

**When Recorded, Mail to:**

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Attention: Krisel Travis

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RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
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**DECLARATION OF**



**COVENANTS, CONDITIONS, AND RESTRICTIONS**

**FOR**

**EVERGREEN FARMS PHASE 1 SUBDIVISION**

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**DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS  
FOR  
EVERGREEN FARMS PHASE 1 SUBDIVISION**

This Declaration of Covenants, Conditions and Restrictions for Evergreen Farms Phase 1 Subdivision (this "**Declaration**") is made and executed this \_\_\_\_ day of \_\_\_\_\_, 2014, by D.R. Horton, Inc., a Delaware corporation (hereinafter referred to as the "**Declarant**").

**RECITALS:**

A. Declarant owns certain real property (the "Property") located in Layton City, Davis County, Utah, which is more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference.

B. Declarant intends to develop a residential subdivision on the Property named Evergreen Farms Phase 1 Subdivision (the "Subdivision"). Declarant will develop and convey all of the Property within the Subdivision subject to a general plan of development and subject to certain covenants, conditions and restrictions, all as set forth in this Declaration, which are deemed to be covenants running with the land, mutually burdening and benefiting all of the Property and each of the Lots within the Subdivision.

**ARTICLE 1  
DECLARATION**

1.1 Property Subject to this Declaration. Declarant hereby declares that all of the Property shall be held, sold, conveyed, encumbered, leased, used, occupied and improved subject to and in strict accordance with all of the terms and conditions of this Declaration, including without limitation all of the covenants, conditions and restrictions set forth herein, all of which are created for the mutual benefit of the Owners of the Property and the Lots. It is the intention of the Declarant in imposing the covenants, conditions and restrictions set forth in this Declaration to create a generally uniform pattern of development of the Property and to protect and enhance the property values and aesthetic values of the Property by eliminating inconsistent uses or improvements, all for the mutual protection and benefit of the Owners of the Lots. All of the terms and conditions of this Declaration, including without limitation all covenants, conditions and restrictions set forth herein, are intended to and shall in all cases run with the title of the land comprising the Property and shall be binding upon the Owners, their successors, assigns, heirs, lien holders, and any other person holding any interest in the Property and shall inure to the benefit of all other Property in the Subdivision. All of the terms and conditions of this Declaration, including without limitation the covenants, conditions and restrictions set forth herein, shall be binding upon Declarant as well as all of Declarant's successors in interest, and may be enforced by Declarant, by the Board of Directors, or by any Owner. Notwithstanding the foregoing, no provisions of this Declaration shall prevent Declarant from the completion of the subdivision improvements, or from using any Lot owned by Declarant as a model home, temporary construction or sales office, nor limit Declarant's right to post signs or engage in other reasonable activities on the Property incidental to sales or construction which are in compliance with the applicable ordinances of the City.

1.2 Reservation to Declarant. There is hereby reserved unto Declarant, its employees, agents, successors and assigns such easements and rights of ingress and egress over, across, through and under the Property and any Improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant, its employees, agents and successors (in a manner not inconsistent with the provisions of this Declaration) to (i) engage in construction upon or to improve the Common Areas with such structures and facilities (including but not limited to sidewalks, and sidewalk lighting and various landscaped areas) designed for the use and enjoyment of all the Members as Declarant may reasonably determine to be appropriate; and (ii) do all things reasonably necessary and proper for the construction, completion, development and sale of the Project. If pursuant to this reservation, the Property or any portion thereof (including any Lot) or any improvement thereon, is traversed or partially occupied by a permanent Improvement or utility line constructed or installed by Declarant, a perpetual easement for such Improvement or utility line shall exist. Each Owner, by acceptance of a deed or other document of conveyance to a Lot, does hereby acknowledge and agree that there will be construction activities, traffic, noises, odors and vibrations which may temporarily disrupt the quiet enjoyment of the Lot until all Improvements are complete, Each Owner does further hereby waive any right to object to such construction activities; provided, however, Declarant shall endeavor to use reasonable efforts to minimize the adverse impact of such construction activities on the Project. Declarant's construction activities shall not be considered a violation of the use restrictions contained herein.

## **ARTICLE 2** **DEFINITIONS**

When used in this Declaration (including in that portion hereof entitled "**Recitals**"), each of the following terms shall have the meaning indicated.

2.1 Articles of Incorporation shall mean and refer to the Articles of Incorporation of Evergreen Farms Phase 1 Subdivision Owners Association, Inc., on file or to be filed with the Utah Department of Commerce, Division of Corporations and Commercial Code.

2.2 Assessment shall mean and refer to the fees, dues and amounts assessed each Owner to pay for the Common Expenses incurred in the operation, management, maintenance, repair, replacement, control and regulation of the Project.

2.3 Association shall mean and refer to the association of Owners at the Subdivision, known as Evergreen Farms Phase 1 Subdivision Owners Association, Inc., a Utah nonprofit corporation.

2.4 Board or Board of Directors shall mean the board of directors of the Association who have been duly appointed or elected to perform their duties, as provided in the Bylaws and in accordance with the provisions of the Utah Revised Nonprofit Corporation Act.

2.5 Bylaws shall mean and refer to the Bylaws of the Association attached to this Declaration as Exhibit "B."

2.6 Capital Improvement shall mean and refer to all nonrecurring expenses (as opposed to day-to-day expenses) to repair, maintain or replace significant fixed assets in the

Project intended to restore, enhance, improve or ameliorate the utility, value or beauty of the Common Areas.

2.7 City shall mean and refer to Layton City.

2.8 Class B Control Period shall mean and refer to the period of time during which the Class B Member is entitled to appoint all or a majority of the members of the Board of Directors.

2.9 Common Areas shall mean and refer to the Landscape Buffer Easement Area, as identified on the Plat, which is five feet in width and which is owned by the Owners of the Lots on which the Landscape Buffer Easement Area is located, but which Landscape Buffer Easement Area shall be maintained by the Association as if it were designated on the Plat as Common Areas. The Common Areas shall also mean and refer to all real property designated as Common Areas on the Plat, in which the Association owns an interest for the common use and benefit of its Members, their successors, assigns, tenants, families, guests and invitees, including, but not limited to, the following items:

(a) All Common Areas designated as such on the Plat;

(b) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Project and intended for the common use of all Owners, including without limitation utility services such as telephone, electricity, natural gas, water and sewer;

(c) The Project's outdoor grounds, landscaping and park strips located between the road and the sidewalks (including the landscaping along 2200 West and Layton Parkway), perimeter and preservation fences (including the vinyl fence along 2200 West and the precast concrete fence along Layton Parkway), sidewalks, trails and walking paths;

(d) All portions of the Project not specifically located within the individual Lots; and

(e) All other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Property owned by the Association for the common benefit of its Members.

2.10 Common Expenses shall mean and refer to the actual and estimated expenses of operating, managing, maintaining, repairing, replacing, controlling and regulating the Project, or any portion thereof, including any reasonable reserve.

2.11 Community Standards shall mean and refer to the standard of conduct, maintenance, or other activity generally prevailing in the Project as determined by the Board of Directors from time to time.

2.12 Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Evergreen Farms Phase 1 Subdivision.

2.13 Declarant shall mean and refer to D.R. Horton, Inc., a Delaware corporation, its successors and assigns.

2.14 Delinquent Assessments shall have the meaning set forth in Section 9.12(b).

2.15 Dwelling shall mean and refer to the single family residence built or to be built on any Lot.

2.16 Eligible Insurer shall mean and refer to an insurer or governmental guarantor of a mortgage or deed of trust who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

2.17 Eligible Mortgage shall mean and refer to a mortgagee, beneficiary under a deed of trust, or lender who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

2.18 Eligible Votes shall mean and refer to those votes available to be cast on any issue before the Association.

2.19 Event or Events shall have the meaning set forth in Section 9.3(b).

2.20 Excavation shall mean any disturbance to the surface of the land, including the removal of native vegetation, and also including trenching which results in removal of soil or rock from a depth of more than 12 inches from the natural surface of the land, or any grading of the surface. Excavation shall include any activities for which an excavation or grading permit would be required under the ordinances and regulations as adopted by the City.

2.21 Fill shall mean the depositing of earth, soil, rock or other materials to the surface of the land, whether imported from off-site or resulting from the re-grading of excavated material from on-site, to raise the natural elevation of the surface. Fill shall include any fill material as defined under the ordinances and regulations as adopted by the City.

2.22 Improvement shall mean and refer to all physical structures and appurtenances to the Land of every kind and type, including but not limited to all buildings, dwellings, fixtures, plumbing, electrical, heating, air conditioning and utility systems, roads, alleys, walkways, driveways, fences, walls, landscaping, trees, shrubs, bushes and green space.

2.23 Individual Assessment shall mean and refer to the fees, dues and amounts assessed to a specific Owner to pay for the expenses incurred that are directly related only to that Owner in the operation, management, maintenance, repair, replacement, control and regulation of the Project.

2.24 Land shall mean and refer to all of the real property subject to this Declaration, which is more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference.

2.25 Landscape Buffer Easement Area shall mean the area that is five feet in width between the sidewalk and the wall, on the Lots located along 2200 West and Layton Parkway

and which area is identified on the Plat as the Landscape Buffer Easement Area. The area comprising the Landscape Buffer Easement Area is owned by the Owners of the Lots on which the Landscape Buffer Easement Area is located.

2.26 Lot shall mean any numbered single-family residential Lot shown on the Plat of the Subdivision.

2.27 Lot Number shall mean and refer to the number, letter or combination thereof designating a particular Lot as identified on the Plat.

2.28 Majority shall mean and refer to those eligible votes of Owners or other groups as the context may indicate totaling more than fifty (50%) percent of the total eligible number.

2.29 Manager shall mean and refer to the person or entity appointed or hired by the Board of Directors to manage and operate the Project.

2.30 Member shall mean and refer to an Owner obligated, by virtue of such Owner's respective ownership, to be a member in the Association.

2.31 Mortgage shall mean and refer exclusively to either a first mortgage or first deed of trust on any Lot, but shall not mean or refer to an executory contract of sale.

2.32 Mortgagee shall mean and refer exclusively to a mortgagee under either a first mortgage or a beneficiary under a first deed of trust on any Lot, but shall not mean or refer to a seller under an executory contract of sale.

2.33 Notice and Hearing shall mean and refer to the procedure which gives an owner or resident due process.

2.34 Occupant shall mean a Person lawfully residing in a Lot who has actual use, possession or control of the Dwelling, regardless of whether that Person is an Owner.

2.35 Owner shall mean and refer to the person who is the owner of record (in the Official Records) of a fee or an undivided fee interest in a Lot, including but not limited to both the seller and buyer under an executory sales contract. The term Owner does not mean or include a mortgagee or a beneficiary or trustee under a deed of trust, unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

2.36 Permitted Improvements shall mean any Improvements installed, constructed, maintained or allowed to stand on the Property in conformity with this Declaration.

2.37 Person shall mean and refer to a natural person, corporation, partnership, trust, limited liability company, or other legal entity.

2.38 Plat shall mean and refer to the Final Plat of "Evergreen Farms Phase 1 Subdivision" on file and of record in the Official Records, as it may be amended from time to time. The Plat will show the location of the Lots and Common Areas.

2.39 Project shall mean and refer to Evergreen Farms Phase 1 Subdivision development. The terms Project and Subdivision are used interchangeably in this Declaration with the same meaning and intent.

2.40 Project Documents shall mean the Plat, the Declaration, the Bylaws, the Articles of Incorporation and any rules or regulations of the Association adopted from time to time by the Board of Directors.

2.41 Property shall mean and refer to all of the Land and all Improvements and appurtenances subjected to the terms of this Declaration.

2.42 Public View shall mean that the object, improvement or activity on the Property is or would be in the line of sight originating from a point five feet above the surface of any public streets with in the Subdivision.

