

WHEN RECORDED, RETURN TO:

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

**FOR
SWAN CREEK VILLAGE
HOMEOWNERS ASSOCIATION**

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This Third Amended and Restated Declaration of Covenants, Conditions and Restrictions for Swan Creek Village (the "Declaration") is made and entered into on the date evidenced below by and among the Members of the Swan Creek Village Homeowners Association.

RECITALS

A. The property subject to this Declaration is the Swan Creek Village subdivision in Rich County, State of Utah. **Exhibit A** of this Declaration further defines the property subject to this Declaration. All Lots therein are part of the Association, and each Owner of a Lot is a member thereof. The Association is created as a planned unit development and contains certain Common Area, Limited Common Area and easements for the benefit of the Owners of Lots therein.

B. The Association desires to continue to provide for the preservation and enhancement of the property values and improvements of the Property and for maintenance of the Common Area.

C. This Third Amended and Restated Declaration of Covenants, Conditions and Restrictions supersedes and replaces all prior declarations, and amendments or supplements thereto, recorded against the subdivision, specifically the Amended and Restated Declaration of Covenants, Conditions and Restriction for Swan Creek Village recorded October 17, 2008, as Entry No. 75688 records of the Rich County Recorder, State of Utah (the "Previous Declaration");

D. Pursuant to Article 9, Section 9.2 of the Previous Declaration, 2/3 of the Owners of the Lots have voted affirmatively to adopt this Declaration.

NOW, THEREFORE, the Association declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions restrictions, easements, charges and liens hereinafter set forth:

NOW, THEREFORE, for such purposes, the Association hereby makes the following declaration, containing covenants, conditions, reservations and restrictions relating to the Swan Creek Village development, and hereby declares that all of said Lots and property described in **Exhibit A** and attached hereto, are held and shall be held, conveyed, hypothecated or encumbered, used, occupied and improved subject to the following restrictions, all of which are declared and agreed to be in furtherance of a plan for the Project, improvement and sale of said Lots and are established and agreed upon for the purpose of enhancing and protecting the value, desirability and attractiveness of the property described. All of the restrictions shall run with the land and shall be binding upon all parties having or acquiring any right, title or interest in and to the real, property or any party or parts thereof subject to such restrictions:

ARTICLE 1 DEFINITIONS

1.1 Act: means the Utah Community Association Act, Utah Code, Title 57, Chapter 8a, as the same shall be amended from time to time, and to which the Association is subject.

1.2 Architectural Committee: The committee created to ensure the development of the lands so platted as an area of high standards.

1.3 Articles: The Articles of Incorporation of Swan Creek Village Homeowners Association as amended from time to time.

1.4 Assessment: includes Regular Assessments, Special Assessments, Common Expenses, and fines as defined herein.

1.5 Association: Swan Creek Village Homeowners Association, a Utah nonprofit corporation, and/or its successors and assigns.

1.6 Board: The Association's Board of Directors and Trustees or governing body, duly elected as established by the Bylaws of the Association.

1.7 Common Area: All areas not located within a Lot and so designated on any current or future recorded Plat, all of which shall be owned by the Association for the common use and enjoyment of the Association Members. Common areas shall include, but not be limited to, any facilities, improvements, landscaping, private roadways and walkways.

1.8 Common Expenses: The actual and estimated expenses of maintenance, improvement, repair, operation, insurance, and management of the Common Areas. This may include, but is not limited to, expenses of operating and maintaining the water system and private roadways throughout the Project, expenses of administration of the Association, and any reasonable reserve for such purposes as determined by a reserve analysis conducted by the Board and pursuant to Utah law. Additionally, without limiting the generality of the foregoing, Common Expenses shall also include: all commonly metered utility charges for the Property; the costs of trash collection and removal; the costs associated with snow removal; compensation paid by the Association to the project manager, accountants, and attorneys and employees; the cost of all maintenance, gardening, security and other services benefiting the common area; the costs of fire insurance, and other insurance covering the Property and the trustees, directors, officers and agents of the Association; and any other costs incurred by the Association pursuant to its authority for any reason whatsoever, but for common benefit of the Owners.

1.9 Declaration: This document which may be amended from time to time.

1.10 Deed of Trust: A secured real-estate transaction. Deed of Trust may also be known as a Mortgage.

1.11 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 residence by a single-family unit.

1.12 E Lot: Specific type of Lot designated on the Plat, also known as “Estate” Lot.

1.13 Fines: Fines levied by the Association against an individual or entity for violations of the Governing Documents. Fines shall be enforced and collected consistent with the Act and are deemed an assessment herein and may be collected as such.

1.14 Improvement: All structures and appurtenances thereto of every type and kind including but not limited to buildings, out buildings, walkways, sprinkler pipes, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, planting, planted trees and shrubs, poles, signs, exterior air conditioning and water softener fixtures and equipment. Applicable fines are posted on the HOA website.

1.15 Lien: means any lien filed by the Association against any Lot which relates to any unpaid or uncollected assessments, dues, fees, penalty, interest or any other charge.

1.16 Lot: The separately numbered and individually described parcels of land shown on the Plats, not including any portion of the Common Area or any portion of the Lot which becomes Common Area.

1.17 Manufactured or Prefabricated (synonymous) Home: a dwelling produced and often delivered in prefabricated sections that can be quickly erected to a conventional basement or crawl space foundation on-site; placed by crane; any wheels, axles and/or hitches previously installed for purposes of transportation have been removed and conform to the June 1976 Safety Standards and evidenced by appropriate HUD Certification Label permanently affixed to each transportable section of the unit.

