

When Recorded Return To:  
Fieldstone Canyon Trail, LLC  
12896 S. Pony Express Road, Suite 400  
Draper, Utah 84020

ENT 27313:2018 PG 1 of 45  
**Jeffery Smith**  
**Utah County Recorder**  
2018 Mar 23 10:09 AM FEE 177.00 BY MA  
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ELECTRONICALLY RECORDED

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**FOR CANYON TRAIL OWNERS ASSOCIATION**

This DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR CANYON TRAIL OWNERS ASSOCIATION (“**Declaration**”) is made by Fieldstone Canyon Trail, LLC, a Delaware limited liability company (“**Declarant**”), Mountain Home Development Corporation, a Utah corporation (“**Master Declarant**”), and Traverse Mountain Master Association, a Utah nonprofit corporation (“**Master Association**”), on the date set forth below.

**RECITALS**

A. The Declarant is the owner of certain real property located in the City of Lehi (“**City**”), Utah County, State of Utah, more particularly described on Exhibit A attached hereto (“**Property**”). Declarant is developing the Property as a residential subdivision to be known as Canyon Trail (“**Project**”). The Project shall be subdivided into individual single-family lots and townhome lots (collectively, the “**Lots**”) together with private streets and sidewalks within the development and public improvements along the public right of way frontages. The Project may be developed in phases.

B. Master Declarant is the declarant identified in the following recorded instrument the *Amended and Restated Master Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Traverse Mountain a Master Planned Community*, recorded in the real property records of Utah County on June 18, 2007, as Entry No. 88194:2007 (as the same is or may be amended, “**Master Declaration**”).

C. Master Association is the master homeowners’ association formed to manage, maintain, and govern the properties identified in the Master Declaration, including the Project. Among other things, the Master Association has the power to regulate the use of residential areas of the Project; establish, review and enforce architectural and landscaping standards in the Project; and impose, collect, and enforce assessments for owners in the Project, all as provided in the Master Declaration.

D. Section 1.47 and Section 1.49 of the Master Declaration authorize the establishment of a neighborhood association and the recording of a neighborhood declaration pursuant to and

subject to the terms and conditions of the Master Declaration. Declarant desires to authorize and approve this Declaration, and the establishment of the Neighborhood Association, defined below, to govern the development, use, maintenance and management of the Project, and to impose, collect, and enforce Assessments, as provided for herein, subject to the provisions of the Master Declaration.

E. Declarant desires that the Project and the Improvements in the Project be developed in accordance with the standards established by the Declarant in this Declaration and desires to authorize the Design Review Committee to promulgate aesthetic, architectural, and design guidelines applicable to the Project and to establish an aesthetic, architectural, and design review process governing development, construction, maintenance, and repair activities within the Project.

F. Declarant and the Neighborhood Association desire the ability to enforce compliance with the terms of this Declaration and the Architectural Guidelines as provided herein and allowed under the Act.

G. Master Declarant has agreed to allow Declarant to create and establish the Neighborhood Association and the Design Review Committee to review aesthetic, architectural, and design standards applicable solely to the Project; provided that any such review be subject to and comply with the terms of the Master Declaration.

H. The Project is not a condominium project.

THEREFORE, to further the general purposes expressed herein, Declarant hereby declares that the Project, and all Lots within the Project, shall at all times be owned, held, used, occupied, sold, conveyed, leased and rented subject to the provisions of this Declaration and subject to (i) the covenants, conditions, and restrictions contained herein and (ii) the easements reserved or granted herein and that the same shall run with the land and shall be binding on all persons or entities holding or taking title to any interest in the Project or any Lot therein.

**ARTICLE 1 – DEFINITIONS**

The plural of any word identified below shall have the same meaning as the singular and vice versa. The following words when used in this Declaration shall have the following meanings and terms used but not defined herein shall have the meaning provided in the Master Declaration if a meaning is provided:

1.1 “Act” shall mean the Community Association Act (Title 57, Chapter 8a, Utah Code, as amended).

1.2 “Architectural Guidelines” means any aesthetic, architectural, and design guidelines adopted by the Design Review Committee as provided in Section 5.5.

1.3 “Board” shall mean the Board of Directors of the Neighborhood Association, appointed or elected in accordance with this Declaration and the Bylaws.

1.4 “Buyer” means any person or entity other than Declarant or Developer who purchases a Lot for individual residential use.

1.5 “Bylaws” means the Bylaws of the Neighborhood Association.

1.6 “City” means the City of Lehi, a political subdivision of the State of Utah.