2.43 Recreational, Oversized or Commercial Vehicle shall mean and refer to any recreational, commercial or oversized vehicle, motor home, commercial vehicle, tractor, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other recreational, oversized or commercial transportation vehicle, machine, or device of any kind.

2.44 Reinvestment Fee shall mean the charge which may be levied and assessed by the Association in the event of a Transfer of a Lot, pursuant to Section 9.11 hereof. The Reinvestment Fee assessed, if any, shall be in compliance with Section 57-1-46 of the Utah Code, as such Section may be amended, supplemented or replaced from time to time.

2.45 Reserve Fund shall mean the fund created or to be created by the Association pursuant to Section 9.7(p) for the purposes provided in Section 9.7(p).

2.46 Subdivision shall mean and refer to the Evergreen Farms Phase 1 Subdivision, as it may be expanded from time to time. The terms Subdivision and Project are used interchangeably in this Declaration, with the same meaning and intent.

### **ARTICLE 3** **EASEMENTS**

3.1 Grant of Easement. Declarant hereby reserves to itself and grants to the Association, a non-exclusive, perpetual right-of-way and easement over, across and through the Land, together with the right to use, operate, maintain, repair and replace the Common Areas, subject to all of the terms, covenants, conditions and restrictions set forth herein.

3.2 Common Use of Easement. Said easement is to be used in common by the Association, Declarant and each Owner, subject to all of the terms, covenants, conditions and restrictions set forth herein.

3.3 Private Easement. The easement created is intended to be used as a private non-exclusive easement for the exclusive use and benefit of Declarant, Association and Owners.

3.4 Encroachments. If any part of the Common Areas encroaches or shall hereafter encroach upon a Dwelling or Lot, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Dwelling encroaches or shall hereafter encroach upon the Common Areas, or upon an adjoining Dwelling or Lot, an easement for such encroachment and for the maintenance of the same shall and does exist. Such easements shall extend for whatever period the encroachment exists. Such encroachments shall not be considered to be encumbrances either on the Common Areas, Dwellings or Lots. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any improvement constructed or to be constructed within the Project, by error in the Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

3.5 Improvements. Improvements, including Dwellings, Lots, and the Common Areas, constructed as subsequent phases of the Project may encroach upon portions of the Dwellings, Lots, and/or Common Areas of earlier phases of the Project. A perpetual easement for such encroachment necessary to repair, maintain and operate such improvements is hereby granted.

3.6 Rights of Access. Each Owner shall have the right to ingress and egress over, upon and across the Common Areas for access to the Dwelling and Lot he or she is occupying and to any Common Areas appurtenant to his Lot, and he shall have the right to the horizontal, vertical and lateral support of his Lot.

3.7 Declarant's Easement. The Declarant hereby reserves to itself, and its affiliates and assignees, an exclusive easement to make such use of the Common Area and Facilities as may be necessary or convenient to perform the duties and functions that each is obligated or permitted to perform pursuant to the Declaration, including, without limitation, the right to construct and maintain the Common Area and Facilities for use by the Association and Owners.

3.8 Locations Facilities Easements. Declarant hereby reserves to itself a non-exclusive easement for itself and its affiliates and assignees to construct, operate, maintain, repair and replace all types of telecommunication facilities, including but not limited to roof antennas, within suitable locations for such facilities (the "Locations of Facilities") within the Project. Declarant further reserves a right of access to the Locations of Facilities over, across, and through all other Common Areas in order to access the Locations of Facilities to exercise the rights established herein. Declarant reserves the perpetual right to transfer by easement, license agreement or other conveyance the rights reserved hereunder to one or more telecommunication facilities providers. Declarant may exercise all of such rights unilaterally and without the consent of any Owner, Mortgagee or the Association. The Association, for itself and on behalf of all Owners, agrees to execute such further and additional instruments as may be requested by Declarant documenting the rights hereunder, in form satisfactory to the Declarant, and any assignee of its rights hereunder.



**ARTICLE 4**  
**ARCHITECTURAL CONTROL**

4.1 Introduction. It is the intention and purpose of this Declaration to impose architectural design standards of a type and nature that result in Dwellings and Permitted Improvements which are compatible with a high quality, attractive and well-designed residential development. The placement, dimensions and materials of the Permitted Improvements will be guided, but still allow for diversity in style and vitality in design. To accomplish this goal, the Declarant hereby declares that the Board of Directors shall be empowered to oversee and enforce the provisions of this Declaration.

4.2 Approval by the Board of Directors. No Improvements of any kind, including without limitation the construction or installation of any Dwelling, garage, out building or any other permanent structure may be constructed, installed, maintained or allowed to stand in the Subdivision without the prior written approval of the Board of Directors. The construction of all Improvements must occur within the portion of a Lot which is approved for the construction of Improvements by the ordinances of the City and also in compliance with all set back requirements set forth in this Declaration. No Excavation, Fill, grading, filling or draining shall be made without the prior written approval of the Board of Directors. Approval of the Board of Directors will be sought in the following manner:

(a) *Plans submitted.* A complete set of plans for the construction of any Improvement must be signed by the applicant and submitted to the Board for review. It is recommended that preliminary plans be submitted before the expense of final construction drawings is incurred. The plans must be in sufficient detail to show the location on the Lot of the Improvements, including without limitation the exterior walls of any Dwelling and all other structures to be built with it; detailed drawings of all elevations of all buildings showing locations of windows, doors, roof pitches, decks and other exterior elements; a list of exterior and roofing materials and/or a sample, including color samples. In the case of an addition or modification to an existing Dwelling, the Board may waive any of the foregoing requirements.

(b) *Review.* The Board shall exercise its best judgment in overseeing the construction of all Improvements on the Property within the Subdivision. The Board shall consider the materials to be used on the external features of all Improvements, including but not limited to exterior colors, harmony of external design with existing structures within the Subdivision, location with respect to topography and finished grade elevations and harmony of landscaping with the natural settings and surroundings. While in receipt of a complete submission of the plans, the Board will review the plans and make an initial determination whether or not the plans comply with the conditions imposed by this Declaration. If the plans do not comply, the plans will be rejected. If the plans are in compliance, the Board will stamp and approve the plans. The Board may approve the plans subject to specific modifications or conditions. Owners may desire to submit preliminary plans to the Board for informal and preliminary approval or disapproval. The Board will review preliminary plans, and the Board will make its comments known to the Owner. However, no preliminary approval is to be considered a final approval, and no final approval will be granted on less than a complete submission

of plans as set forth in this Declaration. All preliminary sketches will be kept by the Board. Upon final approval, the Board and the Owner will each sign a copy of the approved plans, which shall be left with the Board. Any construction that is not in strict compliance with the approved plans is prohibited. Notwithstanding any provisions in the Declaration, all construction of any nature upon any of the Lots within the Subdivision shall be performed in compliance with the requirements of the land management code and the building and zoning ordinances of all governmental entities having jurisdiction with respect to the Subdivision. The construction of any Improvements within the Subdivision by Declarant shall be exempt from the provisions of this Article 3, and Declarant shall not be obligated to receive the approval of the Board of Directors for any Improvements, Excavation, Fill or other construction of any manner constructed or performed by Declarant within the Subdivision.

(c) *Written Record.* The Board will maintain a written record of its actions, and maintain in its files a copy of all plans approved or rejected for a period of five years.

(d) *Failure to Act.* If the Board has not approved or rejected any submission within 45 days after the submission of complete plans, the submission shall be deemed to have been disapproved.

(e) *Permits and Approvals from the City.* Notwithstanding any other provision of this Declaration to the contrary, prior to commencing the construction of any Improvements on any Lot, the Owner of each Lot must obtain from the City all necessary permits and approvals required by the City in connection with the construction of any such Improvements.

4.3 Variances. The Board has the authority to deviate from the requirements contained in this Declaration under extenuating circumstances, when compliance with this Declaration would create an unreasonable hardship or burden for a Lot Owner. No such variance may be granted without the written consent of the Board. The Board does not, however, have the authority to deviate beyond the requirements of the land management code and the building code and zoning ordinances of all governmental entities having jurisdiction with respect to the Subdivision.

4.4 General Design Review. The Board will use its best efforts to provide a consistent pattern of enforcement and consistent application of this Declaration that results in a high quality, attractive, and well-designed residential development.

4.5 Declarant and the Board Not Liable. Declarant, the Board and its members shall not be liable to the applicant or to the Owners of any Lots within the Subdivision for damages or any other remedy as the result of the Board's actions, inactions, or approval or disapproval of any set of plans submitted to the Board for review. In the absence of bad faith or malicious actions, the Owners shall have no claim against Declarant, the Board or its members as a result of the Board's performance or failure to perform the duties created by this Declaration. Any person or persons acquiring title to any Lot in the Subdivision shall be deemed to have agreed and covenanted that such Owner will not bring any action or suit to recover damages against the Declarant, the Board or its members, or the advisors, officers, employees or agents of the any of

the foregoing, as a result of the performance by the Board of its duties and responsibilities under this Declaration. Each Owner has the right to enforce this Declaration against another Owner.

4.6 Limitations on Review. The Board's review is limited to those matters expressly described in this Declaration. The Board shall have no authority over the enforcement of building codes, zoning ordinances, or other statutes, laws, or ordinances affecting the development or improvement of the Property and shall have no liability to any Owner whose plans were approved in a manner that included any such violation. The Board shall not be responsible for reviewing, nor shall the approval by the Board of any plan or design be deemed approval of, any plan or design from the standpoint of structural safety or compliance with any applicable building codes, zoning ordinances, or other statutes, laws or ordinances affecting the development or improvement of the Property. The structural integrity of any Improvements constructed within the Subdivision is not the responsibility of the Board. Corrections or changes to plans as may be subsequently required to bring them into conformity with any applicable statutes, laws or ordinances must be reviewed and approved by the Board prior to construction.

4.7 Approval to Proceed. The Board shall stamp, date and sign the plans and deliver the plans to the applicant once the plans for any Permitted Improvements have been approved.

## **ARTICLE 5**

### **RESTRICTIONS ON ALL PROPERTY**

The following restrictions on use apply to all Property within the Subdivision:

5.1 Governing Regulations. The lawfully enacted zoning regulations of the City and of any other governmental body having jurisdiction with respect to the Property, including without limitation any and all applicable building, fire, and health codes, are in full force and effect in the Subdivision, and no Lot may be occupied in a manner that is in violation of any such statute, law, ordinance or regulation. If the provisions of this Declaration are more stringent than any applicable governmental statute, law, ordinance or regulation, it is the intent that the provisions of this Declaration shall control. This Declaration shall not authorize any uses, improvements, or activities that are prohibited by any local, state or federal statute, law, ordinance or regulation.

5.2 No Mining Uses. No mining, quarrying, tunneling, excavating or drilling for any substances within the earth, including but not limited to oil, gas, minerals, gravel, sand, rock and earth, shall ever be permitted on the Property within the Subdivision. The foregoing limitation shall not preclude drilling and excavation in connection with the construction of roads, utility lines and other Permitted Improvements.

5.3 No Business or Commercial Uses. The Property within the Subdivision shall be used for residential purposes only. No portion of the Subdivision may be used for any commercial or business use, provided however that nothing in this provision is intended to prevent (a) the Declarant from using one or more Lots for purposes of a construction office or sales office during the actual period of construction of the Subdivision Improvements or until the Lots are sold, or (b) the use by any Owner of his Lot for a home occupation. No home occupation will be permitted, however, which requires or encourages the Owner's clients,

customers, patients or others to come to the Lot to conduct business, or which requires any employees outside of the Owner's immediate family or household to come to the Lot to conduct business. No signs or other advertisements relating to any such home occupation shall be placed upon any of the Property within the Subdivision, nor shall any such sign or advertisement be visible from the outside of any of the Permitted Improvements constructed on the Property. No retail sales of any kind may be made in the Subdivision. All home occupations operated or conducted from any of the Lots within the Subdivision shall comply with all applicable local, state or federal statutes, laws, ordinances and regulations, including without limitation all statutes, laws, ordinances and regulations pertaining to licensing and permitting for the operation of any such home occupation.