1.18 Member: One or more persons identified as a member of the Association.

1.19 Membership: The rights and obligations of a member or members of the Association.

1.20 Mobile Home: a transportable structure in one or more sections with the plumbing, heating, and electrical systems contained within one unit, which when erected on a site, may be used with or without a permanent foundation. *See* definition from Utah Code Ann. 57-1603(4). Not considered a Recreational Vehicle for the purposes of this Declaration.

1.21 Modular Home, Log Home Kit or Factory-Built Home: Modular Homes are built in sections in a factory setting, indoors, and not subjected to adverse weather conditions. Log Home Kits are pre-engineered to each plan, the finished modules or kits are transported to the site, placed on a pre-made foundation, joined together and completed by a contractor on site who will then install heating, plumbing pipes and fixtures, electrical wiring and fixtures and roofing materials. The contractor shall follow state, city and county building codes.

1.22 Mortgage: Any mortgage or deed of trust or other conveyance of a Lot to secure the performance of an obligation, which will be void and reconvened upon the completion of such performance. The term “deed of trust” or “trust deed” when used herein shall be synonymous with this term.

1.23 Mortgagee: A person or entity to whom a mortgage is made and shall include the beneficiary of a deed of trust, often the lender.

1.24 Mortgagor: A person or entity who borrows a mortgage and shall include the trustor of a deed of trust.

1.25 Owner: The person(s) or other legal entity, including Declarant who is the owner of record in the office of the County Recorder of Rich County, Utah, of a fee or an undivided fee interest in any Lot, but excluding those having such interest merely as security for the performance of an obligation.

1.26 Person: A natural individual or an entity with a legal right to hold title to real property.

1.27 Phase: A particular parcel of real property which is or shall become part of the Project.

1.28 PH Lot: Specific type of Lot designated on the Plat, also known as “patio home” Lot.

1.29 Plat: The subdivision plats covering the Property, executed and acknowledged by the Developer or the Declarant and filed or to be filed for record in the Office of the County Recorder of Rich County, Utah, concurrently with the filing of the plats.

1.30 Powers: The Association shall have all the powers that are set out in its Articles of Incorporation, Bylaws, Utah code, and these Declarations including, but not limited to, the power to enforce these Declarations at law or equity, to maintain and preserve Common Area, and assess and collect Assessments, Fines and fees from every Owner in the Property.

1.31 Property or Project (synonymous): The real property covered by this Declaration, together with all easements, rights and appurtenances belonging thereto, and all improvements erected or to be erected thereon, which shall be known as Swan Creek Village.

1.32 Quorum: means the Members that are represented at an annual, monthly or special meeting constitute a quorum of that voting group for action on a matter pursuant to Utah Code.

1.33 Record, Recorded, Filed and Recordation: The recordation of any document in the Office of the County Recorder of the County of Rich, State of Utah.

1.34 Recreational Vehicle or “RV”: A Motor Home, Fifth Wheel or Travel Trailer that is self-contained and considered a residence that must be able to be connected to the Project’s main sewer system, power, and community water supply. Mobile Homes, Manufactured Homes and Prefabricated Homes are not considered Recreational Vehicles.

1.35 RV Lot: Specific type of Lot designated on the Plat, also known as “Recreational Vehicle” Lot.

1.36 Reserved Common Area: Those portions of Common Area set aside for exclusive use of all HOA Owner(s).

1.37 Rich County: A county in the State of Utah in which the Property is located.

1.38 Rules or Rules and Regulations: Those rules and regulations adopted by the Board from time to time that are deemed necessary by the Board for the enjoyment of, or furthering the purposes of the Property and Association.

1.39 T Lot: Specific type of Lot designated on the Plat, also known as “Terrace” Lot.

1.40 Unit: All elements of individual ownership of a residential interest in the Project, including ownership of a Lot and Dwelling thereon, designed and intended for use and occupancy as a single-family residence, exclusive use of the appurtenant Common Area, nonexclusive use of the remainder of the Common Area, and all rights of membership in the Association, subject to the provisions herein.

1.41 Vehicle: Any gas, diesel, or electric powered vehicle, i.e., automobiles, trucks, UTV’s, ATV’s, motorcycles, golf carts, scooters, etc.

ARTICLE 2 ARCHITECTURAL CONTROL

2.1 Architectural Committee. For the purpose of further ensuring the development of the lands so platted as an area of high standards, there shall be an Architectural Committee (“hereinafter referred to as “Committee”) with terms and responsibilities as delegated to it by the Board or the Governing Documents. In the event the Board does not appoint an Architectural Committee, the full Board shall serve as the Committee.

The Committee shall have the power to control the Improvements placed on each Lot as well as to make such exceptions to these reservations and restrictions as the committee hereinafter designates, shall deem necessary and proper. From time to time, the Architectural Committee shall prepare and disseminate architectural and landscape requirements (aka “Architectural Guidelines”), which may be found in the Building Checklist and Architectural Requirements document posted on the Association’s website.

2.2 The Architectural Committee shall be organized to act under the authority and pleasure of the Association. Architectural Committee members shall be subject to removal by the Board of the Association, and any vacancies from time to time existing shall be filled by appointment by the Association’s President and concurrence of the Board.

2.3 Whether or not a provision is specifically stated in any conveyance of a Lot, the Owner or occupant of each and every Lot, by acceptance of title thereto or by taking possession thereof, covenants and agrees that no Dwelling, building, wall, or other structure shall be placed upon a Lot unless and until the plans and specifications therefore and Lot plans have been approved in writing by the Committee. Each such Dwelling, buildings, wall, or structure shall be placed on the premises only in accordance with the plans and specifications and Lot plans so approved. Refusal of approved plans and specifications by such Committee may be based on any ground, including purely esthetic grounds. No alteration in the exterior appearance of the buildings or structures shall be made without like approval.