1.7 “Common Expenses” means costs incurred by the Neighborhood Association which are attributable to all Units including expenses arising in in connection with the maintenance, upkeep and management of the Common Areas.

1.8 “Common Areas” means all portions of the Project other than that which are not part of a Lot and which are intended for the use and enjoyment of all Owners. Common Areas do not include Limited Common Areas.

1.9 “Common Assessments” means the assessments attributable to all Units including assessments for Common Expenses.

1.10 “Covenants” means every covenant, condition, restriction, easement, and limitation set forth in this Declaration.

1.11 “Declarant” means Fieldstone Canyon Trail, LLC, and any assign or successor that acquires Declarant’s interest in the Property.

1.12 “Declaration” means this *Declaration of Covenants, Conditions and Restrictions for Canyon Trail Owners Association* as it may be amended from time.

1.13 “Design Review Committee” means the committee established by the Declarant to review plans for construction, alteration, or repair of Improvements within the Project as set forth in Article 5 of this Declaration.

1.14 “Developer” means Declarant and any parent or subsidiary entity of Declarant and any entity owned or controlled by an entity which owns or controls Declarant.

1.15 “Exempt Unit” means any Unit owned by Declarant.

1.16 “Fine” means any fine imposed by the Neighborhood Association consistent with the Act pursuant to a fine schedule adopted by the Board for an Owner’s noncompliance with this Declaration, the Bylaws, any rules and regulations of the Neighborhood Association or the Architectural Guidelines.

1.17 “Improvement” means every structure, feature, or other item of construction of any kind placed or constructed in the Project, including but not limited to any Residence, building, garage, lighting, deck, porch, patio, sidewalk, foundation, awning, fence, retaining wall, driveway, irrigation or drainage feature, storage structure or any other product of construction and also includes landscaping.

1.18 “Limited Common Area” means the Limited Common Area as designated on the Plat Map recorded with Utah County. The term includes the portion of a Townhome Lot designated as a Limited Common Area and the exterior of each Townhome (including rooftops).

1.19 “Lot” means a subdivided and individually numbered residential parcel as designated on the Plat Map recorded with Utah County including the Residence and any other Improvements thereon. The term “Lot” shall include Single Family Lots and Townhome Lots.

1.20 “Master Association” means the Traverse Mountain Master Association, a Utah non-profit corporation.

1.21 “Master Declaration” means the documents identified in Recital B of this Declaration.

1.22 “Master Declarant” means Mountain Home Development Corporation, a Utah corporation.

1.23 “Neighborhood Assessments” means Common Assessments (for all Units) together with Single Family Assessments (for Single Family Lots) and Townhome Assessments (for Townhome Lots).

1.24 “Neighborhood Association” means the Canyon Trail Owners Association, a Utah nonprofit corporation authorized to administer this Declaration, enforce the Covenants set forth herein, and impose and collect the Neighborhood Assessments and other charges provided for herein.

1.25 “Owner” means the person or entity vested with legal, record fee simple title to any Lot. If there is more than one record holder of legal title to a Lot, each shall be an Owner.

1.26 “Period of Declarant’s Control” means the period of time during which Declarant have administrative control of the Project and the Neighborhood Association and the other rights and privileges as set forth in this Declaration. Following the recording of this Declaration, the Period of Declarant’s Control shall continue until such time as Declarant sees fit to, by written notice, release administrative control of the Project and the Neighborhood Association, but in no event shall the Period of Declarant’s Control extend beyond the time when one hundred percent (100%) of the Units in the Project have been conveyed to Buyers.

1.27 “Plat Map” means the subdivision plat map for the Project together with any recorded plat map for a phase of the Project and any amendment thereto. A copy of the Plat Map current as of the date of this Declaration is attached hereto as **Exhibit B**. Declarant reserves the right to modify the terms of any revised or amend the Plat Map for the Project. Any such revisions or amendments to the Plat Map recorded in Utah County shall also be deemed the Plat Map for purposes of this Declaration.

1.28 “Project” means the Canyon Trail subdivision in Lehi City, Utah County, to be constructed on the Property. The Project is not a cooperative and is not a condominium project. The Project is not subject to the provisions of the Utah Condominium Ownership Act, Utah Code § 57-8-1 *et seq.* The Project is not expandable.

1.29 “Property” means the real property situated in Utah County, State of Utah, as more particularly described in **Exhibit A**, against which this Declaration is recorded.

1.30 “Residence” means each Single Family Residence or each Townhome located on a Lot in the Project. As shown on the Plat Map, the Residences within the Project are intended for single family occupation.

1.31 “Single Family Assessments” means the assessments for Single Family Expenses.