5.4 Restrictions on Signs. No signs will be permitted on any Lot or within the Subdivision, except for traffic control and directional signs for roadways placed by the City or temporary signs warning of some immediate danger and such other signs as may be approved by the Board. Signs indicating a Lot is for sale may be placed in accordance with the City sign regulations. The Declarant may erect a sign acceptable to the City at the entrance to the Subdivision announcing the availability of Lots and giving sales information. An entrance monument for the Subdivision may be constructed by Declarant, at Declarant's sole discretion.

5.5 Dwelling to be Constructed First. No garage, storage unit, or other out-building may be constructed on any Lot prior to the construction of the Dwelling on such Lot.

5.6 Animals.

(a) No animals, livestock or poultry of any kind shall be raised or kept on any Lot, except that dogs, cats and other domesticated household pets may be kept on a Lot, provided that they are not kept or maintained for any commercial purpose, and provided further that all pets must be restrained upon the Owner's Lot in a humane and sanitary manner. Enclosures, kennels, runs and the leash areas must be kept clean and sanitary and must be located not less than fifteen (15) feet from any property line on such Owner's Lot. No pets may be kept in unreasonable numbers, as determined by the sole discretion of the Board, and the Board may establish rules and restrictions from time to time concerning specific breeds or types of animals which may be kept on any Lot. No boarding of animals for hire shall be allowed within the Subdivision. Owners are required to be in control over their respective animals and pets in order to protect inhabitants of the Subdivision and other animals kept within the Subdivision. No dangerous animals will be allowed in the Subdivision. The Owner of each Lot shall make such Permitted Improvements as are necessary to assure that animals kept on such Owner's Lot do not trespass on other Lots. Pets must be on a leash at all times outside a Lot.

(b) If a pet defecates on any portion of the Common Areas, the Owner of such pet shall immediately remove all feces left upon the Common Areas by such Owner's pet. If the Owner or resident of the Project fails to abide by the rules and regulations and/or covenants applicable to pets, the Board of Directors may bar such pet from use of or travel upon the Common Areas. The Board of Directors may subject ingress, egress, use or travel by a pet upon the Common Areas to a user and maintenance fee, which may

be a general fee for all similarly situated persons or a specific fee imposed for failure of an Owner, or resident of the Project to abide by the rules, regulations, and/or covenants applicable to pets. In addition, any pet which endangers the health or welfare of any Owner, resident, invitee or guest of the Project or which creates a nuisance (e.g., unreasonable barking, howling, whining or scratching) or an unreasonable disturbance or is not a common household pet, as may be determined in the sole discretion of the Board of Directors, must be permanently removed from the Project upon seven (7) days written notice by the Board of Directors.

5.7 No Hazardous Activity. No activity may be conducted on any Lot that is, or would be considered by a reasonable person to be, unreasonably dangerous or hazardous, or which would cause the cancellation of conventional property casualty insurance. This includes, without limitation, the storage of caustic, toxic, flammable, explosive or hazardous materials in excess of those reasonable and customary for household uses.

5.8 No Unsightliness. No unsightliness is permitted on any Lot. This requirement shall prohibit, without limitation, the open storage of any building materials (except during the construction of any Dwelling or Improvements); open storage or parking of construction equipment, trucks larger than pick-up trucks (except during periods of actual loading and unloading); accumulations of lawn or tree clippings or trimmings; accumulations of construction debris or waste; household refuse or garbage except as stored in tight containers in an enclosure such as a garage.

5.9 No Annoying Lights. No outdoor lighting shall be permitted except for lighting that is designed to aim downward and limit the field of light to the confines of the Lot on which it is installed. This shall not apply to street lighting maintained by the City.

5.10 No Transient Lodging Uses. The Lots are to be used for residential housing purposes only and shall not be rented in whole or in part for transient lodging purposes, boarding house, "bed and breakfast," or other uses for providing accommodations to travelers.

5.11 Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept on any Lot, except in sanitary containers approved by the Board. All equipment for the storage or disposal of waste or rubbish shall be kept in a clean and sanitary condition and must meet the approval of the Board.

5.12 Parking and Storage of Personal Property. No personal property, including but not limited to boats, trailers, campers and motorized vehicles, shall be placed or stored upon any Lot prior to the time the Owner thereof is ready to commence the construction of Permitted Improvements, and thereafter all such personal property shall be placed within the property lines of the Lot and not within the streets and shall be placed in such a manner as not to constitute an aesthetical nuisance upon the rights of other Lot Owners. The Owner of each Lot shall be obligated to construct on such Lot sufficient on-site parking on the Lot to accommodate all automobiles placed or parked on the Lot. No storage of any articles, material, equipment or vehicles of any nature is permitted in the front yard portion of any Lot, except that regularly used passenger cars and light pickup trucks may be parked on the driveway areas in the front yard. Boats, trailers, campers, motorized vehicles and all other types of recreational and/or accessory

equipment shall be restored and repaired only in side or rear yards, garages, or driveways acceptable to the Board. No automobiles, trucks, campers, trailers, boats, equipment, recreational vehicles, motor homes or other similar vehicles shall be parked or stored on a public street or right of way for more than seven (7) consecutive days without the express written consent of the Board. All vehicles parked within the Project must have a current license plate and must be drivable and in good working order, with no fluid leaking from the vehicle. The Board of Directors shall have the right to designate certain areas within the Project that are to be reserved for snow storage during the period of time beginning on November 1 and continuing through the subsequent March 30. During such period of time, there shall be no overnight parking within such designated snow storage areas.

## **ARTICLE 6** **RESTRICTIONS ON LOTS**

6.1 Dwelling and Ancillary Structures: No Dwelling or other Improvements shall be placed, erected, altered, or permitted to remain on any Lot other than one (1) single family Dwelling and one (1) garage together with related nonresidential Improvements which have been approved by the Board. At the time of construction of the single family Dwelling on any Lot, said Lot must also be improved with a garage with at least a two (2) car capacity. The Dwelling on each Lot shall be used for private residence purposes only, and no structure of any kind shall be moved from any other location and placed upon a Lot, nor shall any incomplete building or Improvement of any type be permitted to remain incomplete on a Lot for a period in excess of one (1) year from the date the Improvement was started, unless otherwise approved by the Board. No structure of a temporary character nor any trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently. No structure greater than one hundred (100) square feet in area may be built upon any Lot without the prior written consent of the Board.

6.2 Completion of Dwelling. All construction and alteration work shall be prosecuted diligently, and each Dwelling which is commenced on any Lot shall be entirely completed within twelve (12) months after commencement of construction. A three (3) month grace period after the initial twelve (12) month period has expired may be granted by the Board upon the showing of just cause for such grace period.

6.3 Towers, Satellite Receivers and Antennas: No towers, exposed or outside radio, television or other electronic antennae, with the exception of television receiving antennae, shall be allowed or permitted to remain on any Lot. Satellite receivers, in excess of eighteen (18) inches in diameter, must have an enclosure to screen them from view from any surrounding Lot Owner.

6.4 Alternate Energy Resources. No solar collectors, geothermal products, wind turbines or other alternate energy resources may be installed without the prior express written consent of the Board.

6.5 Used or Temporary Structures: No used or previously erected or temporary house, structure, house trailer, mobile home, camper, or nonpermanent outbuilding shall be placed, erected, or allowed to remain on any Lot except during construction periods, and no

Dwelling shall be occupied in any manner prior to its completion and the issuance by the City of a certificate of occupancy for such Dwelling.

6.6 Minimum Architectural Requirements: The following shall be considered to be minimum architectural requirements with respect to Dwellings constructed within the Subdivision, although the Board shall have broad discretion in the approval of plans for Dwellings constructed in the Subdivision and shall be entitled to consider factors in addition to the following minimum requirements:

(a) Exterior materials on all Dwellings shall be limited to brick, stone, stucco, rock, hardy board, hardy plank or hardy shingle or similar manufactured materials of equal quality. Upon the express written approval of the Board, other exterior building materials may be used. Exceptions to the foregoing requirements may be allowed to accommodate an architectural duplication of a certain era or style, such as Victorian. No Dwellings shall be constructed with readily combustible exterior finishes, which prohibition shall preclude without limitation wood shingles, wood soffits, wood fascia and wood siding.

(b) No dome, A-frame or modified A-frame Dwellings shall be allowed or constructed.

(c) No prefabricated Dwellings or trailers shall be allowed or constructed.

(d) Roofs on all buildings shall be constructed with a minimum pitch angle of 6:12. All roofs shall be made of fire resistant dimensional shingles or other roofing materials approved by the Board. The shingles must be a minimum of 25 year dimensional shingles.

(e) All buildings, structures and improvements on any Lot shall comply with the construction guidelines and specifications of the planning and building department of the governmental authority having jurisdiction over the Subdivision.

6.7 Slope and Drainage Control. No Improvement, planting or other material shall be placed or permitted to remain, nor shall any other activities be undertaken, which may damage or interfere with established slope ratios, which create erosion or sliding problems, or which may change the direction or flow of drainage channels or obstruct or retard the flow of water through drainage channels. The slope control areas of each Lot and all Improvements within 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. All Lot Owners shall retain and control all water runoff from such Owner's Lot or Lots, so as not to damage or hinder other Lots or Owners. If a drainage channel is altered by an Owner, the Declarant and/or the Association expressly reserve the right to enter onto the property to restore the area at the cost of the Owner, and without being guilty of a trespass.

6.8 Landscaping. The Landscaping of the front yard of each Lot, including the planting of grass or the placement of sod, and the planting of at least a minimal number of shrubs or trees on the Lot, must be completed within eighteen (18) months from the time the construction of the Dwelling is commenced. The Owner of each Lot within the Subdivision shall

keep such Owner's Lot clean of weeds and trash. If the Owner fails to do so, the Board shall have the right to cause such maintenance work to be done and to cause the cost of such maintenance work to be charged to and paid by the Owner of such Lot. The recordation by the Declarant and/or the Board in the Office of the Recorder of Davis County, Utah of a Notice of Charge (a "Notice a Charge") against the Owner of any Lot shall constitute a lien against such Lot, which lien shall remain in effect until such amount, together with interest thereon at the rate of eighteen percent (18%) per annum from the date of such Notice of Charge, is paid. Thereupon the Notice of Charge shall be released of record.

## **ARTICLE 7** **OWNERS' MAINTENANCE OBLIGATIONS**

7.1 Duty to Maintain. It is the obligation of the Owner of each Lot to maintain properly his Lot and the Improvements to the Lot in a good state of repair and an attractive, safe, and healthy condition at all times in order to preserve and enhance the enjoyment of the Subdivision. For those Lots abutting 2200 West and Layton Parkway, the Association shall be responsible to maintain any areas and any fences within the five-foot Landscape Buffer Easement Area as identified on the Plat and any park strips adjacent to the five-foot Landscape Buffer Easement Area.

7.2 Alterations of Exterior Appearance. The Owners will maintain their Lots and Improvements in substantially the same condition and appearance as that approved by the Board. No subsequent exterior alterations, improvements or remodeling, whether structural or cosmetic, will be made without the advance written consent of the Board.

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

## **ARTICLE 8** **CONSTRUCTION COVENANTS**

8.1 Introduction. In order to minimize the disturbance of the Property within the Subdivision during any construction activities, and to minimize the inconvenience to adjoining Owners, the following construction regulations shall be enforced. These regulations shall be made a part of the construction contract between the Owner and the builder of each Dwelling or other Improvements on a Lot. The Owner shall be bound by these regulations, and violations



committed by the builder or its employees, subcontractors or others shall be deemed a violation by the Owner for which the Owner shall be liable.