2.4 The Owner shall submit a request for approval for any Improvement to the Architectural Committee, pursuant to the building requirements posted on the Association website. No structures or improvements of any kind shall be erected, altered, placed or maintained upon any Lot unless and until the plot survey is done by a licensed surveyor, final plans, elevations, and specifications have received such written approval as herein provided. Such plans shall include Lot plans showing the location on the Lot of the building, wall, fence, or other structure proposed to be constructed, altered, placed or maintained, together with the scheme for roofs and exterior thereof and proposed landscaped. The Board shall set a filing fee from time to time that may be increased or decreased as needed and posted on the HOA website.

2.5 The Committee shall review the plans then submit the recommendation to the Board. The Board shall then review the Committee's recommendation and approve or disapprove plans, specifications and details within thirty (30) days from the Committee's receipt thereof. If the Architectural Committee or Board fails to take any action due to an irregularity or other anomaly within the time provided herein, the plans shall be deemed to be disapproved. An Owner whose plans or proposals have been disapproved, must begin approval process over for any further proposals and review. The Board may act as the Committee as provided for above.

2.6 The Board must concur on the recommendation before any application for new construction, improvements or additions obtain final approval.

2.7 Neither the Committee, the Board, nor any architect or agent thereof shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications.

2.8 Variances. The Board may allow reasonable variances and adjustments of the restrictions in order to overcome practical difficulties and prevent unnecessary hardships in the application of the provisions contained herein; provided, however, that such is done in conformity with the intent of this Declaration and adjustment will not be materially detrimental or injurious to the others property or improvements in the Project.

**ARTICLE 3
LAND USE RESTRICTIONS**

3.1 Mutuality of Benefit and Obligation. The restrictions and agreement set forth herein are made for the mutual and reciprocal benefit of each and every Lot in the Project and are intended to create mutual, equitable servitudes upon each Lot in favor of all of the other Lots therein; to create reciprocal rights between the respective Owners of all said Lots; to create a privity of contract and estate between the grantees of said Lots; the heirs, successors and assigns, and shall, as to the Owners of each said Lot, his heirs, successors or assigns, operate as covenants running with the land for the benefit of each and all other Lots in the Project and their respective Owners.

3.2 Land Use and Improvements. The land comprising the Project, and each Lot therein, shall be used for single family Dwellings and structures customarily incidental to single family Dwellings. Golf courses, country clubs, parks, playgrounds and other community or recreation centers may only be constructed under the auspices of the Board.

3.2.1 No rentals of any kind shall be permitted.

3.2.2 In addition, all Owners, residents, occupants, tenants, guests and invitees shall be subject to this Declaration, and all rules and regulations established by the Association and any of its committees.

3.3 Set-Back Requirements. By this Declaration, all Owners agree to be subject to and comply with any and all applicable zoning ordinances and set-back requirement ordinances of Rich County. *See Rich County Development Code.*

3.4 Altering of Lots. A recorded Swan Creek Village site plat resides with Rich County as an approved record of identified lots within the community. Altering the plat by way of splitting or combining lots is not therefore an acceptable HOA practice. Lots previously split or combined prior to April 2015 will remain grandfathered.

3.5 RV Lots. "RV" Lots' access are limited to seasonal use based on weather conditions. The Association does not provide snow removal accessing RV Lots. The Association shall shut off water access to RV Lots between November and May.

3.6 Solar Systems. Solar systems intended as an alternative power source must be installed within the confines of the residential structure. Solar panels may be securely mounted on the roof structure and all other components within the structure as needed. Solar Systems must conform to all applicable electrical codes for conformance to safety and application.

**ARTICLE 4
GENERAL PROHIBITIONS AND REQUIREMENTS**

The following general prohibitions and requirements shall prevail as to the construction or activities conducted on any Lot in the Project.

4.1 Access to Lots. Vehicular access to Lots shall be limited to designated roadways and thoroughfares. It is strictly prohibited to access any Lot from Common Areas, or open

space. No Lot may be used for the purposes of accessing adjoining properties outside of Swan Creek boundaries. The exception to this is an Access Agreement with Swan Creek HOA that does not cross Common Areas.

4.2 Act of God. Any Dwelling or outbuilding on any Lot in the Project which may be destroyed in whole or in part by fire, windstorm or for any other cause or act of God must be rebuilt or all debris removed and the Lot restored to a clean, sanitary and attractive condition with reasonable promptness, provided, however, that in no event shall such debris remain longer than sixty (60) days, weather permitting. In addition, the Owner will be required to submit an application for any reconstruction required and may be held to then-current land use guidelines and restrictions.

4.3 Animals. Common household pets include domesticated animals, such as a dog, cat, or bird that are traditionally kept in the home for pleasure rather than for commercial purposes. Any other exceptions must be approved by the Swan Creek HOA.

4.3.1 Dogs must be contained within the Owner's Lot or on a leash and shall not be allowed to run free throughout the Property. Owners are responsible to keep their dogs from barking to the point of annoyance to other Owners. Violation of this provision is punishable by Fine pursuant to Utah law and the policies and procedures adopted by the Board.

4.4 Commercial Parking. No commercial truck type shall be parked for storage overnight or longer, on any Lot in the Project in such a manner as to be visible to the occupants of the other Lots in the Property or the users of any street within the Project, unless prior written approval of the Architectural Committee has been obtained.

4.5 Parking. Parking is not allowed on the roads that would cause an obstruction of the road and make it impassable. No parking is allowed on the roads November through April.

4.6 Completion of Improvements. Once construction of improvements is started on any Lot, the improvements must be substantially completed in accordance with plans and specifications, as approved by the Architectural Committee, and not to exceed a period of twelve (12) months from commencement. If construction exceeds (12) months, the Owner must request additional approval to increase the building time. Requests shall be made to the Architectural Committee.

