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Russell Shirts Washington County Recorder  
01/09/2020 03:04:42 PM Fee \$40.00 By FIRST

AMERICAN - AMERICAN FORK  
**DOC # 20190052929**

*JS*  
*\** \*\*Document re-recorded to correct subdivision name and Owner/Developer. Also re-recorded to add Hawkeye Pointe Subdivision recording information for plat.\*\* *\**

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Russell Shirts Washington County Recorder  
12/18/2019 09:53:30 AM Fee \$ 40.00  
By FIRST AMERICAN TITLE CO 50



**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR HAWKEYE POINTE ESTATES SUBDIVISION**

A RESIDENTIAL SUBDIVISION LOCATED IN  
Washington County, Utah

Hawkeye Pointe, LLC

*\** *A* ~~Blackhawk Construction & Concrete, LLC~~, a Utah limited liability company, hereinafter referred to as the "Developer," is the owner for the following described property, hereinafter referred to as the "Property," located in Washington County, Utah:

SEE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT  
"A" AND INCORPORATED HEREIN BY THIS REFERENCE

*\** *A* Developer hereby includes all of the Property in the plats recorded herewith of ~~HAWKEYE POINTE ESTATES~~, and divides the Property into Lots as shown on said plat(s) and dedicates the streets shown on said plat(s) to the public. The easements indicated on said plats are hereby perpetually reserved for public utilities and for any other uses as designated thereon or set forth herein, and no structures other than for such utility or other indicated purposes are to be erected within the lines of said easements. A plat for the Hawkeye Pointe Estates was recorded 12-18-2019 as instrument number 20190052927, records of Washington County, Utah. Subdivision

Developer further declares that all of the Property described herein is held and shall be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied, and improved subject to the following limitations, restrictions, covenants and conditions, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement and sale of the Property, and are established and agreed upon for the purposes of enhancing and protecting the value, desirability and attractiveness of the Property and every Lot, part or portion thereof. The acceptance of any deed to or conveyance of any Lot, part or portion of the Property by the grantees therein named or by their legal representatives, heirs, executors, administrators, successors or assigns, shall constitute their covenant and agreement with the Developer, Association, and with each other to accept, hold, improve, use and convey the Property described and conveyed in or by such deed or conveyance subject to said covenants, conditions, and restrictions. These covenants, conditions, and restrictions shall run with the land.

ARTICLE 1

USE RESTRICTIONS

1.1 **Land Use and Building Type.** All Lots shall be used only for detached single family residential purposes. As used herein, the term "family" is defined to mean persons related by blood or marriage, by legal adoption, or by operation of law. No professional, business or commercial use shall be made of the same, or any portion thereof; provided, however, that the Lot restrictions contained in this section shall not be construed in such a manner as to prohibit an owner or resident from (a) maintaining a personal professional library therein; (b) keeping personal business or professional records or accounts therein; or (c) handling personal, business or professional telephone calls or correspondence therefrom.

1.2 **Lot Size.** Lot sizes as described on the recorded plat of subdivision are considered minimum Lot sizes and no person shall further subdivide any Lot other than an shown on the recorded plat of said subdivision. Lots may not be combined for construction of a single home.

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**1.3 Care and Maintenance of Lots.** The owner of each Lot shall keep the same free from rubbish, litter and noxious weeds. All structures, landscaping and improvements shall be maintained in good condition and repair at all times. Each Lot shall be subject to an easement for access to make repairs upon adjoining Lots and structures; provided however, that:

- (a) Any damage caused by such entry shall be repaired at the expense of the owner whose property was the subject of the repair work which caused the same;
- (b) Any such entry shall be made only at reasonable times and with as little inconvenience as possible to the owner of the entered Lot; and
- (c) In no event shall said easement be deemed to permit entry into the interior portion of any home.

Each owner shall be responsible for maintenance of his Lot. In the event any owner fails to perform this maintenance in a manner so as not to detract from the appearance of the property, or affect adversely the value or use of any other Lot, the Architectural Control Committee shall have the right to have maintenance performed on the Lot and the cost of said maintenance shall be added to and become a lien against such Lot.

**1.4 Easements.** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation, maintenance or replacement of utilities, or which may change the direction or flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the owner of the Lot, except for those improvements for which a public authority or utility company is responsible. The title holder of each Lot from time to time as may be reasonably required grant rights over, across, on, under and upon these easements for such additional uses and services as may be provided from time to time by a public authority or private utility company.

**1.5 Hazardous Activities.** No activities shall be conducted on the Property and no improvements shall be constructed on the Property which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Property and no open fires shall be lighted or permitted on the Property except in a contained barbecue or fire pit unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

**1.6 Motorbikes.** All motorcycles, trail bikes, three-wheel powered devices, automobiles, and two or four-wheel drive recreational type vehicles are to be operated only by individuals with driver's licenses and only on established streets and parking areas and are specifically prohibited from all other portions of the Property, and are to be used on said streets only for ingress, egress, and access purposes and not for recreational purposes anywhere within the Property.

**1.7 Weed Control.** Each Lot Owner shall, to the extent reasonably feasible, control the growth and proliferation of noxious weeds and flammable materials on his Lot so as to minimize weeds, fire and other hazards to surrounding Lots, homes, the Common Areas, and surrounding properties, and shall

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otherwise comply with any applicable ordinances, laws, rules, or regulations pertaining to the removal and/or control of noxious weeds. Noxious weeds shall mean and refer to those plants which are injurious to crops, animals, land or the public health.

**1.8 Pest Control.** No Lot Owner shall permit any thing or condition to exist upon the Lot which would induce, breed, or harbor infectious plat diseases or noxious insects. Each Owner shall perform such pest control activities on his Lot as may be necessary to prevent insects, rodents, and other pests from being present on his Lot.

**1.9 Nuisances.** No noxious or offensive activity shall be carried on upon any Lot, part or portion or the Property, nor shall anything be done thereon which may be or may become an annoyance to the Subdivision. No clothes drying or storage of any articles which are visible from any public street shall be permitted.

**1.10 Safe Condition.** Without limiting any other provision of these covenants, each owner shall maintain and keep such owner's Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might endanger the health of or interfere with the safety or reasonable enjoyment of other owners of their respective Lots.