1.32 “Single Family Expenses” means expenses incurred by the Neighborhood Association which are attributable only to the Single Family Lots and the Owners thereof.

1.33 “Single Family Lot” means a subdivided and individually numbered residential parcel as designated on the Plat Map recorded with Utah County which is not a Townhome Lot and includes the Single Family Residence and any other Improvements thereon.

1.34 “Single Family Residence” means each detached single family residential dwelling which does not share a common wall with another dwelling.

1.35 “Special Assessments” means assessments in addition to Common Assessments, Single Family Assessments, and Townhome Expenses which the Neighborhood Association may levy against some or all of the Owners and some or all of the Units for expenses incurred by the Neighborhood Association as allowed under this Declaration, the Bylaws, or the Act.

1.36 “Townhome” shall mean each attached residential dwelling within the Project which is designed for separate ownership and occupancy and which shares at least one common wall with another residential dwelling.

1.37 “Townhome Assessments” means the assessments for Townhome Expenses.

1.38 “Townhome Expenses” means all expenses incurred by the Neighborhood Association which are attributable only to Townhome Lots and the Owners thereof.

1.39 “Townhome Lot” means a subdivided and individually numbered residential parcel as designated on the Plat Map recorded with Utah County on which a Townhome is or will be constructed and includes the Townhome and any other Improvements thereon. The Townhome Lots include Lot Numbers 101 through 144, inclusive, on the Plat Map for “Phase 1B” of Project, recorded on December 14, 2017, as Entry No. 123794:2017 (Map 15810), and any Lots on which Townhomes will be constructed in future phases of the Project.

1.40 “Unit” shall mean each Single Family Residence and associated Single Family Lot and each Townhome and associated Townhome Lot within the Project.

## **ARTICLE 2 – NATURE AND DESCRIPTION OF PROJECT**

2.1 This Project will be comprised of Single Family Residences and Townhomes, sometimes referred to herein as “Units.” The Project will include Common Areas and Limited Common Areas.

2.2 Declarant hereby confirms and acknowledges that the Project is subject to the provisions of the Act with respect to items covered by the Act that are not addressed in this Declaration. Declarant hereby further confirms and acknowledges that the Project is subject to the provisions of the Master Declaration. All of the Project is and shall be held, conveyed, hypothecated, encumbered, leased, subleased, rented, used and improved in accordance with, and subject to, the covenants, conditions, restrictions, uses, limitations and obligations set forth herein, each and all of which are declared and agreed to be for the benefit of the Project and the Owners of all Units within the Project. Further, each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit on the Property and shall be binding on any person acquiring, leasing, subleasing or owning an interest in the real property and improvements

comprising the Project, their assigns, lessees, sublessees, heirs, executors, administrators, devisees and successors.

2.3 No provision of this Declaration shall prevent the Declarant from doing any of the following, which shall be deemed to be among Declarant's reserved rights, in addition to such rights as may be described elsewhere in this Declaration: (1) installation and completion of Improvements within the Project; (2) use of any Lot or Unit owned by the Declarant as a model home, or for the placement of temporary construction or sales office; (3) installation of maintenance of signs incidental to sales or construction, which are in compliance with applicable city ordinances; (4) assignment of Declarant's rights under this Declaration, in whole or in part, to one or more persons intending to construct the Project or a portion thereof, or build Residences within the Project; (5) retention of Declarant's rights with respect to subsequent phases of the Project; (6) access over, under and through any of the Project, for the installation of Improvements; and (7) erection of permanent or temporary signs for use during the selling and marketing of the Project. Notwithstanding any other provision to the contrary in this Declaration, Declarant, in its sole and absolute discretion, shall have the right to construct and install any and all Improvements within the Project that it desires to construct and install (and to designate such Improvements as Common Areas and Limited Common Areas to be maintained by the Neighborhood Association), so long as the improvements comply with applicable city ordinances and the Master Declaration. This provision shall not be construed to impose any obligations on Declarant to construct any such items.