4.7 Dwelling Requirements. No Dwelling constructed on a PH Lot shall have a ground floor living area of less than 800 square feet and no Dwelling constructed on all other Lots shall have a ground floor living area of less than 1000 square feet. All Dwellings shall be set on permanent foundations.

4.8 Fences. Fences may be constructed on any Lot with prior approval of the Architectural Committee and its adopted Architectural Guidelines and decisions. Boundary walls are not considered fences and are prohibited without the prior written approval of the Architectural Committee. Fences and fencing materials shall comply with the general aesthetic and scheme of the Project, and be approved in advance by the Architectural Committee. Fences shall not exceed six (6) feet in height.

4.9 Fires. No open fires shall be permitted anywhere within the Project. Violation of this provision is punishable by Fine and will be levied by the Board. Any Fine levied and not paid within thirty (30) days of the Boards decision, shall be a lien against the Owners property.

4.10 Firearms. No hunting or shooting of firearms shall be permitted anywhere within the Project. Violation of this provision is punishable by Fine and will be levied by the Board on a case-by-case basis. Any Fine levied and not paid within thirty (30) days of the Boards decision, shall be a lien against the Owners property.

4.11 Fuel Storage. All tanks for the storage of fuel, including propane tanks, installed outside any building in the Project shall not be unsightly as determined by the Architectural Committee.

4.12 Grading. Except for purposes of landscaping a change in ground level may not be made on any Lot in excess of two (2) feet from existing grades without the written approval of the Architectural Committee obtained prior to the commencement of work.

4.13 Mobile Homes, Pre-Fabricated Homes; Manufactured Homes. Mobile Homes, Pre-Fabricated Homes or Manufactured Homes, as defined herein, shall not be permitted in or on any Lot in the Project.

4.14 New Construction. All structures constructed or placed on any Lot shall be constructed with a substantial quantity of suitable material and no used structures shall be relocated or placed on any such Lot.

4.15 Noxious Activities. No noxious, offensive or illegal activities shall be carried on any Lot nor shall anything be done on any Lot that shall be or become an unreasonable annoyance or nuisance to other residents or the community. Violation of this provision is punishable by Fine pursuant to Utah law and the policies and procedures adopted by the Board.

4.16 Occupation of Dwelling. No Dwelling or residence shall be occupied until the same has been substantially completed in accordance with plans and specifications approved by the Architectural Committee and a certificate of occupancy has been issued by the Rich County building inspector.

4.17 Oil Processing. No oil or natural gas drilling, refining, quarrying, or mining operation of any kind shall be permitted upon or in any Lot and no derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted on any Lot or Common Area.

4.18 Out-of-Commission Vehicles. No stripping down, partially wrecked, or junk motor vehicles, watercraft, farm or garden equipment or sizeable part thereof, shall be permitted to be parked in the Project or on any Lot, unless used as landscape decor. Violation of this provision is punishable by Fine pursuant to Utah law and the policies and procedures adopted by the Board.

4.19 Signs. Standard and industry customary “for sale” real estate signs are permitted so long as they do not exceed thirty inches by thirty inches (30” x 30”). All other signs, banners and promotional items are not allowed to be displayed within the Association unless express written approval has been received from the Association’s Board.

4.20 Recreation Vehicles. Recreation vehicles must always remain mobile and shall only be permitted on “RV” Lots in the Project. Lot owners choosing to store RV units through the winter must remove any damaged units once RV Lots are accessible. Damaged RV equipment deemed to be unsightly as determined by the architectural committee must also be removed from the Project. Violation of this provision is punishable by Fine pursuant to Utah law Bylaws adopted by the Board.

4.21 Refuse Collections. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted. In order to enhance the appearance and orderliness of property Lots, the Association hereby reserves for itself, its successors, and assigns, the exclusive license for a third party to operate a commercial scavenging service within the Project for the purpose of removing garbage, trash and other household refuse. Such refuse collection and removal service shall be designated by the Board or its successors or assigns. The charge made for such refuse collection and removal service shall be at a reasonable rate commensurate with the rates charged by commercial scavengers serving other Projects of high standards in the area and shall be subject to change from time to time. The Projects central refuse collection area is for household garbage only and is not to be used for construction or remodeling debris, appliances, furniture, vehicle parts, batteries, paints or chemicals. Violation of this provision is punishable by Fine pursuant to Utah law and the policies and procedures adopted by the Board.

4.22 Temporary Structures. No temporary house, trailer, “RV”, tent, garage, or other out-buildings shall be placed or erected on any Lot.

4.22.1 Recreational structures including temporary tents, trailers, or other recreational vehicles may be used on a Lot Owner’s property for a period not to exceed fourteen (14) consecutive days in a 30-day period as long as it is an occupied Lot with an established structure or RV. Vehicles must not impede roadways.

4.23 Toilet; Septic Tanks; Sewage System; Plumbing Fixtures. No outside toilet or septic tank shall be constructed on any Lot. All plumbing fixtures, dishwashers or toilets shall be connected to the central sewage system. Storm water shall not be allowed to flow into sewage system.

4.24 Trees; Natural Growth. No tree or a natural growth shall be removed from any Common Area within the Project without the prior written consent of the Project Manager.

4.25 Sheds. All sheds must first receive Architectural Committee approvals to size, type, materials, color and location. Such permission must be received before a shed is installed.

4.26 Association Rules and Regulations and Fines. In addition to the restrictions and requirements above, the Board from time to time may, by resolution, adopt, modify, or revoke such rules and regulations governing the conduct of Persons and the operation and use of the Lots and Common Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Property.