**1.11 Oil and Mining Operations.** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, part or portion of the Property, nor shall any oil well, gas well, tank, tunnel, mineral excavation or shaft be permitted upon or in any such Lot or portion of the Property.

**1.12 Animals, Livestock, Poultry, and Agriculture.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot, part or portion of the Property, except that dogs, cats or other domesticated household pets, two (2) or less in total number may be kept in a home constructed on a Lot, provided that they are not kept, bred, or maintained for any commercial purpose. Such animals as are permitted shall be strictly controlled and kept pursuant to all applicable laws and ordinances, and shall be on a leash or inside a fence when outside the owner's home.

**1.14 Garbage and Refuse Disposal.** No Lot or part or portion of the Property shall be used or maintained as a dumping ground for rubbish, rubble, trash, garbage or other waste. Such trash, rubbish, rubble, garbage or other waste as produced within the Property shall be kept in sanitary containers inside a structure except when placed for collection. No rubbish, trash, papers, junk or debris shall be burned upon the Property except that trash may be burned in accordance with applicable laws and ordinances inside homes that are properly equipped with inside incinerator units.

**1.15 Water Supply.** Each home shall be connected to and use the municipal culinary water supply. No individual culinary water supply system shall be used or permitted to be used on any Lot, part or portion of the Property.

**1.16 Sewage Disposal.** Each home shall be connected to and use the municipal sewage disposal system. No individual sewage disposal system shall be permitted on any Lot, part or portion of the Property.

**1.17 RV's, Boats, and Vehicles.** No boats, motorcycles, trailers, buses, motor homes, campers, recreational vehicles, or other such vehicles, shall be parked or stored upon any Lot except those belonging

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to an Owner that are kept within an enclosed garage, or on a cement pad behind a fenced area in the rear yard area of a Lot. No such vehicles shall be parked overnight on any street located within the subdivision. Trailers, motor homes, and trucks over 9,000 pounds GVW are not allowed to be stored upon any vacant lot or street or road area adjacent to the Property.

Motor vehicles that are inoperable shall not be permitted to remain upon any street or lot or road areas adjacent thereto. In the event an inoperable motor vehicle remains upon any Lot or road area for a period exceeding forty-eight (48) hours, the Developer or Association may remove the inoperable motor vehicle after a ten (10) day written notice. The cost of such removal shall attach to the vehicle and the Lot as a valid lien in favor of the persons, entities, or parties causing such removal. For the purpose of this section, "inoperable motor vehicle" shall mean any motor vehicle that is unable to operate in a normal manner upon the streets under its own power, or is unlicensed or unregistered for a period of not less than six (6) weeks.

**1.18 Rules and Regulations.** The Board of Directors of the Association shall have the authority to promulgate rules and regulations for the governance of the Property and persons within the Property. These rules of the Association shall be compiled and copies shall be made available by the Directors for inspection and copying at a reasonable cost.

**1.19 Developer Business, Marketing, and Sales.** Notwithstanding any provisions to the contrary herein contained, it shall be expressly permissible for Developer, or its written designee, to maintain such facilities and conduct such activities as in the sole opinion of Developer may be reasonable required, convenient or incidental to the construction of homes and sale of lots during the Development Phase, and upon such portion of the Property including lots or common area, if any, as Developer deems necessary, including but not limited to, a business office, storage areas, construction yard, signs, model units and sales offices. Development Phase is defined as that time period that commences upon recordation of the Plat and this Declaration, and continues until such time as the Developer no longer owns a Lot within the Property. As part of the overall program of development of the Property into a residential community and to encourage the marketing thereof, the Developer shall have the right of use of any lots or any common area and facilities thereon, if any, without charge during the sales and construction period to aid in its marketing activities.

## ARTICLE 2

### ARCHITECTURAL CONTROL

**2.1 Architectural Control Committee.** Prior to the commencement of any excavation, construction or remodeling of any structure or of any addition to any structure, or modification of the natural topography of any Lot, or installation of fences or landscaping elements, approval of the Architectural Control Committee is required.

- (a) **Appointment and Membership.** The Architectural Control Committee shall consist of three (3) persons. So long as Developer owns a Lot within the Property, including ownership of any Lot in any phase(s) subsequent to the first phase, it shall be entitled to appoint all members of the Architectural Control Committee, or to be the sole member of the Architectural Control Committee, at its sole discretion. Thereafter, once Declarant no longer owns a Lot within the Property or appoints additional members to the Architectural

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Control Committee, the Architectural Control Committee shall consist of the Directors on the Board of the Association or of three (3) persons appointed by the Board.

- (b) **Submission of Plans.** Two (2) complete sets of building plans and specifications shall be filed with the Architectural Control Committee, together with a site or plat plan showing grading, landscaping and all lighting, indicating the exact part of the building site which the improvements will cover, with such a fee as the Architectural Control Committee may determine from time to time, and an application and such supporting material, such as samples of building materials, as the Architectural Control Committee deems necessary. No work shall commence unless and until the Architectural Control Committee shall endorse on one set of such plans its written approval that such plans are in compliance with the covenants herein set forth and with the standards herein or hereafter established by said Architectural Control Committee pursuant hereto. The second set of such plans shall be filed as a permanent record with the Architectural Control Committee.
- (c) **Rights of Approval.** The Architectural Control Committee shall have the right to refuse or approve any plans and specifications and shall have the right, in so doing, to take into consideration the suitability of the proposed building, the materials of which it is to be built, the site upon which it is proposed to be erected, the harmony thereof with the surroundings, and the effect of said building, or other structure so planned, on the outlook from adjacent or neighboring property.
- (d) **Architectural Standards.** The Architectural Control Committee shall promulgate and maintain a list of standards for guidance in approving or disapproving plans and specifications pursuant to this Article.
- (e) **Time Frame for Action.** In the event the Architectural Control Committee fails to approve or disapprove in writing any such plan within fourteen (14) days after the submission thereof to the Architectural Control Committee, then approval shall be deemed to have been given.
- (f) **Non-Liability.** The Architectural Control Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article. Any errors or omissions in the design of any building, other improvement or landscaping and any violation of any governmental ordinances are the sole responsibility of the Lot Owner and the Lot Owner's designer, architect, or contractor. The Architectural Control Committee's review of plans shall in no way be concerned with structural or mechanical integrity or soundness.
- (g) **Waiver.** The approval of the Architectural Control Committee of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the Architectural Control Committee to disapprove any similar plans and specifications subsequently submitted.
- (h) **Rules and Regulations.** The Architectural Control Committee shall adopt reasonable rules and regulations for the conduct of its proceedings and to carry out its duties and may fix the time and place for its regular meetings and such extraordinary meetings as may be necessary, and shall keep written minutes of its meetings, which shall be open for review

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and inspection upon request. The Architectural Control Committee shall, by majority vote, elect one of its members as chairman and one of its members as secretary and the duties of each will be such as usually appertain to such offices. Notice of meetings shall be given to owners who have made application to the Architectural Control Committee for approval of plans.