### **ARTICLE 3 – RELATION TO MASTER DECLARATION**

3.1 Master Declaration. Notwithstanding (i) any provision of this Declaration, or (ii) any action or decision of the Declarant, the Developer, the Neighborhood Association, the Board or the Design Review Committee, nothing in this Declaration shall be interpreted to amend, modify, interpret, clarify or waive any of the provisions, terms, conditions, requirements, scope or restrictions of the Master Declaration, or alter the rights of the Master Declarant, the Master Association or the Architectural Review Committee thereunder, except with respect to the construction exemptions for the Declarant set forth in Section 6.20 of this Declaration. This Declaration is not, and shall not be interpreted as, a Supplemental Declaration or the designation of a Neighborhood Builder under Article I of the Master Declaration, or the assignment or delegations of any rights or responsibilities of the Master Declarant, the Master Association or the Architectural Review Committee. The provisions, obligations, restrictions, approvals, assessments and requirements of this Declaration are in addition to, and are not in substitution of, the provisions, obligations, restrictions, approvals, assessments and requirements under the Master Declaration. The execution of this Declaration by the Master Declarant and the Master Association is solely for the purposes for which the Master Declarant and the Master Association are specifically referenced herein, and shall not be interpreted as the approval, acquiescence or consent by the Master Declarant or the Master Association to any other provisions of this Declaration, including without limitations the Architectural Guideline or the Acceptable Landscaping Materials Guidelines set forth in this Declaration. Except for the construction exemptions for Declarant set forth in Section 6.20, in the event of any conflict between the provisions of this Declaration (including any actions taken pursuant hereto) and the provisions of the Master Declaration, the provisions of the Master Declaration shall control.

## ARTICLE 4 – PROPERTY RIGHTS, LIMITATIONS, AND USE RESTRICTIONS

4.1 Owners Bound by Declaration. Each Owner, by acceptance of a deed to a Lot, is deemed to have read and agreed to be bound by the terms and conditions set forth in this Declaration and the Master Declaration.

4.2 Enforcement of Covenants by Neighborhood Association. The Declarant during the Period of Declarant's Control and thereafter the Neighborhood Association, through its Board, may in the exercise of its reasonable discretion, enforce the Covenants set forth in this Declaration, the Bylaws, any rules and regulations established by the Neighborhood Association, and the Architectural Guidelines. Among other things, the Declarant or Board may, after notice to any non-complying owner as required by law or this Declaration, commence an action seeking to enforce compliance with the Covenants, the Bylaws, the rules and regulations, or and Architectural Guidelines which action may, under appropriate circumstances, request a temporary restraining order or preliminary injunction to stop or prevent non-compliance with the Covenants, the Bylaws, the rules and regulations, or Architectural Guidelines. In any such legal action, the prevailing party shall be entitled to an award of reasonable costs and attorney fees.

4.3 Fines for Noncompliance. In addition to the provisions of Section 4.2, the Declarant or the Neighborhood Association's Board may after, notice required under the Act, impose a Fine according to a fine schedule established by the Board for such an Owner's noncompliance with any of the terms of this Declaration, the Bylaws, Neighborhood Association's rules and regulations, or the Architectural Guidelines. Any such Fine will be deemed an Assessment as provided for herein. The imposition of a Fine shall not, in any way, prejudice the Declarant or Neighborhood Association's ability to collect all costs and fees, including attorney fees, incurred in enforcing compliance with this Declaration, as provided in Section 4.2, and all such costs shall be subject to the Neighborhood Association's lien as provided in Section 14.1 and its subparts.

## ARTICLE 5 – DESIGN REVIEW

5.1 Design Review Committee Approval Required. In order to create, maintain and improve the Project as a pleasant and desirable environment, to establish and preserve harmonious design for the community, to establish procedure for the enforcement of the terms and conditions of this Declaration, to protect and promote the value of the Project, all Improvements constructed within the Project shall be subject to prior review and approval of the Neighborhood Association's Design Review Committee. Only plans that comply with the terms of this Declaration and any Architectural Guidelines (i) will be approved by the Design Review Committee and (ii) may be submitted for review to the Architectural Review Committee pursuant to the requirements of the Master Declaration. Except as provided herein, no Improvements may be constructed or undertaken without Design Review Committee approval. The Design Review Committee may impose a charge up to one hundred dollars (\$100) for the review and processing of plans.

5.2 Creation of the Design Review Committee. The Design Review Committee shall consist of three (3) members, the majority of which will constitute a quorum, and the concurrence of the majority shall be necessary to carry out the provisions applicable to the Design Review Committee. The members of the Design Review Committee will be appointed by Declarant and the members of the Design Review Committee may be changed by Declarant from time to time in



Declarant's sole and absolute discretion. The Design Review Committee may designate representatives or agents to act on its behalf. In the event of the death, resignation, or incapacity of any member of the Design Review Committee, the vacancy must be filled by the Declarant. The Design Review Committee will cease to function at the conclusion of the Period of Declarant's Control and design review following that point will be limited to that required by the Master Declaration.