ARTICLE 5
ASSOCIATION REGULAR AND SPECIAL ASSESSMENTS

5.1 Every Person who shall become a legal or equitable Owner of any Lot in the Project by any means, by the act of acquiring such title, or by the act of contracting to acquire such title, is held to have agreed to pay the Association all fees and assessments that the Association shall make in accordance with this Declaration.

5.2 Each Lot Owner shall pay the Association its regular allocated portion of the Common Expenses deemed necessary by or on behalf of the Association to manage and to meet the expenses incidental to running of the Association and upkeep of the Project. All regular assessments shall be paid annually by the Member to the Association on or before the first day of September each year, for the ensuing year, unless the Board determines an alternate date is

necessary and provides proper notice to the Members of the change. The Board of the Association shall fix the amount of the regular annual assessment per Lot by the first day of July of each year, and written notice of the assessment so fixed shall be sent to each Member in the event it is changed from the previous year.

5.2.1 Owners are assessed by Lot, and the assessment is appurtenant to each Lot. Therefore, any Owner of multiple Lots will have multiple assessments, dues and other obligations proportionate to the number of Lots owned. Owners of multiple Lots do not receive a discount or reduction in fees, charges or assessments unless agreement was made prior to this Declaration.

5.2.2 Owners who have an agreement for a discount or reduction in fees, charges or assessments, will not carry over such discounts with the sale or transfer of Lots.

5.2.3 The Board may not impose a regular assessment that is more than fifteen percent (15%) greater than the regular assessment for the Association's preceding fiscal year or impose special assessments in the event it's required to offset catastrophic or unforeseen events of the association without the approval of a majority of a quorum of members at a member meeting.

5.2.4 Pursuant to U.C.A. 57-8a-215, a budget is disapproved if within 45 days after the date at which the Board presents the adopted budget, (a) there is a vote of disapproval by at least 51% of all the allocated voting interests of the Lot Owners in the Association; and (b) the vote is taken at a special Board meeting requested by Lot Owners under the Declaration, Articles or Bylaws.

5.2.5 If a budget is disapproved, the budget that the Board last adopted that was not disapproved by members continues as the budget until and unless the board presents another budget to members and that budget is not disapproved.

5.3 If an Owner fails to pay any assessment within thirty (30) days of the time when the same becomes due, the Owner shall pay interest thereon at the rate of eighteen percent (18%) per annum from the date which such installment becomes due to the date of the payment thereof, together with all costs and expenses, including attorney fees, incurred in any proceedings brought to collections such unpaid expenses. The Association may publish the name of the delinquent member and may file notice that it is the Owner of a lien to secure payment of the unpaid assessment plus cost and reasonable attorney's fees, and which lien shall encumber the Lot or Lots and may be foreclosed in accordance with the laws of the State of Utah. Failure of the Board to give timely notice of any Assessment provided herein shall not affect the liability of the Owner of the Lot for such amount, but the date when payment shall become due in such case shall be deferred to a date thirty (30) days after such notice shall be given.

5.3.1 Member voting rights shall be suspended if any charge or assessment owed remains unpaid; or for any continuing violation of the restrictive covenants of the Project, after the existence of the violation has been brought to the attention of the Member in writing by the Board.

5.3.2 The lien of a mortgage or deed of trust placed upon any Lot for the purpose of permanent financing and/or constructing a Dwelling or other Improvement thereon, shall be superior to any such lien as provided for in these restrictions.

5.4 The Common Expenses above referred to for each fiscal year, are hereby defined and shall be deemed to be such aggregate sum as the Board from time to time shall determine, in its judgment, is to be paid by all the Owners then in existence to enable the Association to pay all estimated expenses and outlays to the close of such year, growing out of or in connection with the

maintenance and operation of such land, buildings and improvements; which sum may include, among other things the cost of management, special assessments, fire casualty, flood, fidelity, public liability and other insurance or bond premiums, common lighting, landscaping, and care of the grounds, repairs, and renovations, and any other services which are separately billed or metered to the land as a whole.

5.5 Other adjacent property owners may contract for the use of the recreational properties and facilities within the Project upon such terms and conditions and for such fees as may be mutually agreed upon from time to time between the operators of such properties and the Board. The revenue accumulated as a result of the charges levied by the Association shall be used exclusively for purposes of promoting the recreation, health, safety and welfare of the Members of the Association.

5.6 In any case in which this Declaration requires the vote of a stated percentage of the Owners for authorization or approval of a transaction, such requirement may be fully satisfied by obtaining written consents and ballots approving such action as long as approval threshold, for any such action as stated in the Declaration or Bylaws, is obtained at an annual, monthly or special meeting.

5.6.1 No Proxy votes are accepted for CC&R approval.

5.7 By acceptance of a deed for a Lot, each Owner as trustor conveys and warrants to trustee in trust for the Association, as beneficiary, with power of sale, the Owner's Lot and all improvements thereon for the purpose of securing payment of all Assessments (including basis of collection) provided for in this Declaration. For purposes of this Section, the Act, as amended from time to time, the trustee shall mean the attorney for the Association, and the Association may provide notice and disclosure of the trustee, or substitution thereof, by recording an appointment or substitution of trustee in the records of the local County Recorder. Each Owner hereby also grants to the Association and trustee all powers and rights of non-judicial trust deed foreclosure provided for in Utah Code Ann.

5.8 The lien provided for in this Article may be enforced by the Association by causing a Lot to be sold through non-judicial foreclosure as though the lien were a deed of trust, or by foreclosing the lien through a judicial foreclosure, all in the manner provided by the Act and by the laws of the state of Utah for the non-judicial foreclosure of deeds of trusts or the law for the foreclosure of a mortgage, as the case may be. The Association shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

5.9 The Association shall establish and maintain a reserve fund (also known as "reserve account"), separate from other Association funds, for repairs and replacement of the Common Areas, for any emergency, unforeseen, unusual, or unanticipated expenditure, and for any other purpose determined from time to time by the Board. As stated above, in formulating the budget each year, the Association shall include a reserve fund line item in an amount the Board determines, based on the reserve analysis, to be prudent. The Board may not use money in a reserve fund for daily maintenance expenses, unless a majority of the total votes of the Association, vote to approve the use of reserve fund money for that purpose.