- (i) Compensation. The members of the Architectural Control Committee may receive reasonable compensation for services rendered upon written authorization by resolution of the Board. Members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of any Committee function or duty. Professional consultants retained by the Architectural Control Committee shall be paid such compensation as the Architectural Control Committee determines.
- (j) Developer Exemption. Developer shall be exempt from the provisions, restrictions, and requirements of the Article, as the same exists or as it may be amended, supplemented or replaced in accordance with other provisions of the Declaration.

**2.2 Governmental Permit Required.** No home, accessory or addition to a home, other structure or building shall be construed or maintained, and no grading or removal of natural vegetation or change in natural or approved drainage patterns or installation of fencing or landscaping elements shall occur on a Lot until any required permit or required approval therefor is obtained from the appropriate governmental entity following submission to the appropriate governmental entity of such information as it may require. The granting of a permit or approval by any governmental entity with respect to any matter shall not bind or otherwise affect the power of the Architectural Control Committee to refuse to approve any such matter.

**2.3 Design Restrictions.** In order to promote a harmonious community development and protect the character of the Subdivision, the following guidelines, together with any guidelines hereafter established by the Architectural Control Committee, are applicable to the Property:

- (a) Purpose and Intent. The intent of these Architectural Guidelines is to encourage a blending of styles within the Property with the natural surroundings and prevailing architecture of the created environment of the Property. These standards allow design latitude and flexibility, while ensuring that the value of the Property will be enhanced through the control of site planning, architecture and landscape elements.

The Architectural Guidelines serve as an evaluative aid to owners, builders, project developers, design professionals, City staff, the Planning Commission, City Council and the Architectural Control Committee in the design review of individual, private and public developments within the Hawkeye Pointe Estates Subdivision. The Washington City Zoning Regulations will apply for any area of design not addressed in these guidelines.

- (b) Permitted and Required Structures. The only building or structure permitted to be erected, placed or permitted to be located on any Lot within the subdivision shall be a detached single family home placed within the building envelope for each lot and not to exceed the height requirements found in this section. Each home must include a minimum two car, private enclosed and attached garage. All construction shall be of new materials. All

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structures shall be constructed in accordance with the zoning and building ordinances of Washington City, Washington County, Utah, in effect from time to time.

- (c) **Minimum Area.** The minimum total square footage of living area on the ground floor located within the building envelope and foundation for any residential home constructed on any Lot within the Property shall be not less than 1,700 square feet, exclusive of porches, balconies, patios and garages. The minimum total square footage of living area on the ground floor located within the building envelope and foundation for any two story residential home constructed on any Lot within the Property shall be not less than 1,600 square feet, exclusive of porches, balconies, patios and garages, with a combined square footage of the first and second floors not less and 2,200 square feet.
- (d) **Setbacks.** Washington City setback standards apply to the Lot. All measurements shall be made from the applicable Lot line to the foundation, porch or other extension of such building, whichever is nearer to such Lot line.
- (e) **Landscaping.** Landscaping shall be completed within 180 days from occupancy.
- (f) **Home Elevations.** Elevations should be consistent with the intended architectural style of the home and carried around all four elevations of the structure.
- (g) **Garages.** All residences constructed on a Lot in the Property shall include a fully enclosed, private attached garage, built to accommodate not less than two (2) vehicles. Carports are not a substitute for a garage and are not allowed. Garage doors shall be a flat panel type and shall be painted to match the color of stucco on the exterior of the home to which it is attached. An Owner shall use the garage portion of the Owner's Lot for the storage of motor vehicles. No owner shall use a garage for any purpose which prevents storing of motor vehicles, unless doing so would not result in additional motor vehicles being stored outside the garage. No Owner shall remodel a garage or use a garage on any Lot for residential purposes.
- (h) **Driveways, Parking, Access and Sidewalks.** There shall be area on the driveway (excluding sidewalk areas) to park not less than two vehicles per lot. Each driveway on a lot shall be constructed out of cement, brick, concrete or interlocking pavers. Cinders, sand, gravel, asphalt or dirt shall not be permitted for driveway material in the front and side yard area of any Lot. Sidewalks shall be added by Owners at their own expense and shall be four feet (4') wide with a broom finish.
- (i) **Windows.** Colors for windows must be designated on the plans that are submitted to the Architectural Control Committee for approval prior to construction.
- (j) **Facades.** At least 50% of the exterior of the constructed improvements facing a street must be finished with masonry wainscot, brick, stucco, or stone, with accents of stone or such other material as approved by the Architectural Control Committee.
- (k) **Roof and Roofing Materials.** Flat roofs are permitted. Roof material shall be limited such materials and colors as may be established and allowed by the Architectural Control

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Committee.