8.2 Construction Debris Removal. The builder must comply with the ordinances of the City and the requirements of the Board requiring the placement and maintenance of a trash container or dumpster on the Lot. The builder shall collect trash at the end of each work day and deposit construction trash, packing material, unusable scraps, and other debris in a suitable container, protected from the wind. Such container shall be regularly serviced. No trash may be burned, buried, or otherwise disposed of on the Property. No concrete trucks may be cleaned out on the Lot, the Property or anywhere within the Subdivision.

8.3 Construction Area Appearance. The Lot must be maintained in a reasonably organized and neat condition at all times during the construction of a Dwelling or other Improvements. Once the Dwelling is enclosed, materials shall be stored inside the Dwelling and out of sight, whenever practical and possible.

8.4 Sanitary Facilities. The builder is responsible for the installation and maintenance of an approved portable toilet facility during construction. The portable toilet must be located on the Lot at a location approved by the Board and must be removed from the site at such time as the permanent plumbing system is operational.

8.5 Construction Parking and Vehicles. Construction crews must park their vehicles on the Lot on which they are working or on the street in front of such Lot and shall not use or park on any other Lot or any other Property within the Subdivision. All vehicles must be parked to allow the free flow of traffic within the Subdivision.

8.6 Removal of Mud. The builder is responsible for cleaning up and removing mud from the construction site that is deposited on the Roadways of the Subdivision.

8.7 Duration of Construction. No construction shall be undertaken without a building permit and all other necessary permits from the City and any other governmental entity having jurisdiction over construction on the site. No materials, tools, temporary offices or portable toilets, excavation or construction equipment or similar materials or equipment may be delivered to the site prior to the issuance of the permit(s). It is the obligation of the Owner to proceed with construction with all reasonable speed once construction has commenced, and in any event, all exterior surfaces of the Dwelling shall be substantially complete within a period of six months from commencement. All landscaping and soil stabilization work must be completed as soon as possible after completion of the exterior of the Dwelling, but in no event later than the summer following completion of the exterior of the Dwelling.

8.8 Repair of Damage. Each Owner is responsible for the prompt repair of any damage to any Property within the Subdivision caused by or incidental to such Owner's construction, including without limitation any cracked or broken sidewalks. The Board, if necessary, may initiate legal action against any Owner for the repair of damage that occurs from construction activity pertaining to that Owner's Lot. The Board shall be entitled to record a Notice of Charge against such Owner's Lot until all such damage is repaired and paid for, in the manner described in Section 6.8 above.

**ARTICLE 9**  
**THE ASSOCIATION**

9.1 Board of Directors. The affairs of the Association shall be conducted by a Board of at least three (3) directors, but no more than nine (9) members (as determined by the Board of Directors), and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws, as the same may be amended from time to time. The initial Board shall be composed of three (3) directors appointed by Declarant, which initial Board shall be controlled by Declarant until the expiration of the Class B Control Period. The Board may also appoint various committees and may appoint a Manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the Manager.

9.2 Status and General Authority of Board of Directors. Any instrument executed by the Board of Directors that recites facts which, if true, would establish the Board of Director's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The Board of Directors shall have, and is hereby granted, the following authority and powers:

(a) Access. The power and authority to enter into or upon any Lot to make repairs and to do other work reasonably necessary for the proper maintenance and operation of the Project. Except in the case of an emergency, reasonable notice shall be given to the residents.

(b) Grant Easements. The authority, without the vote or consent of the Owners, Mortgagees, insurers or guarantors of any Mortgage, or of any other Person, to grant or create, on such terms as it deems advisable, reasonable permits, licenses, and non-exclusive easements over, under, across and through the Common Areas for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance, operation or regulation of the Project.

(c) Execute Documents. The authority to execute and record, on behalf of all Owners, any amendment to the Declaration or Plat which has been approved by the vote or consent necessary to authorize such amendment.

(d) Standing. The power to sue and be sued.

(e) Enter Into Contracts. The authority to enter into contracts which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.

(f) Promulgate Rules. The authority to promulgate such reasonable administrative guidelines, rules, regulations, and procedures as may be necessary or desirable to aid the Board of Directors in carrying out any of its functions or to insure that the Project is maintained and used in a manner consistent with this Declaration.

(g) Meetings. The authority to establish procedures for the conduct of its meetings, including but not limited to the power to decide what portion of the meeting shall be open or closed to Members of the Association or residents not on the Board of Directors, to retire to executive session, to regulate record keeping, and to allow, control or prohibit the electronic reproduction (video or audio) of Board of Directors meetings.

(h) All Other Acts. The power and authority to perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the Board of Directors to perform its functions on behalf of the Owners.

9.3 Classes of Membership and Voting Allocations. The Association shall have two (2) classes of membership—Class A and Class B, described more particularly as follows:

(a) Class A. Class A Members shall be all Owners with the exception of the Class B members, if any. Class A Members shall be entitled to vote on all issues before the Association, subject to the following:

(i) Each Lot shall have one (1) vote.

(ii) No vote shall be cast or counted for any Lot not subject to Assessment.

(iii) When more than one (1) Person or entity holds an ownership interest in a Lot, the vote for such Lot shall be exercised by those Persons or entities as they themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote of the Lot shall be suspended in the event more than one (1) Person or entity seeks to exercise it.

(iv) An Owner of a Lot which has been leased may, in the lease or other written instrument, assign the voting right appurtenant to that Lot to the lessee, provided that a copy of such instrument is furnished to the Secretary at least three (3) days prior to any meeting.

(b) Class B. The Class B Member shall be Declarant and any successor of Declarant who takes title for the purpose of development and sale of Lots, and who is designated as such in a recorded instrument executed by Declarant. The Class B Member shall originally be entitled to three (3) votes per Lot owned. The Class B membership shall terminate, and Class B membership shall convert to Class A Membership upon the happening of the earlier of the following (herein referred to as the “**Event**” or “**Events**”):

(i) Four (4) months after one hundred percent (100%) of the Lots have been sold; or

(ii) Ten (10) years after the recording of this Declaration in the Office of the Recorder of Davis County, Utah; or

(iii) When, in its sole discretion, Declarant so determines. If and when Declarant elects to relinquish control of the Association, Declarant shall send

written notification to each Owner of the effective date of the relinquishment or transition (the "Transition Date") at least forty-five (45) days prior thereto. Thereupon, the Owners shall call a meeting to elect the members of the Board of Directors to take office as of the Transition Date.

From and after the happening of the first to occur of the Events, the Class B Member shall be deemed to be a Class A Member entitled to one (1) vote for each Lot owned. At such time, Declarant shall call a meeting, in the manner described in the Bylaws of the Association for special meetings, to advise the membership of the termination of Class B status.

9.4 Professional Management. The Association may carry out through the Manager those of its functions which are properly subject to delegation. The Manager so engaged shall be an independent contractor and not an agent or employee of the Association, shall be responsible for managing the Project for the benefit of the Association and the Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself. Any such management agreement may be terminated by the Declarant without cause at any time during the Class B Control Period. In addition, any such management agreement may be terminated by the Association without cause upon giving reasonable notice at any time after the expiration of the Class B Control Period.

9.5 List of Owners Eligible Mortgagees, and Eligible Insurers of Guarantors. The Board of Directors shall maintain up-to-date records showing: a) the name of each Person who is an Owner, the address of such Person, and the Lot which is owned by such Owner; b) the name of each Person or entity who is an Eligible Mortgagee, the address of such Person or entity, and the Lot which is encumbered by the Mortgage held by such Person or entity; and c) the name of each Person or entity who is an Eligible Mortgagee or Eligible Insurer or guarantor, the address of such Person or entity, and the Lot which is encumbered by the Mortgage insured or guaranteed by such Person or entity. In the event of any transfer of a fee or undivided fee interest in a Lot, either the transferor or transferee shall furnish the Board of Directors with evidence establishing that the transfer has occurred and that the Deed or other instrument accomplishing the transfer is of record in the Office of the Recorder of Davis County, Utah. The Board of Directors may for all purposes act and rely on the information concerning Lot ownership in its records or, at the option of the Board of Directors, the records of the Recorder of David County, Utah. The address of any Owner shall be deemed to be the address of the Lot owned by such Person, unless the Board of Directors is otherwise advised in writing.

9.6 Capital Improvements and Table. The Board of Directors shall prepare a table of Capital Improvements, which shall contain a list of foreseeable expenditures for Capital Improvements within the Common Areas. The table shall be included in every annual budget, and it shall be reviewed and updated at least annually, and reasonable reserve accounts shall be established by the Board of Directors for the replacement of capital assets as they age. Expenditures by the Association for Capital Improvements to the Project shall be subject to and governed by the following:

(a) Board of Directors Discretion/Expenditure Limit. So long as the line item in the annual Budget for such improvements will not be exceeded by more than ten percent (10%), Capital Improvements may be authorized by the Board of Directors alone.

(b) Owner Approval/Expenditure Limit. Any Capital Improvements, the cost of which will exceed the amount described in Section 9.6(a) must prior to the commencement of construction, be authorized by at least a Majority of the Owners.

9.7 Common Areas Expenses. Each Owner, upon receipt of a deed to a Lot, shall pay his Assessments subject to and in accordance with the restrictions set forth below; provided, however, anything to the contrary notwithstanding, the Declarant shall not be obligated to pay Assessments pertaining to a Lot until such time as any Dwelling on such Lot is substantially complete and a permanent certificate of occupancy has been issued or, in the alternative, the Declarant elects in writing to commence payment, whichever first occurs.

(a) Purpose of Common Areas Expenses. The Assessments provided for herein shall be used for the general purpose of operating the Project, promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and residents, including the maintenance of any real and personal property owned by the Association, and regulating the Project, all as may be more specifically authorized from time to time by the Board of Directors.

(b) Creation of Assessments. Each Owner, by acceptance of a deed for a Lot within the Project, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association in a timely manner all Assessments assessed.

(c) Budget. Not less than ten (10) days or more than thirty (30) days prior to the annual Owners' meeting of the Association, the Board of Directors shall prepare and deliver to the Owners a proposed budget which:

(i) Shall set forth an itemization of the anticipated Common Expenses for the twelve (12) month calendar year, commencing with the following January 1.

(ii) Shall be based upon advance estimates of cash requirements by the Board of Directors to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Areas, which estimates shall include but are not limited to expenses of management, grounds maintenance, taxes and special assessments, premiums for all insurance which the Board of Directors is required or permitted to maintain, repairs and maintenance of the Common Areas and replacement of those elements of the Common Areas that must be replaced on a periodic basis, wages for Board of Directors employees, legal and accounting assessments, any deficit remaining from a previous period, the creation of a reasonable contingency reserve, surplus or sinking fund, capital improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration.

(d) Uniform Rate of Assessment. The annual Assessments shall be allocated to the Owners equally and may be collected on an annual, semi-annual, quarterly or monthly basis, as determined by the Board of Directors.

(e) Approval of Budget and Assessments. The proposed budget and the annual Assessments shall become effective unless disapproved at the annual Owners' meeting by a vote of at least a Majority of the Owners or unless disapproved by a vote of at least a Majority of the Owners at a special meeting called for that purpose within 45 days after the date of the meeting at which the Board of Directors presented the proposed budget to the Owners. Notwithstanding the foregoing, however, if the membership disapproves the proposed budget and Assessments or the Board of Directors fails for any reason to establish the budget and Assessments for the succeeding year, then and until such time as a new budget and new Assessment schedule shall have been established, the budget and the Assessments that the Board of Directors last adopted that was not disapproved by at least a Majority of the Owners shall continue as the budget until and unless the Board of Directors presents another budget to the Owners and that budget is not disapproved.