**ARTICLE 6
EASEMENTS AND UTILITIES**

6.1 Easements. The Association reserves unto itself, its successors and assigns, certain easements along, across, over and upon the real estate that constitutes the Project. The easements so reserved by the Association are described as follows:

6.1.1 The Association, for itself, its successors and assigns and licenses, reserves a ten foot wide easement along all road rights-of-way, and rear property lines, and a three (3) foot easement along the side lines of each and every Lot in the Project for the purpose of installing, maintaining and operating utility mains thereon, together with the right to trim, cut or remove any trees and/or brush, and the right to locate braces and anchors wherever necessary for said installation, maintenance and operations, together with the right to install, maintain and operate utility mains and appurtenances thereto, and reserving unto itself, its successors, assigns and licenses, the right to ingress and egress to such areas for any of the purposes heretofore mentioned.

6.1.2 No permanent building shall be placed on such easements, but the same may be used for gardens, shrubs, landscaping and other purposes, provided that such use or uses does not interfere with the use of such easement for their intended purposes.

6.1.3 In instances where an Owner of two or more adjoining Lots erects and constructs a Dwelling or building which will cross over or through a common Lot line, the same shall not be subject to the three-foot easement along or upon the contiguous or common Lot line, except where utility lines or mains have been platted or installed.

6.1.4 Each Lot shall further be subject to an easement for the maintenance and permanent stabilization control of slopes.

6.2 No Owner of any Lot in the development shall have any claim or cause of action against the Association, its successors, assigns or licenses, either in law or in equity, and arising out of exercise of any easement reserved hereunder except in cases of willful or wanton negligence.

6.3 Rules for determination of location of easements. The rules prescribed in paragraph 3.3 of the restrictions above for the establishment of setback lines that must be measured from meandering lines may be applied, whenever necessary and with such adaptations as are necessary, in defining the location of an easement that is to encumber a strip of land contiguous to a meandered line.

6.3.1 On each Lot, the rights-of-way and easement areas reserved by the Association or dedicated to public utilities purposes shall be maintained continuously by the Lot Owner but no structures, plantings or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with the installation or maintenance of utilities, which may change the direction of flow of drainage channels in the easements, which may obstruct or retard the flow of water through drainage channels in the easements, or which damage or interfere with established slope ratios or create erosion or sliding problems, provided, however that where the existing location of a drainage channel would hinder the orderly development of a Lot the drainage channel may be relocated provided such relocation does not cause an encroachment on any other Lot in the Project or development and upon written approval

from the committee. Improvements within such areas shall also be maintained by respective Lot Owner except for those for which a public authority or utility company is responsible.

6.3.2 Whenever two or more contiguous Lots in the development shall be owned by the same Person, and such Person shall desire to use two or more of said Lots as a site for a single-Dwelling house, they shall apply in writing to the committee for permission so to use said Lots. If written permission of such a use shall be granted, the Lots constituting the site for such single-dwelling house shall be treated as a single Lot for the purpose of applying these restrictions and the setback and easement portions of these Declarations to said Lots, so long as the Lots remain improved with a single-Dwelling.

6.3.3 The Lots in the Project shall be burdened by such additional easements as may be shown on recorded plats.

6.4 Water; Cross Connection Control. For the purpose of protecting the water supply of the Project from contamination or pollution from any cross connections existing or potential and to assure that approved backflow prevention assemblies are tested when put into service and at least on an annual basis thereafter, the Association has adopted section R309.100 of the Utah Public Drinking Water Rules (“UPDWR”) and U.C.A. 15A-3-306, State Construction and Fire Codes Act and U.C.A. 73-3, Water and Irrigation

6.4.1 The installation and maintenance of any unprotected cross connection which would endanger the Project’s water supply is prohibited. Any such cross connection now existing and hereafter installed is unlawful under Utah law and shall be immediately protected or eliminated.

6.4.2 The control or elimination of cross connections and the criteria for determining the degree of hazard and prescribing appropriate levels of protection shall be in accordance with Federal, State and local regulations.

6.4.3 Water service to any Lot, Dwelling or Improvement shall be contingent upon the Owner or Member providing appropriated cross connection control if determined necessary by the Association, its agents, Rich County or its successors and assigns, or the local municipal or governmental building inspector. Water service may be refused or terminated to any Lot, Dwelling or Improvement where an unprotected cross connection may allow contamination or pollutants to backflow into the public drinking water system.

6.4.4 The Association, its employees and/or agents shall have free access, with proper identification, to all areas of the Lot, Dwelling or Improvement to which drinking water is supplied for the purpose of conducting hazard assessment surveys. Water service may be refused or terminated to any Lot, Dwelling or Improvement, or maximum backflow protection may be required, to the Lot, Dwelling or Improvement where access to perform surveys is denied, where unprotected cross connections are located, or in the event that installed assemblies are not tested and maintained as required by state or local regulations.

6.4.5 After a problem is detected, the Association, its agents or employees shall send notice to the Owner, of the problem before any water service is terminated. Thereafter, the Association shall provide written notice to the Owner of the date and time of the initial notification of the problem, the findings of the hazard assessment survey, and specify that the problem must

be corrected within a reasonable period and failure to do so may result in the termination of water service, assessment of penalties for such termination and imposition of re-connection fees.