- (l) **Exterior Building Materials.** At least 50% of the exterior of the constructed improvements must be finished with masonry wainscot, hardie board, brick, stucco, or stone. No wood, vinyl aluminum, or steel siding is allowed. All stucco must be of a synthetic type.
- (m) **Reflective Exterior Surfaces or Materials.** No reflective exterior surfaces or materials shall be used. Sheet metal, flashing, vents and pipes must be colored or painted to match the material to which they are attached or from which they project.
- (n) **Colors.** Colors shall be limited to those established and approved by the Architectural Control Committee.
- (o) **Prohibited Structures.** Dome structures, log homes, premanufactured homes; re-located homes; and Earth or Berm homes of any type are not allowed.
- (p) **Temporary or Other Structures.** No structure of a temporary nature, and no trailer, bus, basement, outhouse, tent, shack, garage, or other outbuilding shall be used at any time as a home either temporarily or permanently, nor shall any such structures be erected or placed on the Property at any time. No old or second hand structures shall be moved onto any of said Lots. It is the Developer's intention that all homes and other buildings to be erected within the subdivision be new construction, of good quality, workmanship, and materials.
- (q) **Accessory Buildings.** No storage or utility buildings are allowed. All such structures intended for such uses must be built so as to be part of the home. Notwithstanding the foregoing, structures known as "casistas" shall be allowed upon i) review and approval by the Architectural Control Committee pursuant to this Article; ii) strict compliance with all applicable ordinances and the approval of the Washington City; and iii) compliance with all other provisions of this Declaration. A typical casista is a structure containing one bedroom and one bathroom but shall not in any event be larger than 500 square feet.
- (r) **Sight Obstructions.** No structure, fence, wall, hedge or shrub planting which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points thirty (30) feet from the intersection of the street lines, or in the case of a rounded property corner from the intersection of the street property lines extended. The same sight line limitations shall apply on any Lot within the (10) feet from the intersection of a street property line with the edge of a driveway or alley pavement. No tree shall be permitted to remain within such distances of such intersections unless the foliage line is maintained at such height to prevent obstruction of such sight lines. No fence, wall, hedge, shrub or other structure shall be placed along any front property line. No fence, wall, hedge, tree, plant, shrub or foliage shall be planted, kept or maintained in such manner as, in the opinion of the Architectural Control Committee, shall create a serious potential hazard or an aesthetically unpleasant appearance to the other residents of the subdivision.
- (s) **Fencing.** Fencing, walls, gates and other barriers shall be approved by the Architectural Control Committee. Any walls constructed within the Property shall be constructed with



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the same block as the other Lots within the Property and in the same color of block as the wall constructed by Developer or as designated by Developer. No fences, walls or other barriers shall be constructed in the front setback area.

- (t) Retaining Walls. Retaining walls are restricted to a maximum height of five (5) feet, unless otherwise approved by the Architectural Control Committee. In the event approval is given for a retaining wall higher than five (5) feet, the retaining wall must be tiered and landscaping must be installed to hide the retaining wall. Retaining walls, due to slope, or at the request of Washington City, may be required to be professional engineered prior to construction.
- (u) External Illumination. Light used to illuminate garages, patios, parking areas or for any other purposes, shall be recessed canned lights, arranged as to reflect light away from adjacent residences and away from the vision of passing motorists or as otherwise designated by Washington City. Low-level outdoor illumination may be used for particular landscape features (trees, rock formations, etc.), as approved by the Architectural Control Committee.
- (v) External Television or Other Antennas. Antennas for radio, television, or device for the reception or transmission of radio, microwaves or other similar signals are restricted to the attic or interior of the home. Satellite dishes shall be allowed provided they are located in such areas as may be designated by the Architectural Control Committee. In no event shall a satellite dish exceed 30 inches in diameter or width.
- (w) Location of Air Conditioning, Heating, and Soft Water Equipment. Air conditioning, heating equipment, and soft water tanks must be screened from view so as not to be visible from neighboring property or from the streets of the development, and shall be insulated for sound attenuation. Air conditioning units are not permitted on roofs or through windows.
- (x) Utility Meters. Utility meters shall be placed in as inconspicuous a location as possible. Locations of meters are to be shown on the plans, and meters must be screened from view from neighboring property. Exposed piping should be painted to match exterior colors of the home. The area immediately around the meters should be cleared to allow for access. Electric meters, switches or circuit breaker boxes are not to be located in the same enclosure with the gas meter and regulator. Enclosures for gas meters and regulators are to be vented in compliance with the Uniform Building Code.
- (y) Mailboxes. A central mailbox system will be supplied and maintained by the Homeowners Association. No Owner shall erect a mailbox or provide mailboxes for newspapers.
- (z) External Apparatus. No Lot Owner shall cause or permit anything (including without limitation, awnings, canopies or shutters) to hang, be displayed or otherwise affixed to or placed on the exterior walls or roof or any part thereof, or on the outside of sines or doors, without the prior written consent of the Architectural Control Committee.
- (aa) Slope and Drainage Control. No structure, planting or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with

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established slope rations, create erosion or sliding problems, or which may change the direction of flow of drainage channels. The slope control areas of each Lot and all improvements in them shall be maintained continuously by the owner of the Lot, except for those improvements for which a public authority or utility company is responsible. Lot owners are responsible to see that no nuisance or damage is created by drainage location or flow to any adjacent property.

- (bb) **Easements.** Easements for installation and maintenance of utilities, drainage facilities and ingress and egress are reserved as shown upon the recorded plat. Within these easements no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow or drainage channels in the easements or which may impede ingress and egress. The easement area of each lot and all improvements in it shall be maintained continuously by the owner of the Lot, except for those improvements for which a public authority or utility company is responsible.
- (cc) **Lateral and Subjacent Support and Drainage.** An owner's activities which affect the lateral or subjacent support, or both, of adjacent landowners shall be responsible for damages proximately caused by such activities. Owners shall be responsible for all damage proximately caused by drainage from their lot(s) to adjacent landowners.
- (dd) **Signs; Commercial Activity.** Except for on "For Rent" or "For Sale" sign of not more than two (2) square feet, no advertising signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed or permitted to remain on any Lot or any portion of the properties. No commercial activities of any kind whatever shall be conducted in any building or on any portion of the properties. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Developer or its agents during the construction and sales period.


**2.4 Construction.** In order to promote a harmonious community development and protect the character for the Subdivision, the following guidelines are applicable to the Property:

- (a) **Completion of Construction.** The construction of any building on any portion of the Property shall be continuously and diligently pursued from and after the purchase of the Lot, and after the commencement of such construction, and in any event shall be completed within twenty-four (24) months after the Owner takes title to the Lot.
- (b) **Building Materials Storage.** No Lot, part or portion of the Property shall be used or maintained as a storage for building materials except during a construction phase. Once a home is occupied or made available for sale all building materials shall be removed or stored inside such home, out of public sight.
- (c) **Damages.** Any damage inflicted on existing improvements such as curbs, gutters, streets, concrete sidewalks and such, by the owner and/or their agents of any particular Lot in the subdivision must be repaired within thirty (30) days after such damage is discovered, and the expense of such repair shall be borne by the purchaser or owner.

