of office for the Board. The members of the Board of Directors shall serve until their respective successors are elected, or until their death, resignation or removal.

Section 3.2 Eligibility. All members of the Board shall be Owners or an Owners’ spouse or legal partner. Notwithstanding, only one member of a single household can be a member of the Board at any one time. A Director appointed to the office of President or must be a full-time resident in the community.

Section 3.3 Resignation & Removal. A Director may resign at any time by delivering a written resignation to either the President or the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery. In the event of death, resignation or removal of a Director, their successor shall be selected by the remaining Directors and shall serve for the unexpired term of their predecessor. A Director may also be removed, and a replacement appointed if such Directors has three consecutive and/or unexcused absences from Board Meetings.

- (a) Any Director may be removed from the Board by the Owners with a vote of at least (51%) of the Owners of the Association.
- (b) Any Director may be removed from the Board for cause by the unanimous vote of the other members of the Board.

Section 3.4 Compensation. No Director shall receive compensation for any service they may render to the Association. Notwithstanding, upon the unanimous approval of the

Board, the Board may provide a discount in annual, regular assessments for each Director, in an amount set by the Board from time to time. Directors may also be reimbursed for actual and approved expenses incurred in the performance of their duties.

Section 3.5 Action Taken Without a Meeting. The Directors may take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of a majority of the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Board.

Section 3.6 No Estoppel or Reliance. No one may rely upon any authorization (from the Board or otherwise) contrary to the terms and conditions of the Governing Documents regardless of circumstances. No claim of estoppel, waiver or similar equitable claims or defense may be raised by anyone related to any alleged reliance.

Section 3.7 Records Retention. The Board shall take appropriate action to develop, implement and update procedures for record retention. The Board should maintain documents in a manner to be easily accessible and copied. The Board may budget specifically for this expense and may seek the advice of consultants in developing retention procedures.

ARTICLE IV NOMINATION AND ELECTION OF DIRECTORS

Section 4.1 Nomination. Nomination for election to the Board may be made by the Board, Owners from the floor at the annual meeting, or pursuant to other written notice and procedures established by the Board

Section 4.2 Election. The election of Directors may be by written ballot, which need not, but may be, secret, as determined at the discretion of the Board. The persons receiving the largest number of votes shall be elected. Cumulative voting is not authorized.

Section 5.1 Regular Meetings. Regular meetings of the Board shall be held at least annually, or more frequently as determined by the Board. All notices shall be provided by email or other electronic means. Directors are required to provide an email or electronic address for purposes of notice of Board meetings. Notice shall be provided at least five (5) days before a meeting, but no more than thirty (30) days.

- (a) Owners, and Owner representatives (if designated in writing in advance) may attend Board meetings and may be present for all discussions, deliberations, and decisions except when the Board is in executive session. Owners shall comply with all reasonable rules established by the presiding officer for their attendance. The Board may limit Owners' comments and/or questions to a specific period of time within the meeting. The Board shall provide email notice in accordance with the Act to Owners that have requested, in writing, to be notified of Board Meetings and have provided a valid email address.

Section 5.2 Special Meetings. When, in the discretion of the President or two members of the Board, circumstances require that a meeting be held sooner than the required five (5) days' notice for a regular meeting, a special meeting may be called.

Section 5.3 Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 5.4 Conduct of Meetings. The Board, or its authorized representatives, shall preside over all meetings. The Secretary or other authorized person shall keep and maintain minutes of all meetings. The Board may adopt further policies and procedures with regard to conduct at a Board meeting.

- (a) **Recording.** No person, whether an Owner, occupant, owner representative, or other third party is permitted to record (whether audio, video, transcription, or combination) any Board meeting, work session, or similar event regardless of the location of such event without authorization from the Board.

Section 5.5 Action Taken Without a Meeting. The Directors may take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval (including but not limited to email and text messages) of a majority of the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Board.

ARTICLE VI - POWERS AND DUTIES OF THE BOARD

Section 6.1 Powers and Duties. The Board shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Governing Documents and Utah law. The Board may delegate its authority to manager(s), subject to any limitations or provisions contained in the Governing Documents.

ARTICLE VII OFFICERS AND THEIR DUTIES

Section 7.1 Enumeration of Officers. The officers of this Association shall be a president, vice-president, secretary/treasurer and other offices, as determined by the Board, who shall at all times be members of the Board.

Section 7.2 Election of Officers. The election/appointment of officers shall take place at the first Board meeting following the annual meeting of the Owners. Officers shall serve in their office for a period of one (1) year. Notwithstanding, nothing in these Bylaws prevent an officer or directors from being re-elected to their respective positions.