6.4.5.1 The Association, its employees or agents, will conduct an inspection of work when notified the work is complete. If the problem is corrected, the matter will be closed. If not, water service will be terminated until corrective action is taken, inspected by the Association, and approved.

ARTICLE 7 RIGHTS IN COMMON AREA

7.1 Ownership, Use and Enjoyment of Parks and Recreational Amenities. All areas marked Common Area on the Plat that include parks, recreational facilities and other amenities within the Property are private, and neither the recording of the Plat nor any other act with respect to the Plat, shall be construed as a dedication to the public, but rather all such parks, recreational facilities and other amenities shall be for the use and enjoyment of Members of the Association, and to the guests of such Members of the Association or other residents of Swan Creek Village who qualify for the use and enjoyment of the facilities.

7.1.1 The ownership of all Common Area and recreational facilities within the Property shall be in the name of the Association.

7.1.2 Common Area shall not be used for access or egress to any Lot. Similarly, no Lot shall be used for access to property outside the Project as described in Article 4.1 herein.

ARTICLE 8 MEMBERSHIP

8.1 Every Person acquiring legal or equitable title to any Lot in the Project becomes a Member of the Association. With such ownership in the Association, they then become subject to the requirements and limitations imposed in these restrictions and to the regulations and assessments of the Association, with the exception, however, of such Person or Persons who hold an interest in any such Lot merely as security for the performance of an obligation to pay money, e.g., mortgages, deeds of trust, or real estate contract purchases. However, if such a Person should realize upon his security and becomes the real owner of a Lot within the Property, he will then be subject to all the requirements and limitations imposed in these restrictions on Owners of Lots within the Property and on Members of the Association, including those provisions with respect to alienation and the payment of an annual charge.

8.2 Grantee's Acceptance. The grantee of any Lot subject to the coverage of the Declaration, by acceptance of a deed conveying title thereto, of the execution of a contract for the purchase thereof, shall accept such deed or contract upon and subject to each and all of these restrictions and the agreements herein contained, and also the jurisdiction, rights and powers of the Association and by such acceptance shall for himself, his heirs, personal representatives, successors and assigns, covenant, consent and agree to and with the Association, and with grantees and subsequent owners of each of the Lots within the development to keep, observe, comply with and perform said restrictions and agreements.

8.2.1 Each such grantee, its successors or assigns, also agrees, by such acceptance, to assume, all the risks and hazards of ownership or occupancy attendant to such

Lot. The general purpose of the Association is to further and promote the community welfare of property Owners in the Project.

8.3 The Association shall be responsible for the maintenance, upkeep and repair, and the establishment and enforcement of rules and regulations concerning the operation and use, of all recreational facilities, and other properties within the Project as it may from time to time own.

8.4 The Association shall have all the powers that are set out in its Articles of Incorporation and Bylaws and all other powers that belong to it by operation of law, including, but not limited to, the power to assess and collect from every Member of the Association a uniform regular assessments per single-family residential Lot within the Project. The amount of such charge is to be determined by the Board.

8.5 Association's Right to Perform Certain Maintenance. In the event an Owner of any Lot in the Project shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board, the Association shall have the right to enter upon said Lot and repair and restore the Lot and the exterior of any improvements erected thereon. Such entry shall not be deemed a trespass. Such right shall not be exercised unless two-thirds of the Board shall have voted in favor of such action. The cost of such exterior restoration and maintenance shall be added to and become a part of the annual charge to which such Lot is subject. The Association shall not be liable for any damage that may result from any maintenance work performed hereunder.

8.6 Indemnity of Association Trustees and Officers. The Association will maintain appropriate insurance coverage to indemnify the officers, agents and trustees of the Association against any and all claims arising against them personally which are a result of the good faith exercise of the powers, duties and responsibilities of their office under this Declaration.

8.7 Charges for Water and Sewer. Every legal or equitable Owner of a Lot in the Project shall pay charges for water based on consumption when applicable. Each Lot Owner in the Project shall be required to connect to water, sewer, and power prior to the completion of construction and prior to occupancy of the Dwelling on the Lot, and thereafter shall pay for water, sewer, and power service at consumption rates. Easements in addition to those reserved through these restrictions and on the recorded plats shall be granted for the practical construction operation and maintenance of such water, sewer, and power upon request of the Association for applicable aforementioned utilities.

ARTICLE 9 GENERAL PROVISIONS

9.1 Manners in Voting. In those cases in which the Declaration or Bylaws require a vote, such requirement may be fully satisfied pursuant to the adopted Bylaws of the Association, as may be amended from time to time. Electronic or mail provisions are applicable. This is also applicable to unscheduled meetings as may be requested by members, or consent in writing, which may include voting through electronic means, such as emails or internet form submissions, so long as reasonably adequate assurances are made that said electronic means are secure and exercised only by the Owner on an as needed basis.

9.2 Means of Giving Notice. If any of these Declarations, or Bylaws, Rules or regulations adopted hereunder require notice, written notice, written consent, votes or any other form of communication, this may be accomplished pursuant to the adopted Bylaws of the

Association, as may be amended from time to time, using text-based electronic means of communication, e.g. emails, internet forms, and telephonic transmissions, so long as that means of electronic communication has been verified because it either (1) was used by an Owner to communicate with the Association in the past; (2) is approved in writing by the Owner; (3) is reasonably expected by the Association to promptly reach the Owner and provide the same level of notice as described in the document; or (4) is recognized by applicable state or federal law as equivalent notice. If a verified means of electronic communication used by an Owner becomes insecure or compromised, and it is unknown to the Association, the Association may continue to use the means of communication unless or until the Owner notifies the Association in writing, to no longer use it.