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ARTICLE 3

HOMEOWNERS' ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS

3.1. **Homeowner's Association.** A homeowner's association known as Hawkeye Pointe Estates Home Owner's Association has been incorporated under the laws of the State of Utah. "Association" shall mean and refer to Hawkeye Pointe Estates Homeowner's Association, a Utah non-profit corporation. "Board" shall mean and refer to Board of Directors of the Association as duly elected in accordance with the terms and conditions of the Articles and Bylaws of the Association. 

3.2. **Membership.** Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest and shall not be separated from the Lot to which it appertains.

3.3. **Voting Rights.** The Association shall have the following described two classes of voting membership:

Class A. Class A Members shall be all Owners other than the Developer until the Class B Membership ceases. Class A Members shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any Lot.

Class B. The Class B Member shall be the Developer. The Class B Member shall be entitled to three (3) votes for each Lot in which it holds the interest required for Membership in the Association. The Class B Membership shall automatically cease and be converted to a Class A membership on the first to occur of the following events:

- (a) When the total number of votes held by all Class A Members equals the total number of votes held by the Class B Member; or
- (b) The expiration of Seven (7) years after the date on which this Declaration is filed for record in the office of the County Recorder of Washington County, Utah.

3.3. **Multiple Ownership Interests.** In the event there is more than one Owner of a particular Lot the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

3.4. **Record of Ownership.** Every Owner shall promptly cause to be duly filed of record the conveyance document (or in the case of contract buyer a copy of the sales contract) to him of his Lot. Each owner shall file a copy of such conveyance document (or contract) with the secretary of the Association with a transfer fee of \$25.00, who shall maintain a record of ownership of the Lots. Any Owner who mortgages his Lot or any interest therein by a mortgage which has priority over the lien of any assessment provided herein shall notify the secretary of the Association of the name and address of the Mortgagee and also of the release of such Mortgage; and the secretary of the Association shall maintain all such information in the

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records of ownership. Any cost incurred by the Association in obtaining the information about an Owner as specified herein which is not furnished by such Owner shall nevertheless be at the expense of such Owner and shall be reimbursed to the Association as a "Reimbursement Assessment" in accordance with the provisions of Section 5.5.

#### ARTICLE 4

##### PROPERTY RIGHTS IN COMMON AREAS

4.1 **Common Areas.** Common Areas shall mean and refer to that part of the Property which is not included with the Lots (other than those Common Area Lots designated upon the plat) which is owned by the Association and those easements either granted to or reserved for the benefit of the Association or the owners and intended for the common use and enjoyment of the Owners, together with all improvements thereon and all easements appurtenant thereto including but not limited to private utility lines and fixtures and other personal property owned by the Association when the context so requires.

4.2 **Use of the Common Areas.** The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to the Lots and shall be improved only for the following purposes:

- a. Pedestrian and bicycle access to and from and movement within the Development; provided, nothing herein shall preclude the use of Trails by members of the public.
- b. Recreational use by Owners and occupants of any homes constructed on the Lots and their guests.
- c. Beautification of the Development.
- d. Privacy for the Owners and occupants of any homes constructed on the Lots.
- e. Such other uses as shall be determined from time to time by the Board for the benefit of members of the Association, following consultation with the Architectural Control Committee.

4.3 **Easement of Enjoyment.** Each Member shall have a right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any family member, tenant, lessee or contract purchaser who resides on such Member's Lot.

4.4 **Form for Conveyancing.** Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

Lot No. \_\_\_\_\_, contained within the Hawkey Pointe Estates Subdivision, as the same is identified in the Plat recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_ and in the "Declaration of Covenants, Conditions and Restrictions for Hawkeye Pointe Estates" recorded in Book \_\_\_\_\_ at Page \_\_\_\_\_, of the official records of the Washington County Recorder.



TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described and provided for in said Declaration of Covenants, Conditions and Restrictions and in the Record of Survey Map in the official record of the Washington County Recorder.

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Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

**4.5. Transfer of Title.** Developer agrees to convey to the Association title to the various Common Areas free and clear of all liens (other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governments or quasi-governmental authorities), as each such Common Area is substantially completed. In the event the Developer fails to convey the Common Areas by deed or other instrument, the filing of the Plat shall nevertheless be deemed a conveyance of the Common Areas to the Association.

**4.6. Limitation on Easement.** A Member's right and easement of use and enjoyment concerning the Common Areas shall be subject to the following:

- (a) The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;
- (b) The right of the Architectural Control Committee to approve and designate the point of access from a Lot to any street;
- (c) The right of Washington County, Washington City, and any other governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Property for purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service; and
- (d) The right of the Association to dedicate or transfer all or any part of the Common Areas and any sewer, water and storm drain trunk lines to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by (i) all holders of first Mortgages secured by Lots and (ii) by two-thirds (2/3) of the vote of each class of membership which Members present in person or by proxy are entitled to cast at a meeting duly called for that purpose written or printed notice setting forth the purpose of the meeting and the action proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

#### **ARTICLE 5 ASSESSMENTS**

**5.1. Personal Obligation and Lien.** Each Owner shall, by acquiring or in anyway becoming vested with his interest in a Lot, be deemed to covenant and agree to pay to the Association the monthly and special assessments described in this Article, together with the hereinafter provided for interest and costs of collection. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made; and (b) the personal obligation of the person who is the Owner of such Lot at the time the assessment falls due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid assessments, late payment fees, interest and costs of collection, including reasonable attorneys fees, which shall be a charge on the Lot at the time of the conveyance, without prejudice

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to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

**5.2. Purpose of Assessments.** Assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of residents of the Property, including but not limited to the appearance and aesthetics of the Development. The use made by the Association of funds obtained from assessments may include, but is not limited to, payment of the cost of taxes and insurance on the Common Areas; maintenance, repair and improvement of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration or its Articles of Incorporation.