(f) Payment of Assessments. The Board of Directors has the sole authority and discretion to determine how and when the Assessments are paid. The dates and manner of payment of the Assessments shall be determined by the Board of Directors.

(g) Personal Obligation of Owner. Owners are liable to pay all Assessments assessed, accruing interest, late charges and collection costs, including attorneys' fees. Provided, however, no Mortgagee or beneficiary under a first deed of trust (but not the seller under an executory contract of sale such as a uniform real estate contract, land sales contract, or other similar instrument), who obtains title to a Lot pursuant to the remedies provided in the Mortgage or trust deed shall be liable for unpaid Assessments which accrued prior to the acquisition of title. For purposes of this Section, the term "Owner" shall mean and refer jointly and severally to: (i) the Owner of both the legal and equitable interest in any Lot, (ii) the owner of record in the Official Records, and (iii) both the buyer and seller under any executory sales contract or other similar instrument.

(h) Reserve Accounts. The Board of Directors shall establish and maintain at least two (2) reserve accounts: one to pay for unexpected operating expenses and the other to pay for Capital Improvements (the Reserve Fund). The reserve accounts shall be funded out of Assessments (as reasonably determined by the Board).

(i) Acceleration. Assessments shall be paid in the manner and on dates fixed by the Board of Directors who may, at its option and in its sole discretion, elect to accelerate the entire annual Assessment for delinquent Owners. If, however, the Assessment is accelerated and an Owner subsequently files bankruptcy or the Board of Directors otherwise decides acceleration is not in its best interest, the Board of Directors, at its option and in its sole discretion, may elect to decelerate the obligation.

(j) Statement of Assessments Due. Upon written request, the Board of Directors shall furnish to any Owner a statement of Assessments due, if any, on his Lot. Failure to provide the certificate within ten (10) days after a written request, shall be deemed conclusive evidence that all Assessments are paid current. The Association may require the advance payment of a processing charge not to exceed \$10.00 for the issuance of such certificate.

(k) Superiority of Assessments. All Assessments and liens created to secure the obligation to pay Assessments are superior to any homestead exemptions to which an Owner may be entitled.

(l) Suspension of Right to Vote for Non-Payment. At the discretion of the Board of Directors, the right of an Owner to vote on issues concerning the Association may be suspended if the Owner is delinquent in the payment of his Assessments, and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

(m) Failure to Assess. The omission or failure of the Board of Directors to fix the Assessment amounts or rates or to deliver or mail to each Owner an Assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner shall continue to pay annual Assessments on the same basis as for the last year for which an Assessment was made until a new Assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

(n) Equitable Changes. If the aggregate of all monthly payments on all of the Lots is too large or too small as a result of unanticipated income or expenses, the Board may from time to time effect an equitable change in the amount of said payments. Owners shall be given at least thirty (30) days prior written notice of any changes.

(o) Re-assessments. The Board may exercise its business judgment and if, because of bankruptcies and/or foreclosures, the charge-offs and delinquencies in any given year create too great a shortfall in the operating account and budget, then the Board, rather than deplete the contingency reserve account, may elect to reassess among all of the Owners based upon their percentages of ownership interest an amount equal to the total of unpaid or uncollected assessments. Owners shall be given at least thirty (30) days written notice of any such reassessment.

(p) Reserve Fund.

(i) The Association shall maintain an adequate and reasonable Reserve Fund for maintenance, repairs and replacement of the Common Areas that are to be maintained by the Association that must be replaced on a periodic basis, and the Reserve Fund shall be funded from the Assessments (in amounts to be reasonably determined by the Board in accordance with the terms hereof and applicable law). The Reserve Fund shall be maintained by the Association in a

bank account separate from the bank account maintained by the Association for the other funds of the Association.

(ii) Pursuant to Section 57-8a-211 of the Utah Code, as may be amended from time to time, the Board shall cause a Reserve Fund analysis to be conducted on a periodic basis. After the initial Reserve Fund analysis is conducted, the Board shall review and, if necessary, update a previously conducted Reserve Fund analysis on a periodic basis. The Board may conduct a Reserve Fund analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the Reserve Fund analysis. The Board may not use money in the Reserve Fund: (a) for daily maintenance expenses, unless a majority of the Members vote to approve the use of the Reserve Fund money for that purpose; or (b) for any purpose other than the purpose for which the Reserve Fund was established. The foregoing may not be construed to limit the Board from prudently investing money in the Reserve Fund, subject to any investment constraints imposed by the Articles of Incorporation or Bylaws. The Association shall: (a) annually, at the annual meeting of Owners or at a special meeting of Owners: (i) present any Reserve Fund analysis conducted; and (ii) provide an opportunity for Owners to discuss reserves and to vote on whether to fund a Reserve Fund and, if so, how to fund it and in what amount; and (b) prepare and keep minutes of each such meeting held and indicate in the minutes any decision relating to funding a Reserve Fund.

9.8 Special Assessments. In addition to the other Assessments authorized herein, the Association may levy special assessments in any year, subject to the following:

(a) Board of Directors Based Assessment. So long as the special assessment does not exceed the sum of One Hundred Dollars (\$100.00) (the "**Special Assessment Limit**") per Lot in any one fiscal year, the Board of Directors may impose the special assessment without any additional approval.

(b) Association Approval. Any special assessment which would exceed the Special Assessment Limit shall be effective only if approved by a Majority of the Members of the Association. The Board of Directors in its discretion may allow any Special Assessment to be paid in installments.

9.9 Specific Assessments. The Board of Directors shall also have the power specifically to assess the Owners in a particular area pursuant to this Section ("**Specific Assessment**") as, in its discretion, it shall deem necessary or appropriate, subject to the following:

(a) No Obligation or Waiver. Failure of the Board of Directors to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board of Director's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board of Directors has not previously exercised its authority under this Section.



(b) Enabling Power. The Board of Directors may specifically assess an Owner in a particular area in the manner set forth below; provided, however, the Specific Assessment is not for any maintenance, repair or replacement ordinarily required by this Declaration, and the Owner has the choice to accept or reject the benefit:

(i) If the expense benefits less than all of the Lots, then those Lots benefited may be specifically assessed, and the Specific Assessment shall be equitably apportioned among those Lots according to the benefit received.

(ii) If the expense benefits all Lots, but does not provide an equal benefit to all Lots, then all Lots shall be specifically assessed, but the Specific Assessment shall be equitably apportioned among all Lots according to the benefit received.

9.10 Individual Assessments. Individual Assessments shall be levied by the Board of Directors against a Lot and its Owner to reimburse the Association for:

(a) Fines. Fines levied and costs incurred in enforcing Project Documents;

(b) Maintenance and Repairs. Costs associated with the maintenance, repair or replacement of that for which the Owner is responsible;

(c) Other. Any other charge, fee, dues, expense, or cost designated as an Individual Assessment in the Project Documents; and

(d) Collection Costs. Attorneys' fees, interest, and other charges relating thereto as provided in this Declaration.

9.11 Reinvestment Fee shall mean the charge which may be levied and assessed by the Association in the event of a Transfer of a Lot, pursuant to Section 9.11 hereof. The Reinvestment Fee assessed, if any, shall be in compliance with Section 57-1-46 of the Utah Code, as such Section may be amended, supplemented or replaced from time to time.

(a) Upon the occurrence of any sale, transfer or conveyance (as applicable, a "Transfer") of any Lot, the party receiving title to the Lot (the "Transferee") shall pay to the Association a "Reinvestment Fee" in an amount to be established by the Board from time to time, provided that in no event shall the Reinvestment Fee exceed the lesser of (a) 0.5% of the value of the applicable Lot, or (b) the maximum rate permitted by applicable law.

(b) Notwithstanding anything to the contrary contained in this Section 9.11, the Association shall not levy or collect a Reinvestment Fee for any of the Transfers described below:

(i) Any Transfer to (a) the United States or any agency or instrumentality thereof, or (b) the State of Utah or any county, city, municipality, district or other political subdivision of the State of Utah.

(ii) Any Transfer to the Association or its successors.

(iii) Any Transfer, whether outright or in trust, that is for the benefit of the Transferor or the Transferor's relatives, but only if the consideration for the Transfer is no greater than 10 percent of the value of the Lot transferred.

(iv) Any Transfer or change of interest by reason of death, whether provided for in a will, trust or decree of distribution, except for a sale of a site by the estate of an Owner.

(v) Any Transfer made by a Person owning a Lot or portion thereof to a legal entity or trust owned or controlled by the Transferor.

(vi) Any Transfer made solely for the purpose of confirming, correcting, modifying or supplementing a Transfer previously recorded, making minor boundary adjustments, removing title defects or encumbrances affecting the title to such Lot, or granting easements, rights of way or licenses, and any exchange of Lots between Declarant and any original purchaser from Declarant of the one or more Lots being Transferred to Declarant in such exchange.

(vii) Any lease of any Lot or portion thereof for a period of less than thirty years

(viii) Any Transfer to secure a debt or other obligation or to release any Lot that is encumbered as security for a debt or other obligation.

(ix) Any Transfer in connection with (a) the foreclosure of a deed of trust or mortgage, or (b) a deed given in lieu of foreclosure.

9.12 Collection of Assessments. All Assessments must be paid in a timely manner and shall be collected as follows:

(a) Time is of the Essence. Time is of the essence, and all Assessments shall be paid promptly when due.

(b) Delinquent Assessments. Any Assessments which are not paid when due are delinquent (hereinafter, a "**Delinquent Assessment**"), and a lien against the Lot affected shall attach automatically, regardless of whether a notice of lien is recorded.

(c) Late Charges and Accruing Interest. Any Assessments delinquent for a period of more than ten (10) days shall incur a late charge of Twenty-Five Dollars (\$25.00) or five percent (5%) of the delinquent amount, whichever is greater. Interest at the rate of one and 1/2 percent (1.5%) per month shall accrue on all delinquent accounts. The Board of Directors may, in its sole discretion, change the amount of the late charge or waive the late charge and accruing interest, but is not required to do so.

(d) Notice of Delinquency. The Association shall give a notice of delinquency to any Owner who has not paid any Assessments in a timely manner.

(e) Notice of Lien. If any Assessment in a notice of lien evidencing the unpaid amounts, accruing interest, late charges, attorneys' fees, the cost of a foreclosure or abstractor's report, and any other Additional Charges permitted by law should be filed in the Official Records, then the lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Owners. It may be executed by the Association's attorney, manager, Board of Directors member or other designated agent.

(f) Foreclosure of Lien and/or Collection Action. If any Assessments remain unpaid, the Association may, as determined by the Board of Directors, institute suit to collect the amounts due and/or to foreclose the lien.

(g) Personal Obligation. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against him or her personally for the collection of the charges as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, deeds of trust or encumbrances may be foreclosed.

(h) No Waiver. No Owner may waive or otherwise exempt himself or herself from liability for the Assessments provided for herein by the non-use of Common Areas or by the abandonment of his Lot.

(i) Duty to Pay Independent. No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Board of Directors to take some action or to perform some function required to be taken or performed by the Association or Board of Directors under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with an order or directive of any municipal or other governmental authority. The obligation to pay Assessments shall be a separate and independent covenant on the part of each Owner.

(j) Application of Payments. All payments shall be applied as follows: Additional Charges, Delinquent Assessments and current Assessments.

(k) Foreclosure of Lien as Mortgage or Trust Deed. The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's interest therein by the Board of Directors. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. This includes judicial foreclosure (through the courts) or nonjudicial foreclosure (outside the courts) provided the prior notice of intent required by statute is sent. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report and reasonable attorneys' fees. The Board of Directors may bid for the Lot at foreclosure or other sale and hold, lease, mortgage, or convey the same.