Section 7.3 Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period,

have such authority, and perform such duties as the Board may, from time to time, determine. Appointed Officers are not Directors, do not vote, and may be removed by the Board with or without cause.

Section 7.4 Resignation and Removal. Any officer may resign at any time by delivering a written resignation to any Director or to any Manager. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced by a majority of the Board of Directors at any time, with or without cause. In the event of death, resignation or removal of an officer, their successor shall be selected by the Board and shall serve for the unexpired term of their predecessor.

Section 7.5 Duties. The Board may adopt policies and resolutions to define the respective duties of Directors and Officers.

ARTICLE VIII COMMITTEES

Section 8.1 Committees. The Board may appoint such committees as deemed appropriate in carrying out its purposes. A committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Board. The Board may terminate any committee at any time.

ARTICLE IX – MISCELLANEOUS

Section 9.1 Waiver of Procedural Irregularities. All inaccuracies and irregularities in calls or notices of meetings, in the manner of voting, in the form of proxies, in the method of asserting persons present, in the method of making decisions, or in the method of accepting or counting votes shall be deemed waived under the following circumstances:

- (a) If the objecting person attended the meeting and no objection to the particular procedural issue was made at the meeting;
- (b) If the objecting person was not in attendance at the meeting but had proper notice of the meeting; or
- (c) 90 days following the meeting.

Section 9.2 Requirements for Objections. All objections except those made at a meeting shall be in writing. Whenever made, objections must specifically describe the circumstances giving rise to the objection and reference the specific provision of the Governing Documents or law that is alleged to have been violated, with a brief statement of the facts supporting the claimed violation.

Section 9.3 Irregularities that Cannot Be Waived. Any irregularity that is the result of fraud or that was done intentionally in violation of the Governing Documents or Utah law.

Section 9.4 Fiscal Year. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

Section 9.5 Amendment. These Bylaws may be amended by the unanimous consent of the Board of Directors or the approval of at least fifty-one percent (51%) of total membership eligible to vote. An amendment to these Bylaws shall be effective immediately upon recordation in the Davis County Recorder, State of Utah.

PARKWAY VILLAGE HOMEOWNERS ASSOCIATION

By:

R. Matt Slate dotloop verified
01/03/23 3:00 PM MST
J507-X3L2-FDOP-ZX5M

01/03/2023

Its: ~~Board President~~ Board Member

Exhibit C

EXTERIOR DWELLING MAINTENANCE CHART

The following chart demonstrates the division of responsibility for maintenance, repair and replacement of Common Areas, Limited Common Areas and Dwellings components between the Association and Owners. In the event of conflict, the terms of the Declaration will control over this chart.

	DWELLING EXTERIOR	HOA	OWNER
1	Roof underlayment (felt and plywood), roofs, shingles, rain gutters and downspouts, heat tape (if any) chimney and chimney caps (if any) due to normal wear, tear and useful life. (Any <u>structural maintenance</u> , repairs or replacement not included herein is the responsibility of the Owner unless otherwise covered by the Association's insurance).	X	
2	Exterior of each Dwelling (excluding the backing behind each of these exterior finishes).	X	
3	Concrete foundations and concrete pads constituting part of the Dwelling;	X	
4	Exterior light fixtures and automatic light sensors	X	
5	Exterior lightbulbs		X
6	Outside water spigots.		X
7	Rear patios, driveways and one foot area surrounding Dwelling.	X	
8	Front steps, porches and sidewalks	X	
9	All structural components of the Dwelling, including but not limited to framing, insulation, rafters, beams, water barriers, plywood or other backing to stucco and brick.		X
10	Doors, hinges, frames, thresholds, locks, and doorbells.		X
11	Garage doors, and garage door frames.		X
12	Windows (including glass), shutters, sliding glass doors, French doors, screens, frames, and window wells.		X
13	Gas and electricity connections serving a single Dwelling		X
14	Water system and sewer system serving a single Dwelling		X
14	Phone lines, TV cables, air conditioning, and satellite dishes.		X
15	All Owner Improvements, such as skylights, windows, attic vents, fans, ornamental railings, decks, deck steps, window well covers, and similar items.		X

	GROUNDS	HOA	OWNER
16	Lawns, yards, open space, original trees, shrubs and related plantings	X	
17	All flowers abutting a Dwelling	X	
18	Maintenance and utilization of sprinkler system within the Association.	X	

19	Snow removal: Common Area walkways and driveways (unless modified by the Board as provided for herein).	X	
20	Perimeter fencing surrounding the Subdivision	X	
21	Privacy, dividing, or other approved fencing within a Lot		X