**5.3. Special Assessments.** From and after the date set under Section 5.7, the Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonable capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction or unexpectedly required repair, replacement in connection with the Common Areas. Any such special assessments must be assented to by not less than a majority of the Members other than the Developer (or if the two class voting structure is still in effect as provided herein, a majority of the votes of each class of Members), present in person or represented by proxy are entitled to cast at a meeting duly called for the purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

**5.4. Reimbursement Assessment on Specific Lot.** In addition to the monthly assessment and any special assessment authorized pursuant to Sections 5.3 and 5.4 above, the Board may levy at any time Special Assessments (a) on each Lot specifically benefitted by any improvement to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the Owner of the Lot to be charged; (b) on each Lot the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs; and (c) on each Lot as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to Section 3.4, Section 6.1(c), Section 6.2(a) or other provisions of this Declaration (all or part of the foregoing being sometimes referred to as "Reimbursement Assessment"). The aggregate amount of any such Special Assessments shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs and attorney's fees, and shall be allocated among the affected Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action as the case may be, and such assessment may be made in advance of the performance of work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to a Reimbursement Assessment against the Lots benefitted.

**5.5. Rate of Assessment.** Except as provided in Section 5.5 above, monthly and special assessments shall be fixed at a uniform rate for all Lots with square footage less than 5,400 square feet. Developer, for each unsold Lot owned by it in the development, shall pay monthly assessments as herein provided for all Lot Owners; provided that until such date as Developer closes and conveys a Lot to an Owner (other than Developer), the monthly assessment attributable to such Lot shall be one-fourth (1/4) the regular monthly assessment. For Lots with square footage more than 5,400 square feet, the Board may set monthly and special assessments based on the benefits these Lots receive from improvements and maintenance.

**5.6. Monthly Assessment Due Dates.** The monthly assessments provided for herein shall commence as to all Lots on (i) the date a deed is delivered to the purchaser of a Lot, or if the sale is by way

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of a contract of sale, on the date the contract is executed by the parties thereto. (ii) the date of occupancy agreement, or the date the Owner actually takes possession of a Lot, or (iii) if either of the foregoing has occurred as of the date of recording of this Declaration, the first day of the month following recording, whichever first occurs. The first monthly assessment shall be adjusted according to the number of days remaining in the month of conveyance, contract or occupancy as the case may be. Thereafter all monthly assessments shall be due and payable on the first day of each month. A monthly assessment not paid within ten (10) days of the thereof shall be deemed late and subject to late fee of \$15.00. At least fifteen (15) days prior to the effective date of any change in the amount of the monthly assessment, the Association shall give each Owner written notice of the amount and the first due date of the assessment concerned.

NOTWITHSTANDING THE FOREGOING, in the event that a majority of the Owners of Lot elect, the Association may provide for the payment of monthly assessments on a quarterly basis, provided such assessments are payable in advance.

5.7. **Certificate Regarding Payment.** Upon the request of any Owner or prospective purchaser or encumbrancer of a Lot the Association shall issue a certificate stating whether or not all assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon.

5.8. **Effect of Non-Payment; Remedies.** Any assessment not paid when due shall, together with the hereinafter provided for interest and costs of collection be, constitute and remain a continuing lien on the affected Lot; provided, however, that any such lien will be subordinate to the lien or equivalent security interest of any first mortgage on the Lot recorded prior to the date any such assessments became due. If the assessment is not paid within sixty (60) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum and the Association may bring an action either against the Owner who is personally liable or to foreclose the lien against the Lot. Any judgment obtained by the Association shall include reasonable attorneys' fees, court costs, and each and every expense incurred by the Association in enforcing its rights.

5.9. **Tax Collection by County Authorized.** It is recognized that under the Declaration the Association will own the Common Areas and that it will be obligated to pay property taxes to Washington County. It is further recognized that each Owner of a Lot as a Member of the Association will be required to reimburse the Association for his pro rata share of such taxes paid. Notwithstanding anything to the contrary contained in the Declaration, Washington County shall be authorized to collect such pro rata share of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot.

#### ARTICLE 6 DUTIES AND POWERS OF THE ASSOCIATION

6.1 **Duties of the Association.** Without limiting any other duties which may be imposed upon the Association by its Articles of Incorporation or this Declaration: the Association shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Property:

- (a) The Association shall accept all Owners as members of the Association.
- (b) The Association shall accept title to all Common Areas conveyed to it by Developer.

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- (c) The Association shall maintain, repair, and replace all landscaping and improvements in the Commons Areas, including but not limited to the maintenance of all exterior trees, shrubs, grass and other Common Area improvements. Association shall have no obligation to perform any exterior maintenance and/or repair of any part of a home or any other landscaping installed by an Owner without the Association's express agreement to maintain such landscaping.

In the event that the need for maintenance or repair of Common Areas as specified herein is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests or invitees of an Owner, the Board may cause such repairs to be made by the Association and the cost of such maintenance or repair (and administrative expenses equal to ten (10%) percent of such costs) shall be added to and become part of the Reimbursement Assessment (as set forth in Section 5.5) to which such Lot is subject.

- (d) To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments levied upon any portion of the common Areas, provided that the Association shall have the right to contest or compromise any such taxes or assessments.
- (e) The Association shall obtain and maintain in force the policies of insurance required by the provisions of this Declaration.
- (f) The Association may employ a responsible corporation, partnership, firm, person or other entity as the Managing Agent to manage and control the Common Areas, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board. The compensation of the Managing Agent shall be such as shall be specified by the Board. Any agreement appointing a Managing Agent shall be terminable by either party, with or without cause and without payment of any termination fee, upon thirty (30) days written notice thereof; and the term of any such agreement may not exceed one year, renewable by agreement of the parties for successive one-year periods. Any Managing Agent may be an independent contractor and not an agent or employee of the Association.

**6.2. Powers and Authority of the Association.** The Association shall have all the powers set forth in its Articles of Incorporation and its Bylaws, together with its general powers as a nonprofit corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including the power to levy and collect assessments as hereinafter provided. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

- (a) The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon if for any reason the Owner fails to maintain and repair such Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of Article VII of this Declaration. The Association shall have the right to close all or any portion of a Common Area to such extent as may be legally



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sufficient to prevent a dedication thereof or the accrual of any right therein to any person or the public. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any rules and regulations promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such rules and regulations.