(l) Appointment of Trustee. Declarant hereby conveys and warrants, pursuant to Sections 57-1-20, 57-8a-302 and 57-8a-402 of the Utah Code, to Cottonwood Title

Insurance Agency, Inc., a Utah corporation, as trustee, with power of sale, all of the Lots within the Project and all of the Improvements to the Lots within the Project for the purpose of securing payment of all of the Assessments under the terms of this Declaration. Each Owner, by accepting a deed to the Lot, also hereby conveys and warrants to Cottonwood Title Insurance Agency, Inc., a Utah corporation, as trustee, with power of sale, each Lot acquired by such Owner and all of the Improvements thereon for the purpose of securing payment of all of the Assessments under the terms of this Declaration and such Owner's performance of such Owner's obligations set forth herein.

(m) Attorney in Fact. To the extent not prohibited by the Utah Community Association Act set forth in Section 57-8a-101 et seq. of the Utah Code, as amended from time to time, each Owner by accepting a deed to a Lot hereby irrevocably appoints the Association as his attorney in fact to collect rent from any Person renting his Lot, if the Lot is rented and if the Owner is delinquent in his Assessments. Rent due shall be paid directly to the Association, upon written demand, until such time as the Owner's Assessments are current; and the Owner shall credit the Renter, against rent due, for the amount of money paid to the Association.

9.13 Liability of Board of Directors. The Association shall indemnify every officer and member of the Board of Directors against any and all expenses, including but not limited to attorneys' fees reasonably incurred by or imposed upon any officer or member of the Board of Directors in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer or member of the Board of Directors. The officers and members of the Board of Directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and members of the Board of Directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and the Association shall indemnify, defend and hold harmless each such officer and member of the Board of Directors from and against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or member of the Board of Directors, or former officer or member of the Board of Directors, may be entitled. The Association shall, as a common expense, maintain adequate general liability and officer's and director's insurance coverage to fund this obligation, if such insurance is reasonably available.

9.14 Insurance. The Board of Directors shall at all times purchase, maintain in force, and pay the premium for insurance on all Common Areas within the Project satisfying the insurance requirements set forth in Sections 57-8a-401 through 57-8a-407 of the Utah Code, as such Sections may be amended, supplemented or replaced from time to time (the "Statutory Insurance Requirements").

9.15 Amendment.

(a) By Owners. Except as provided elsewhere in this Declaration, the affirmative vote of at least sixty seven percent (67%) of the Owners shall be required and shall be sufficient to amend the Declaration. Any amendment so authorized shall be

accomplished through the recordation of an instrument executed by the Association. In such instrument the Association shall certify that the vote required by this Section for amendment has occurred, and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained.

(b) By Declarant. Notwithstanding anything contained in this Declaration to the contrary, this Declaration may be amended unilaterally at any time and from time to time by Declarant: (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) to correct typographical errors or inadvertent omissions, or to make technical corrections to fix mistakes or remove/clarify ambiguities; or (c) if such amendment is reasonably necessary to enable a title insurance company to issue title insurance coverage with respect to the Project or any Lot, or to satisfy the conditions of any state or federally chartered lending institution in order for such lender to lend funds upon the security of any Lot.

(c) Declarant's Right to Amend Unilaterally Prior to Termination of Declarant's Right to Control. Prior to the expiration of the Class B Control Period, Declarant may unilaterally amend this Declaration for any purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Owner hereunder, nor shall it adversely affect title to any Lot without the consent of the affected Owner.

(d) Plat. Notwithstanding anything contained in this Declaration to the contrary, Declarant reserves the right to unilaterally amend the Plat at any time and from time to time, if such amendment is deemed by Declarant necessary to make technical corrections, to satisfy the requirements of any governmental authority, to correct mistakes or remove/clarify ambiguities on the Plat.

9.16 Notice and Hearing. If an Owner or resident is charged with a material violation of the Project Documents, then:

(a) Notice. Written notice specifying the nature of the violation (and providing any other appropriate information) and stating the time, date and place that the Member will have an opportunity to be heard by the Board of Directors shall be given to the Member at least fifteen (15) days prior to the date set for the hearing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after it has been deposited in the United States mail, first class postage prepaid, addressed to the Member at the address given by the Member to the Board of Directors for the purpose of service of notice or to the address of the Member's Lot if no other address has been provided. Any address may be changed from time to time by a Member giving written notice to the Board of Directors.

(b) Costs and Assessments. If the violation, or the failure to correct or remedy a violation, results or may result in the expenditure of funds, the notice shall also state that the Board of Directors may vote to assess the adverse party, levy a fine, or impose other sanctions if the Board of Directors finds that a violation has occurred.

(c) Final Determination. After the hearing has taken place, the Board of Directors shall (1) determine whether a violation has occurred and, if so, may impose a fine or issue sanctions which shall become effective not less than five (5) days after the date of the hearing; or (2) take such other action as may be appropriate. The determination of the Board of Directors shall be final. However, nothing herein shall be construed to prevent the Board of Directors from making any emergency repairs or taking any other emergency action it deems necessary and subsequently providing notice and an opportunity for a hearing.

## **ARTICLE 10** **GENERAL PROVISIONS**

The covenants, conditions, and restrictions contained in this Declaration may be enforced as follows:

10.1 Violation Constitutes Nuisance. The violation of the provisions of this Declaration is deemed to be a nuisance, and the Owner of the Property on which the violation occurs is responsible for the removal or abatement of the nuisance.

### 10.2 Remedies.

(a) Any single or continuing violation of the covenants contained in this Declaration may be enjoined in an action brought by the Declarant (for so long as the Declarant is the Owner of any Lot), by any other Owner, or by the Board in its own name. In any action brought to enforce these covenants, the prevailing party shall be entitled to recover as part of its judgment all of the reasonable costs of enforcement, including attorneys' fees and costs of litigation.

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

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

(d) The delay or failure by anyone to take enforcement action with respect to any violation of this Declaration shall not be construed as a waiver of the covenants contained in this Declaration with respect to such violation or with respect to any other violations.

10.3 Pre-Litigation Requirements. Notwithstanding any other provision to the contrary in this Declaration, the Association shall not file, commence or maintain any lawsuits, actions or legal proceedings against Declarant, the individual managers, owners, members or officers of Declarant, Declarant's contractors, or any other person or entity involved in the construction of the Units unless and until all of the following requirements have been satisfied:

(a) The Association has obtained a legal opinion from an attorney licensed to practice law in Utah having at least ten (10) years of experience in litigation practice, with the legal opinion providing in substance the following: (i) a description of the factual allegations and legal claims to be asserted in the action; (ii) an analysis of the facts and legal claims explaining why it would be in the best interests of the Association to file and pursue such action, taking into account the anticipated costs and expenses of litigation, the likelihood of success on the merits of the claims, and the likelihood of recovery if a favorable judgment is obtained by the Association; and (iii) providing a budget of the estimated amounts of legal fees, costs, expert witness fees and other expenses likely to be incurred in connection with such action (the "Litigation Budget");

(b) A copy of the opinion letter described in subsection 10.3(a) above has been provided to all Owners, and, after the Owners have had a reasonable period of time to review the opinion letter, the decision to file the subject action has been approved by Owners (excluding Declarant) who collectively hold at least sixty percent (60%) of the total votes in the Association; and

(c) The Association has collected funds from the Owners, by special assessment or otherwise, equal to at least one-half (1/2) of the Litigation Budget as set forth in the opinion letter obtained pursuant to subsection 10.3(a) above.

The purposes of these requirements include the following: (i) to minimize the risks to the Association of pursuing litigation involving claims that lack merit; (ii) to minimize the risks of becoming involved in litigation that is unlikely to be successful or, even if successful, will not result in meaningful recovery sufficient to justify the costs and expenses of litigation; and (iii) to avoid becoming involved in litigation without sufficient support from the members of the Association financially and otherwise.

If any claims or actions falling within the scope of this Section 10.3 are filed without satisfying all of the requirements set forth above, such claims/action shall be dismissed without prejudice and shall not be re-filed unless and until all such requirements have been satisfied. In any action to enforce the requirements of this Section 10.3, the prevailing party shall be entitled to an award of reasonable attorney fees and costs. For purposes of clarity, this Section 10.3 and the requirements set forth herein shall not apply to any actions or legal proceedings filed by the Association to recover payment of any annual assessments, special assessments, or other amounts required to be paid by Owners to the Association under this Declaration, nor does this Section 10.3 apply to claims or actions that individual Owners may file relating solely to their own Units. Individual Owners, however, shall not be allowed to file or pursue any actions or claims belonging to other Owners or to the Association.

10.4 Severability. Each of the covenants, conditions, restrictions and provisions contained in this Declaration shall be independent of the others, and in the event that any covenant, condition, restriction or provision of this Declaration is found to be invalid, unenforceable or illegal by a court of competent jurisdiction, the remaining covenants, conditions, restrictions and provisions of this Declaration shall remain in full force and effect.

10.5 Limited Liability. Neither the Declarant, the Board or its individual members, nor any Owner shall have personal liability to any other Owner for actions or inactions taken pursuant to the terms of this Declaration, provided that any such actions or inactions are the result of the good faith exercise of their judgment or authority under this Declaration and without malice.

10.6 Term of Declaration. The term of this Declaration shall be perpetual.

10.7 Amendment, Mortgagee Not Bound. At any time while this Declaration is in effect, the Owners of sixty percent (60%) of the Lots subject to this Declaration may amend the provisions of this Declaration, provided that if the Declarant owns or controls an interest in all or a portion of the Additional Land at the time of the proposed amendment, the consent of the Declarant will be required. Any such consent shall be in the exclusive judgment of the Declarant. Any amendment must be in writing and must be properly recorded in the Office of the Recorder of Davis County, Utah. No amendment will be binding upon the holder of any mortgage or trust deed on any Lot which mortgage or trust deed is of record at the time of the amendment, unless the mortgage or trust deed holder joins in the amendment. This Declaration may not be repealed by amendment.

10.8 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 provisions of this Declaration against such Owner's Lot, whether or not there is any reference to this Declaration in the instrument by which such Owner acquires an interest in any Lot.

10.9 Reservation of Easements. Easements affecting the Lots within the Subdivision are reserved as shown on the Plat for utility installation and maintenance, drainage and other purposes as designated on the Plat.

10.10 Notices. All notices under this Declaration are deemed effective 72 hours after mailing, whether delivery is proved or not, provided that any mailed notice must have postage pre-paid and be sent to the last known address of the party to receive notice. Notices delivered by hand are effective upon delivery.

10.11 Liberal Interpretation. The provisions of this Declaration shall be interpreted liberally to further the goal of creating a uniform plan for the development of the Subdivision. Section headings are inserted for convenience only and shall not be considered in the interpretation of the provisions. The singular shall include the plural, and the plural shall include the singular. Any reference to gender is intended to include masculine, feminine and neuter as well.

10.12 Expansion of Project. Declarant may elect to submit to this Declaration certain real property (the "**Additional Land**") which adjoins or is in the vicinity of the Subdivision, which Additional Land is identified on the attached Exhibit "C." The Declarant may subdivide all or part of the Additional Land and may then add it to the Subdivision subject to this Declaration. Any of the Additional Land may be subjected to this Declaration and become a part of the Subdivision by recording a subdivision plat describing such Additional Land and the Lots



created on it, and a supplemental declaration stating that such Additional Land has been added to the Subdivision and is subject to these this Declaration. The terms and conditions of any supplement declaration recorded with respect to any Additional Land which is added to the Subdivision may vary, at the sole discretion of the Declarant, from the terms and conditions of this Declaration. It is possible that the Lot sizes, with respect to such Additional Land added to the Subdivision, may vary from the sizes of the Lots shown on the initial Plat for the Subdivision. The overall size of the ultimate project may vary, with some, but not all, of the Additional Land being added to the Subdivision.