9.3 Duration. These restrictions shall affect and run with the land and shall exist and be binding upon all parties and all persons claiming under them unless properly amended.

9.4 Amendment. Subject to the other provisions of this Declaration, at any time while this Declaration is in effect, the provisions of this Declaration may be amended upon approval of 66.6% or two-thirds of the written ballots received from the Owners of Lots that voted. An amendment shall not be effective until the amendment is certified by the president of the Association, or duly authorized officer or agent, as being adopted in accordance with this Declaration and is acknowledged and recorded in the appropriate County Recorder's Office.

9.5 Remedies. The Association or any party to whose benefit these restrictions inure, may proceed at law or in equity to prevent the occurrence, continuation or violation of any of these restrictions; provided, however, that it is expressly understood that neither Declarant nor the Board shall be liable for damages of any kind to any party for failing to either abide by, enforce, or carry out any of these restrictions.

9.5.1 No Waiver. No delay or failure on the part of an aggrieved party to invoke an available remedy herein in respect to a violation of any of these restrictions shall be held to be a waiver by that party of (or an estoppel of that party to assert) any right available to him upon the recurrence or continuation of said violation or the occurrence of a different violation.

9.5.2 Additional Remedies - Fines. Reasonable Fines may be levied and collected as an assessment for violations of said rules and regulations and for violations of any restrictions contained in this Declaration. A schedule of fines may be adopted by the Board specifying the amounts of such fines, and any other provisions or procedures related to the levying of such fines.

9.6 Severability. Every one of the restrictions is hereby declared to be independent of, and severable from, the rest of the restrictions and of and from every other one of the restrictions and of and from every combination of the restrictions. Therefore, if any of the restrictions shall be held to be invalid or to be unenforceable or to lack the quality of running with the land, that holdings shall be without effect upon the validity, enforceability, or "running" quality of any other one of the restrictions.

9.7 Invalidity; Number; Captions. The invalidity of any part of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the balance of this Declaration. As used herein, the singular shall include the plural and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context

requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

9.8 Constructive Notice. Every Person who owns, occupies, or acquires any right, title or interest in any Lot in the Subdivision 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 covenants, conditions and restrictions against his Lot, whether or not there is any reference to this Declaration in the instrument by which he acquires his interest in any Lot.

9.9 Priority of Governing Documents. In the event of any conflict between or among this Declaration and any other Governing Document, the document in the highest priority beginning with the first document listed hereinafter shall prevail (as to any such conflict) over any later listed document: this Declaration, the Articles of Incorporation, Bylaws, Rules and Regulations.

9.10 Recovery of Costs and Attorney Fees. The Association shall be entitled to recover its costs and attorney's fees incurred for enforcement of this Declaration regardless of whether any lawsuit or other action is commenced. Such costs and attorney's fees shall automatically be and constitute an assessment against the Owner and the Lot. Additionally, the prevailing party shall be entitled to its attorney fees and costs in any dispute concerning any Governing Document, including an action dealing with the declaration of rights and obligations thereunder with or without a defaulting party, whether such costs and expenses are incurred with or without suit; before or after judgment; in any appeal; in any bankruptcy or receivership proceeding; or in connection with any alternative dispute resolution proceeding.

9.11 Interpretation. All questions of interpretation or construction of any of the covenants or restrictions in this Declaration shall be resolved by the Board, and its decision shall be final, binding and conclusive on all parties affected for all purposes. The covenants, restriction and terms of this Declaration are to be interpreted broadly to give effect to the Association's role as the governing body of the Community and to grant all the powers necessary for management of the common property, administration of the servitude regime, carrying out other functions set forth herein, and furthering the purposes of the Association. The enumeration of specific items, acts, rights, or powers in this instrument does not limit or restrict and is not to be construed or interpreted as limiting or restricting, the general powers granted to the Association or Board except where powers are expressly restricted.

9.12 Premises Liability. The Association and the Board is and shall remain wholly free and clear of any and all liability to, or claims by, all Owners and all Persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect of the use and operation of, the Common Area or any of its improvements, fixtures, and facilities and an Owner shall defend, indemnify and hold harmless the Association and Board against such claim, loss or liability asserted by such Owner or his or her guest, invitee, licensee, tenant, or visitor. In this respect, it shall be the affirmative duty and responsibility of each Owner and user of the Common Area facilities to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the Common Area and its improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril.

9.13 Notice of Sale. Immediately upon the sale of any Lot, the Owner shall promptly inform the secretary or manager of the name and address of said grantee.

IN WITNESS WHEREOF, this Third Amended and Restated Declaration of Covenants, Conditions and Restrictions for Swan Creek Village have been adopted by the membership of the Swan Creek Village Homeowners Association, as of the ___ day of _____, 2021.

SWAN CREEK VILLAGE HOMEOWNERS ASSOCIATION

By: Robin Barraclough
Its: President

STATE OF UTAH)
 :SS
COUNTY OF _____)

I hereby certify that on the _____ day of _____, 2021, personally appeared before me Robin Barraclough, who, being by me first duly sworn, declared that he is the person who signed the foregoing document and that the statements therein contained are true.

NOTARY PUBLIC

EXHIBIT A
Legal Description

All Lots and Common Area, SWAN CREEK VILLAGE Plat 1, according to the official plat(s) thereof on file in the office of the Rich County Recorder, state of Utah.

Parcels:

41-08-010-0001 through 0103

All Lots and Common Area, SWAN CREEK VILLAGE PH 2, according to the official plat(s) thereof on file in the office of the Rich County Recorder, state of Utah.

Parcels:

E Lots: 41-08-040-0001 through 0104

T Lots: 41-08-050-0001 through 0164

PH Lots: 41-08-060-0001 through 0104

RV Lots: 41-08-070-0001 through 0095