- (b) In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas (and exterior repairs of homes to the extent necessitated by the failure of the Owners of such Lots) or in exercising any of its rights to construct, maintain and repair improvements or other work upon any of the Common Areas, and provided that any contract for goods or services having a term of more than one (1) year shall state that it may be terminated by either party at the end of the first year or at any time thereafter.
- i. Construction, maintenance, repair and landscaping of the Common Areas (and exterior repairs of homes upon Lots to the extent necessitated by the failure of Owners of such Lots) on such terms and conditions as the Board shall deem appropriate;
  - ii. Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of Developer, the Association, the members of the Board and the Owners;
  - iii. Such utility services, including (without limitation) water, sewer, trash removal, snow removal, electrical, telephone and gas services, as the Board may from time to time deem desirable;
  - iv. The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable;
  - v. Fire, police and such other protection services as the Board may deem desirable for the benefit of the Owners or any of the Property; and
  - vi. Such materials, supplies, furniture, equipment, services and labor as the Board may deem necessary.
- (c) The Board may delegate by resolution or contract to the Managing Agent any of its powers under this Declaration; provided, however, that the Board cannot delegate to such Managing Agent the power to execute any contract binding on the Association for a sum in excess of Five Thousand Dollars (\$5,000.00) nor the power to sell, convey, mortgage, or encumber any Common Areas.

6.3. **Association Rules.** The Board from time to time and subject to the provisions of this Declaration, may adopt, amend, repeal and enforce rules and regulations governing, among other things: (a) the use of the Common Areas; (b) the use of any roads or utility facilities owned by the Association; (c) the collection and disposal of refuse; (d) the types of animals permitted and the maintenance of permitted animals on the Property; (e) the use of homes for business or rental purposes; and (f) other matters

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concerning the use and environment of the Property and the conduct of residents. The Board may also adopt additional Architectural Guidelines, in addition to those adopted by the Developer, for the construction of homes; provided, however, that until the earlier of the expiration of ten (10) years from the date on which this Declaration is filed for record in the office of the County Recorder of Washington County, or all Units to be located upon the Property and the Additional Property have been sold to third parties. Developer shall have the unilateral right to amend or modify the Architectural Guidelines or to reject any additional Architectural Guidelines proposed by the Board Rules and Regulations and/or Architectural Guidelines adopted by the Board may be enforced in accordance with the provisions of Section 7.18.

**6.4 Limitation of Liability.** No member of the Board acting in good faith shall be personally liable to any Owner, guest, lessee or any other person for any error or omission of the Association, its representatives and employees, the Board, any committee or the Managing Agent.

**6.5 Insurance.** The Association shall secure and at all times maintain the following insurance coverage:

(a) Policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all improvements comprising a part of the Common Areas. The name of the insured under each such policy shall be in form and substance similar to "Hawkey Pointe Estates Homeowner's Association for the use and benefit of the individual Lot Owners and Mortgagees, as their interests may appear".

(b) A policy or policies insuring the Owners, the Association, and its directors, offices, agents, and employees against any liability incident to the ownership, use or operation of the Common Areas which may arise among themselves, to the public, and to any invitees or tenants of the Property or of the Owners. Limits of liability under such insurance shall be not less than \$500,000 for any one person injured; \$2,000,000 for all persons injured in any one accident; and \$100,000 for property damage resulting from one occurrence. Such policies shall be issued on a comprehensive liability basis and shall provide a cross-liability endorsement pursuant to which the rights of the named insured as between themselves are not prejudiced.

The following additional provisions shall apply with respect to insurance:

- (1) In addition to the insurance described above, the Association shall secure and all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature and use.
- (2) All policies shall be written by a company holding a rating of "AA" or better from Bests Insurance Reports.
- (3) The Association shall have the authority to adjust losses.
- (4) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their mortgagees.
- (5) Each policy of insurance obtained by the Association shall, if reasonably possible, provide: a waiver of the insurer's subrogation rights with respect to the Association, the Owner, and their respective directors, officers, agents, employees, invitees, and tenants; that it cannot be cancelled, suspended or invalidated due to the conduct of any particular Owner or Owners; that it cannot be cancelled, suspended, or invalidated due to the conduct of the Association or of any director, officer, agent or employee of the Association without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall

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not apply with respect to insurance held individually by Owners.

6.6. **Quorum Requirements.** The quorum required for any action by the Members hereunder, unless otherwise specifically set forth in this Declaration, shall be as follow: At the first meeting called the presence of members or of proxies entitled to cast sixty percent (60%) of all outstanding votes shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five days following the immediately preceding meeting.

**ARTICLE 7**

**ENFORCEMENT**

7.1 **Violation Constitutes Nuisance.** Every act or omission whereby any restriction, covenant or condition in this document set forth is violated in whole or in part, is declared to be and shall constitute a nuisance, and may be abated by appropriate legal action by the Developer, the Association, or a Lot owner or owners. The remedies provided for hereunder shall be deemed cumulative and not exclusive.

7.2 **Enforcement.** Each and all of the restrictions, covenants and conditions contained in this document is and are for the benefit of the Developer and of the Lot owner or owners from time to time of any Lot, part or portion of the Property. Each such restrictive covenant and condition shall inure to the benefit of and pass with each and every Lot, part or portion of the Property and shall apply to and be binding upon each and every successor in interest. Said restrictions, covenants and conditions are and shall be deemed covenants of equitable servitude, and the actual or threatened breach thereof, or the continuance of any such breach, or compliance therewith, may be enforced, enjoined, abated, or remedied by appropriate proceedings at law or in equity by the Developer or a Lot owner or owners; provided, however, that no such breach shall affect or impair the lien of any bona fide mortgage or trust deed which shall have been given in good faith and for value, except that any subsequent owner of said Lot, part or portion of the Property shall be bound and obligated by the said restrictions, covenants and conditions, whether such ownership is obtained by foreclosure, at a trustee's sale, or otherwise. The Architectural Control Committee may levy a fine or penalty in the amount of \$50.00 against any owner who fails to refrain from violation of these covenants or a rule of the Association, after three (3) days written notice, and opportunity for hearing. A fine may be levied for each day of a continuing violation. All attorneys fees and costs incurred in any such action, and all expenses incurred and any fines levied, shall constitute a lien on such Lot owner's Lot, and shall also be a personal obligation of said Lot owner, enforceable at law, until such payment therefore is made.