10.13 No Obligation to Expand. The Declarant reserves the right to add some or all of the Additional Land to the Subdivision, but there is no obligation to do so. Any Additional Land, if not added to the Subdivision, may be developed in a manner that is different from the development plan utilized for the Subdivision.

10.14 Expansion in Phases. The Declarant may exercise its right to expand the Subdivision in one or more phases. The addition of some of the Additional Land does not obligate the Declarant to add the balance of the Additional Land to the Subdivision.

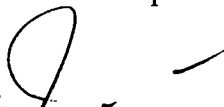
10.15 No Public Right or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any part of the Subdivision to the public or for any public use, except as specifically shown on the Plat

10.16 Enforcement. The Board may exercise its business judgment in deciding whether to impose sanctions or pursue legal action against violators and shall consider common concerns when taking or deciding not to take formal action, such as a weak legal position, conflict with current law, technical violations, minor or collateral issue, and whether or not it is in Association's best interests to pursue the matter and, if so, to what extent.

EXECUTED the day and year first above written.

**DECLARANT:**

D.R. HORTON, INC.  
a Delaware corporation

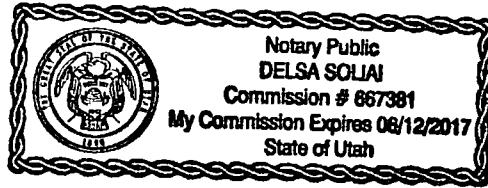
By:   
Name: Jonathan S. Thornley  
Title: Division CFO

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 2nd day of JULY,  
2014, by Jonathan S. Thornley in his capacity as the  
DIVISION CO of D.R. Horton, Inc., a Delaware corporation.

Delisa Solari  
NOTARY PUBLIC  
Residing at: Utah County

My Commission Expires:  
06/12/2017



**EXHIBIT A  
TO  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
EVERGREEN FARMS PHASE 1 SUBDIVISION**

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**Legal Description of Land**

That certain real property located in Layton City, Davis County, Utah more particularly described as follows:

**EVERGREEN FARMS PHASE 1 BOUNDARY DESCRIPTION**

PART OF THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN. BEGINNING AT A POINT LOCATED NORTH 89°57'58" EAST 250.82 FEET ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER FROM THE NORTH WEST CORNER OF SAID SOUTHWEST QUARTER WHICH IS MARKED BY A DAVIS COUNTY BRASS CAP MONUMENT. RUNNING THENCE:

NORTH 89°57'58" E 479.64 FEET ALONG THE NORTH LINE OF SAID SOUTHWEST QUARTER TO THE NORTHWEST CORNER OF UTAH POWER AND LIGHT PROPERTY THENCE; SOUTH 36°25'35" EAST 445.77 FEET ALONG WESTERLY LINE OF ROCKY MOUNTAIN POWER PROPERTY THENCE; SOUTH 53°34'25" WEST 113.00 FEET THENCE; SOUTH 89°44'47" WEST 71.85 FEET THENCE; SOUTH 53°34'25" WEST 113.00 FEET THENCE; SOUTH 56°57'47" WEST 209.23 FEET THENCE; SOUTH 37°29'23" WEST 103.14 FEET THENCE; SOUTH 01°46'41" WEST 283.36 FEET THENCE; SOUTH 00°02'39" EAST 105.00 FEET THENCE; SOUTH 00°11'37" WEST 58.00 FEET THENCE; SOUTH 00°02'39" EAST 185.00 FEET THENCE; SOUTH 89°57'21" WEST 498.77 FEET TO THE WEST LINE OF SAID SOUTHWEST QUARTER THENCE; NORTH 00°11'08" EAST 1190.25 FEET ALONG THE WEST LINE OF SAID SOUTHWEST QUARTER AND THE CENTERLINE OF 2200 WEST; THENCE; NORTH 89°57'38" EAST 250.80 FEET THENCE; NORTH 00°11'08" EAST 130.00 FEET TO THE POINT OF BEGINNING.

CONTAINS: 828,094 SQ. FT. 19.01 ACRES

**EXHIBIT B  
TO  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
EVERGREEN FARMS PHASE 1 SUBDIVISION**

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**BYLAWS OF EVERGREEN FARMS PHASE 1 SUBDIVISION  
OWNERS ASSOCIATION, INC.**

**A UTAH NONPROFIT CORPORATION**

Pursuant to the provisions of the Utah Revised Nonprofit Corporation Act (the “Act”), the following are the Bylaws of the Association, which is obligated to operate, manage and regulate the Project. Unless otherwise defined below, the capitalized terms set forth in these Bylaws shall have the same meanings ascribed to them in the Declaration of Covenants, Conditions and Restrictions for Evergreen Farms Phase 1 Subdivision (the “Declaration”).

**ARTICLE 1  
PLAN OF LOT OWNERSHIP AND INCORPORATION**

1.1 Submission. These Bylaws are referred to and incorporated by reference in the Declaration. The Project is located in the Layton City, Davis County, State of Utah. These Bylaws shall govern the administration of the Project and the Association.

1.2 Organizational Form. If the Association is incorporated, then these Bylaws shall also function as the bylaws of the corporation.

1.3 Bylaws Applicability. All present and future Owners, residents, occupants, tenants, renters, lessees, and their guests, licenses, invitees, servants, agents or employees, and any other person or persons who shall be permitted entrance to the Project shall be subject to and shall abide by these Bylaws.

**ARTICLE 2  
ASSOCIATION**

2.1 Composition. The Association is a mandatory association consisting of all Owners of Lots within Evergreen Farms Phase 1 Subdivision.

2.2 Voting. Each Lot shall have one (1) vote. Multiple Owners must elect a representative to cast their vote. A vote cast, without objection, by an apparent representative of multiple owners shall be binding upon the parties. Organizational Owners may vote by means of an authorized agent.

2.3 Place of Meeting. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place as may be designated by the Board of Directors from time to time and stated in the notice of meeting.

2.4 Annual Meeting. Unless otherwise designated by the Board of Directors, the annual meeting of the Association shall be held at 7:00 p.m. on the first Tuesday of October of each year, or at such other suitable date as may be designated by the Board of Directors from time to time. When such day is a legal holiday, the meeting shall occur on the first business day thereafter. The place of meeting shall be the principal office of the Association unless otherwise specified in the notice of meeting.

2.5 Special Meetings. The President of the Association, or a Majority of the members of the Board of Directors, may call a special meeting of the Association, or if the President of the Association is so directed by resolution of the Board of Directors or upon receipt of a petition signed and presented to the Secretary of the Board of Directors by at least twenty five percent (25%) of the members of the Association. The notice of any special meeting shall state the date, time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

2.6 Notice of Meeting. It shall be the duty of the Secretary to hand deliver or mail, by regular U.S. mail postage prepaid, a notice of: (a) each annual meeting of the Owners not less than ten (10) and not more than thirty (30) days in advance of such meeting; and (b) each special meeting of the Owners. The notice shall be delivered at least three (3) days and not more than twenty (20) days in advance of such meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Owner of record, at the address of his respective Lot or such other address as each Owner may have designated by notice in writing to the Secretary. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.

2.7 Voting Requirements. An Owner shall be deemed to be in "good standing" and "entitled to vote" at any annual meeting or at any special meeting of the Association, if, and only if, he shall be in full compliance with all of the terms, covenants, and conditions of the Project Documents, and shall have fully paid all Assessments and/or Additional Charges due.

2.8 Proxies. The votes appertaining to any Lot may be cast pursuant to a proxy or proxies fully executed by or on behalf of the Owner, or in cases where the Owner is more than one person, by or on behalf of all such persons. No such proxy shall be revocable except by actual written notice to the person presiding over the meeting, by the Owner or Owners that it be revoked. Any proxy shall be void if it is not dated, if it purports to be revocable without notice, or if it is not signed by the Owner or Owners as the case may be.

(a) Executive Session. The Board of Directors may, with approval of a majority of a quorum, adjourn a meeting and reconvene in an executive session to discuss and vote upon private, confidential, sensitive or personnel matters, litigation, and orders of business of a similar nature. The nature of any and all business to be considered in an executive session shall first be announced in open session.

(b) Action Without a Formal Meeting. Any action to be taken at a meeting of the Board of Directors may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by all members of the Board of Directors.

**ARTICLE 3**  
**BOARD OF DIRECTORS**

3.1 Powers and Duties. The affairs and business of the Association shall be managed by the Board of Directors in accordance with the Declaration. The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Declaration and may do all such acts and things appropriate and necessary to operate, manage, maintain, control and regulate the Project. The Board of Directors shall have the power from time to time to adopt any rules and regulations deemed proper for the exercise of its management powers. The Board of Directors may delegate its authority to a manager or managers.

3.2 Composition of Board of Directors. The Board of Directors shall be composed of at least three (3) but no more than nine (9) members. Only individual Owners or officers or agents of organizational Owners shall be eligible for Board of Directors membership.

3.3 Election and Terms of Office of the Board of Directors. The election and terms of the Board of Directors shall be carried out in accordance with the provisions of the Declaration. The term of office of membership on the Board of Directors shall be two (2) years. At the expiration of the member's term, a successor shall be elected.

3.4 Initial Meeting. The first meeting of the members of the Board of Directors shall be immediately following the annual meeting of the Association, or at such other time and place designated by the Board of Directors.

3.5 Regular Meetings. Regular meetings of the Board of Directors shall be held from time to time and at such time and place as shall be determined by a Majority of the members of the Board of Directors.

3.6 Special Meetings. Special meetings of the Board of Directors may be called by the President, Vice-President or a Majority of the members on at least forty-eight (48) hours prior notice to each member. Such notice shall be given personally, by regular U.S. mail postage prepaid, or by telephone, and such notice shall state the time, place and purpose of the meeting. Any meeting attended by all members of the Board of Directors shall be valid for any and all purposes.

3.7 Waiver of Notice. Before or at any meeting of the Board of Directors, any member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any meeting of the Board of Directors shall constitute a waiver of notice. If all the members are present at any meeting of the Board of Directors, no notice shall be required, and any business may be transacted at such meeting.

3.8 Board of Director's Quorum. At all meetings of the Board of Directors, a Majority of the members then in office shall constitute a quorum for the transaction of business, and the acts of the Majority of all the Board of Directors members present at a meeting at which a quorum is present shall be deemed to be the acts of the Board of Directors. If, at any meeting of the Board of Directors, there is less than a quorum present, the Majority of those present may

adjourn the meeting from time to time but for no longer than two days. At any such rescheduled meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

3.9 Vacancies. Vacancies in the Board of Directors caused by any reason other than removal of a member by a vote of the Association shall be filled by vote of the Majority of the remaining members of the Board of Directors at a special meeting of the Board of Directors held for that purpose promptly after the occurrence of any such vacancy, even though the total members remaining may constitute less than a quorum of the Board of Directors; and each person so elected shall be a member for the remainder of the term of the member so replaced and until a successor is elected at the next annual meeting of the Association. A vacancy created by the removal of a member by a vote of the Association shall be filled by the election and vote of the Association.

3.10 Removal of Board of Directors Member. A member may be removed with or without cause, and his successor elected, at any duly called regular or special meeting of the Association at which a quorum of the Association is present, by an affirmative vote of a Majority of the members of the Association. Any member whose removal has been proposed by the Owners shall be given at least thirty (30) days' notice of the calling of the meeting and the purpose thereof and an opportunity to be heard at the meeting. Any Board of Directors member who fails on three successive occasions to attend Board of Directors meetings (whether regular or special) or who has failed to attend at least twenty-five percent (25%) of all Board of Directors meetings (whether regular or special) held during any twelve (12) month period shall automatically forfeit his seat. In such cases, the remaining Board of Directors members shall elect a replacement to sit on the Board of Directors until the next meeting of the Association.

3.11 Conduct of Meetings. The President shall preside over all meetings of the Board of Directors, and the Secretary shall keep a Minute Book of the Board of Directors recording therein all resolutions adopted by the Board of Directors and a record of all transactions and proceedings occurring at such meetings.

3.12 Report of Board of Directors. The Board of Directors shall present at each annual meeting, and when called for by vote of the Association at any special meeting of the Association, a full and clear statement of the business and condition of the Association.

#### **ARTICLE 4**

#### **OFFICERS**

4.1 Designation. The principal officers of the Association shall be a President, a Vice-President, and a Secretary/Treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint assistant secretaries and such other officers as in its judgment may be necessary. All officers shall also be members of the Board of Directors. Two (2) or more offices may be held by the same person, except that the President shall not hold any other office.

4.2 Election of Officers. The officers of the Association shall be elected annually by the Board of Directors at the annual meeting of the Board of Directors and shall hold office at the

pleasure of the Board of Directors. Any vacancy in an office shall be filled by the Board of Directors at a regular meeting or special meeting called for such purpose.

4.3 Removal of Officers. The officers shall hold office until their respective successors are chosen and qualify in their stead. Any officer elected or appointed by the Board of Directors may be removed, with or without cause, at any time by the affirmative vote of a majority of the Board of Directors, and his successor may be elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purposes. Provided, however, if a member of the Board of Directors is removed as an officer, he shall continue to be a member of the Board of Directors.

4.4 President. The President shall be the chief executive officer; he shall preside at meetings of the Association and the Board of Directors and shall be an ex-official member of all committees; he shall have general and active management of the business of the Board of Directors and shall see that all orders and resolutions of the Board of Directors are carried into effect. He shall have all of the general powers and duties which are usually vested in or incident to the use of president of a stock corporation organized under the laws of the State of Utah.

4.5 Vice-President. The Vice-President shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Board of Directors or the President shall prescribe. If neither the President nor the Vice-President is able to act, the Board of Directors shall appoint a member of the Board of Directors to do so on an interim basis.

4.6 Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of the Association and record all votes and the minutes of all proceedings in a book to be kept by him for that purpose and shall perform like duties for committees when required. He shall give, or cause to be given, notices for all meetings of the Association and the Board of Directors and shall perform such other duties as may be prescribed by the Board of Directors. The Secretary shall compile and keep current at the principal office of the Association, a complete list of the Owners and their last known post office addresses. This list shall be open to inspection by Owners and other persons lawfully entitled to inspect the same, at reasonable hours during regular business days. The Secretary shall also keep current and retain custody of the Minute Book of the Association, containing the minutes of all annual and special meetings of the Association and all sessions of the Board of Directors including resolutions.

4.7 Treasurer. The Treasurer shall have custody of all funds and securities that are not under the control of the Manager, and with the assistance of the Manager shall keep full and accurate records of receipts and disbursements, shall prepare all required financial data, and shall deposit all monies and other valuable effects in such federally insured depositories as may be designated by the Board of Directors. He shall disburse funds as ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and members, at the regular meetings of the Board of Directors, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Project.



**ARTICLE 5**  
**FISCAL YEAR**

The fiscal year of the Association shall be the calendar year consisting of the twelve (12) month period commencing on January 1 of each year terminating on December 31 of the same year. The fiscal year herein established shall be subject to change by the Board of Directors should it be deemed advisable or in the best interests of the Association.

**ARTICLE 6**  
**AMENDMENT TO BYLAWS**

6.1 Amendment.

(a) By the Board. The Board may amend the Bylaws at any time to add, change, or delete a provision, unless:

(i) this Section or the Articles of Incorporation or Bylaws:

(A) reserve the power exclusively to the Members in whole or part; or

(B) otherwise prohibit the Board from amending the Bylaws to add, change, or delete a provision; or

(ii) it would result in a change of the rights, privileges, preferences, restrictions, or conditions of a membership class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class.

(b) By the Members.

(i) Unless otherwise provided by the Bylaws, the Members may amend the Bylaws even though the Bylaws may also be amended by the Board.

(ii) Amendments to the Bylaws by Members shall be made in accordance with Sections 16-6a-1003 and 16-6a-1004 of the Utah Code Annotated as if each reference in Sections 16-6a-1003 and 16-6a-1004, as amended or supplemented, to the Article of Incorporation was a reference to the Bylaws.

6.2 Recording. An amendment to these Bylaws shall become effective immediately upon recordation in the Office of the Recorder of Davis County, Utah.

**ARTICLE 7**  
**NOTICE**

7.1 Fair and Reasonable Notice. Notice given in accordance with the provisions of the Act shall be considered fair and reasonable notice. The Association may give notice by text

message, e-mail, text message, the Association website, or other electronic notice; provided, however an Owner may by making a written demand to the Association require written notice. If such written demand is made, then all notices, demands, bills, statements, or other communications provided for or required under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or sent by regular U.S. Mail postage prepaid, a) if to an owner, at the address of his Lot and at such other address as the Owner may have designated by notice in writing to the Secretary; or b) if to the Board of Directors or the Manager, at the principal office of the Manager or at such other address as shall be designated by notice in writing to the Owners pursuant to this Section.

7.2 Waiver of Notice. Whenever any notice is required to be given by the Project Documents, a waiver thereof, in writing, signed by the person or persons entitled to such notice, whether signed before or after the time stated therein, shall be deemed equivalent thereto.

## **ARTICLE 8**

### **COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS**

8.1 Compliance. These Bylaws are set forth in compliance with the requirements of the Declaration.

8.2 Conflict. These Bylaws are subordinate to and subject to all provisions of the Declaration. All of the terms hereof, except where clearly repugnant to the context, shall have the same meaning as they are defined to have in the Declaration. In the event of any conflict between these Bylaws and the Declaration, the provisions of the Declaration shall control.

8.3 Severability. If any provision of these Bylaws or any section, sentence, clause, phrase, or word, or the application thereof in any circumstance is held invalid, the validity of the remainder of these Bylaws shall not be affected thereby and, to this end, the provisions hereof are declared to be severable.

8.4 Waiver. No restriction, condition, obligation, or provision of these Bylaws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

8.5 Captions. The captions contained in these Bylaws are for convenience only and are not part of these Bylaws and are not intended in any way to limit or enlarge the terms and provisions of these Bylaws.

8.6 Gender and Grammar. Whenever in these Bylaws the context so requires, the singular number shall refer to the plural and the converse; and the use of any gender shall be deemed to include both masculine and feminine.

8.7 Liability of Board of Directors Members. Neither the members of the Board of Directors nor the officers of the Association shall be liable to any Owner, resident or person for any damage, loss or liability arising out of or caused by their voluntary participation as a member of the Board of Directors, including but not limited to any claims due to negligence, mistake of judgment, or for any acts or omissions made in good faith. In addition, the Owners and residents, by virtue of their taking title to or possession of a Lot, agree to indemnify, defend and hold

harmless the members of the Board of Directors and officers of the Association from and against any and all claims arising out of or caused by their voluntary participation as a member of the Board of Directors or officer of the Association to the extent any damage, loss or liability is not covered by insurance, unless caused by gross negligence or willful neglect.

8.8 Attorneys' Fees, Assessments and Costs. If an Owner or resident, or their families, guests or invitees shall, at any time, violate the terms, covenants or conditions of these Bylaws, and the Board of Directors shall be required to take action to enforce the same, regardless of whether a lawsuit is commenced, the Owner or resident shall reimburse the Board of Directors for all costs and expenses, including but not limited to reasonable attorneys' fees. To secure payment of any unpaid costs or Assessments, the Board of Directors shall have the right and power to file a lien against the Lot owned or occupied, and may proceed to collect the same by judgment or foreclosure. In the event of a breach or anticipated breach by an Owner or resident, or by their family, guests or invitees, of any of the terms, covenants, or conditions of these Bylaws, the Board of Directors shall have, in addition to any other remedies provided by law equity, the right to injunctive relief and damages.

8.9 Persons Bound. All references herein to an Owner, resident, tenant, renter, lessee, guest, or invitee shall be deemed to include their respective executors, administrators, employees, representatives, successors and assigns, and the terms, covenants, and conditions herein contained shall apply to and be binding upon them.

**EXHIBIT C  
TO  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
EVERGREEN FARMS PHASE 1 SUBDIVISION**

11-085-0054  
0056

**Legal Description of the Additional Land**

**EVERGREEN FARMS PHASE 2 BOUNDARY DESCRIPTION**

PART OF THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN. BEGINNING AT A POINT LOCATED NORTH 89° 57'58" EAST 730.46 FEET ALONG THE NORTH LINE OF SAID SOUTH WEST QUARTER AND S36°25'35" EAST 445.77 FEET FROM THE NORTH WEST CORNER OF SAID SOUTHWEST QUARTER WHICH IS MARKED BY A DAVIS COUNTY BRASS CAP MONUMENT. RUNNING THENCE:  
SOUTH 36°25'35"EAST 1193.99 FEET ALONG THE WESTERLY LINE OF ROCKY MOUNTAIN POWER PROPERTY; TO THE NORTH RIGHT-OF-WAY LINE OF LAYTON PARKWAY THENCE SOUTH 89°57'21" WEST 1209.62 FEET TO THE EASTERLY LINE OF EVERGREEN FARMS PHASE 1 THENCE;  
NORTH 0°02'39" WEST 185.00 FEET ALONG SAID EASTERLY LINE, THENCE CONTINUING ALONG SAID LINE  
NORTH 0°11'37" EAST 58.00 FEET ALONG SAID EASTERLY LINE, THENCE CONTINUING ALONG SAID LINE  
NORTH 0°02'39" WEST 105.00 FEET ALONG SAID EASTERLY LINE, THENCE CONTINUING ALONG SAID LINE  
NORTH 01°46'41" EAST 283.36' FEET ALONG SAID EASTERLY LINE, THENCE CONTINUING ALONG SAID LINE  
NORTH 37°29'23" EAST 103.14 FEET ALONG SAID EASTERLY LINE, THENCE CONTINUING ALONG SAID LINE  
NORTH 56°57'47" EAST 209.23 FEET ALONG SAID EASTERLY LINE, THENCE CONTINUING ALONG SAID LINE  
NORTH 53°34'25" EAST 113.00 FEET THENCE  
NORTH 89°44'47" EAST 71.85 FEET THENCE  
NORTH 53°34'25" EAST 113.00 FEET TO THE POINT OF BEGINNING  
CONTAINS 749,130 SQ. FT. 17.20 ACRES

**Together with and also including:**

11-085-0040 0025  
0041

PART OF THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 4 NORTH , RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN. BEGINNING AT A POINT LOCATED NORTH 89°57'38" EAST 1117.02 FEET ALONG THE E-W QUARTER LINE OF SAID SECTION FROM THE WEST QUARTER CORNER OF SAID SECTION WHICH IS MARKED BY A DAVIS COUNTY BRASS CAP MONUMENT (SAID POINT IS THE NORTHEAST CORNER OF UTAH POWER AND LIGHT PROPERTY); THENCE CONTINUING  
N 89°57'38" E 1515.63 FEET ALONG THE E-W QUARTER LINE OF SAID SECTION TO THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION; THENCE  
S 00°12'53" W 1320.04 FEET ALONG THE N-S QUARTER LINE OF SAID SECTION; THENCE  
S 89°57'21" W 537.00 FEET TO THE SOUTHEAST CORNER OF UTAH POWER AND LIGHT PROPERTY; THENCE  
N 36°25'35" W 1639.78 FEET TO THE POINT OF BEGINNING  
CONTAINS: 1,354,798 SQ. FT. 31.10 ACRES