7.3 **Right to Enforce.** The provisions contained in these covenants shall bind and inure to the benefit of and be enforceable by the Developer or a Lot owner or owners, and each of their legal representative, heirs, successors and assigns, and failure to enforce any of said restrictions, covenants, or conditions shall in no event be deemed a waiver of the right to do so thereafter.

**ARTICLE 8**

**AMENDMENT AND EXPANSION**

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**8.1 Amendment.** During the Development Phase, Developer may unilaterally amend these Covenants. Upon completion of the Development Phase, the restrictions, covenants and restrictions contained herein may be amended by a recorded instrument signed by no less than the owners of seventy-five percent (75%) of the number of Lots, provided that all signatures must be notarized and obtained within a 180 day period. After the Developer or its designee ceases to act as the Architectural Control Committee, written notice of any such proposed amendment shall be sent to every owner of any Lot, part or portion of the Property at least 30 days in advance.

**8.2 Additional Property.** Additional property may be subjected to these covenants, conditions and restrictions by the Developer. This right of the Developer shall be assignable to one or more assignees.

Expansion shall occur by the Developer filing:

1. an additional subdivision plat or plats creating additional Lots, stating on each plat the intention to have the property described on said plat bound by the terms, covenants and conditions of these Protective Covenants upon the recording of a Declaration of Annexation; and
2. a Declaration of Annexation (after satisfying conditions hereafter stated), which shall state the Developer's intention to have the area described therein subject to these Protective Covenants. Upon the recording of such a Declaration of Annexation the property described therein shall be subject to these Protective Covenants.

Any additional properties annexed hereto by the Developer shall be exclusively for residential single-family dwellings, architecturally compatible to the existing homes, constructed out of similar materials, with similar Lot size and Lots therein shall constitute Lots under these Protective Covenants.

## ARTICLE 9

### GENERAL PROVISIONS

**9.1 Duration of Covenants.** The covenants, conditions, and restrictions contained herein shall run with and bind the land for a period of fifty (50) years from the date this document is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years each, subject to amendment as herein set forth. Until the Developer or its designee ceases to act as the Architectural Control Committee, the covenants and restrictions contained herein may be modified, amended or repealed in whole or in part at any time and from time to time by the Developer or his successor or assigns by recorded instrument.

**9.2 Notices.** Any notice required under the provisions of this document to be sent to any Lot owner shall be deemed to have been properly sent when mailed postage prepaid, to the last known address of such owner.

**9.3 Construction and Severability.** All of the covenants, conditions, and restrictions contained in this document shall be construed together. Invalidation of any one of said restrictions, covenants or conditions, or any part thereof, shall not affect the enforceability or applicability any of the remaining restrictions, covenants or conditions, or parts thereof.

**9.4 Assignment of Powers.** Any and all rights and power of the Developer herein contained

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may be delegated, transferred or assigned. Wherever the term "Developer" is used herein, it includes Developer and its successors and assigns.

9.5 **Gender and Grammar.** The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

9.6 **Waivers.** No provision contained herein shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations that may occur.

9.7 **Topical Headings.** The topical headings contained herein are for convenience only and do not define, limit or construe the contents of these covenants.

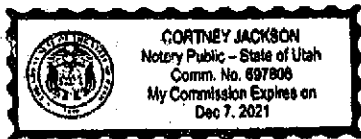
IN WITNESS WHEREOF, the undersigned has hereunto executed this document this \_\_\_\_ day of November, 2019.

**DEVELOPER**  
**BLACKHAWK CONSTRUCTION & CONCRETE, LLC**

By: Robert Kendall, Manager

STATE OF UTAH )  
 )ss.  
COUNTY OF WASHINGTON )

On this 14 day of November, 2019, before me personally appeared Robert Kendall whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being duly sworn (or affirmed), did say that he is the Manager of Blackhawk Construction & Concrete, LLC, and that the foregoing documents was signed by him on behalf of that Company by proper authority and they acknowledged before me that the Company executed the documents and the document was the act of the Company for its stated purpose.



*[Signature]*  
NOTARY PUBLIC

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**EXHIBIT A**

**HAWKEYE POINTE ESTATES** | **SUBDIVISION**  
*Legal Description*



A tract of land located in the northwest quarter of Section 2, Township 43 South, Range 15 West, Salt Lake Base and Meridian, Said tract is also located in a portion of Lot 6, and all of Lots 7, 8 and 1 of Block 8 of Robert C. Lund's Entry in Sectional Lot 4. Being more particularly described as follows:

Beginning at a point on the Southerly right of way line of 3650 South Street, said point being 7 feet perpendicularly distant from the Northerly line of said lot 6 and 40 feet perpendicularly distant from the centerline of said 3650 South Street, said point being South 89° 17' 55" East 664.30 feet along the section line of said Section 2 and South 00° 42' 05" West 40.00 feet and running thence along said southerly right of way line South 89° 17' 55" East 605.29 feet; thence southeasterly 39.37 feet along the arc of a 25.00 foot radius curve to the right, chord bears South 44° 10' 46" East 35.43 feet to the east line of said Lot 6; thence South 00° 56' 24" West 1237.93 feet along the easterly line of said Block 8 to the southeast corner of said Lot 1; thence North 89° 15' 47" West 629.33 feet to the southwest corner of said Lot 1; thence North 00° 53' 30" East 1262.64 feet along the westerly line of said Block 8 to the point of beginning.

Contains 18.257 acres, more or less.

Hawkeye Pointe, LLC a Utah limited liability company

By: \_\_\_\_\_  
Name: Robert M. Kendall  
Title: Managing Member

STATE OF UTAH )  
County of WASHINGTON ) ss.

On JANUARY 6 2020, before me, the undersigned Notary Public, personally appeared **Robert M. Kendall, Managing Member of Hawkeye Pointe, LLC**, a Utah limited liability company personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

My Commission Expires: 02-08-2021

[Signature]  
Notary Public