5.3 Design Review Committee Duties. The Design Review Committee will be responsible for the review and, subject to compliance with this Declaration, approval of all plans for the construction of any Improvements upon any Lot and report any noncompliance to the Board; provided that such approval shall be subject to the further approval of the Architectural Review Committee pursuant to the requirements of the Master Declaration. The Neighborhood Association, through its Board, may enforce the provisions of this Declaration, including by legal action if necessary as provided in Section 4.2. In addition to the authority expressly granted herein, the Neighborhood Association shall have all rights, powers and privileges as are reasonably necessary to give effect to this Declaration and to enforce the terms of this Declaration.

5.4 Use of Consultants. The Design Review Committee is authorized to retain the services of one or more consulting architects, landscape architects, or designers qualified to practice in the State of Utah to assist the Design Review Committee in performing duties and responsibilities set forth in this Declaration.

5.5 Architectural Guidelines. All construction within the Project must comply with aesthetic, architectural and design guidelines as set forth in Article 6 of this Declaration. In addition, the Design Review Committee shall establish aesthetic, architectural, design, and maintenance guidelines for the construction, repair, alteration, modification, and maintenance of the Lots and all Improvements ("**Architectural Guidelines**") within the Project. Once established, the Architectural Guidelines may be changed or amended at any time at the discretion of the Design Review Committee after notice to the Owners.

5.6 Assignment of Rights and Duties. Declarant may assign by express written assignment all or any portion of the rights of Declarant arising under this Declaration, including without limitation rights related to design review, to any other person or entity who obtains an interest in the Property or the Project or to the Master Declarant, the Master Association, or the Aesthetic Review Committee identified in the Master Declaration.

## **ARTICLE 6 – RESTRICTIONS ON USE**

6.1 Residential Use of Lots and Resale Limitation. All Lots within the Project shall be used only for the construction and occupancy of either one Single Family Residence or one Townhome, in accordance with the Lot's designation on the Plat Map. All Lots shall be used, improved, and devoted exclusively for Residential use. No profession, trade or other non-residential use shall be conducted within the Project and no person shall enter into any Lot for the purpose of engaging in such uses or receiving products or services arising out of such uses without review and approval from the Board and, as required by the Master Declaration or local ordinance, from the Master Association and Lehi City. No Lot may be re-sold by an Owner within one year from the date it was purchased from Declarant without first notifying Declarant in writing at the

address listed below. Upon receipt of such notice, Declarant may exercise an option to repurchase the Lot at the original purchase price. (This provision does not apply to construction contracts with home builders.)

Fieldstone Canyon Trail, LLC  
12896 S. Pony Express Road, Suite 400  
Draper, Utah 84020

6.2 Architectural Control. No grading, excavation, building, fence, wall, Residence or Improvement of any kind may be constructed, erected, altered, repaired, or made until the plans and specifications for such construction, showing the location of all Improvements, have been approved in writing by the Design Review Committee. The Design Review Committee, at its sole option, may require the Owner to submit a topographical plan and / or a detailed landscaping plan for review and approval. All subsequent additions to or changes or alterations in any Residence, building, structure, or other Improvement, including exterior color scheme, must also be approved in writing by the Design Review Committee or its designee and by the Master Association to the extent required by the Master Declaration. After receiving approval from the Design Review Committee and before commencing any construction, each Owner will be required to obtain any applicable permits or approvals required by the Master Declaration and Lehi City.

6.3 Design Review Deadlines. Upon receipt by the Design Review Committee of a written request for approval provided for or required by this Declaration, the Design Review Committee shall, within thirty (30) days after receipt of such request for approval, either: (a) approve the plans and specifications as submitted; or (b) notify the party making such request of any objections thereto (such objections must be specifically stated) and such party may within fifteen (15) days thereafter resubmit its request for approval to the Design Review Committee. The Design Review Committee shall then have an additional seven (7) days after receipt of any resubmitted request to approve or reject the same. If approval or rejection is not communicated within the above designated timelines, the request shall be deemed to have been approved by the Design Review Committee.

6.4 Construction Quality, Size, and Height. All Improvements constructed within the Project shall be of new materials and shall be of good quality and workmanship. ALL EXTERIOR MATERIALS AND COLORS ARE TO BE SPECIFIED ON PLANS SUBMITTED TO THE DESIGN REVIEW COMMITTEE FOR APPROVAL. Pictures and/or renderings shall also be submitted depicting exterior materials and colors. The Design Review Committee will base its approval of construction plans, specifications, landscaping plans, and other alterations on the acceptability and harmony of the external design of the proposed Improvements with respect to topography, grade, quality of materials, size, height, color, etc. The specific design standards initially applicable to the Project are set forth below and in the Acceptable Landscaping Materials Guidelines attached hereto as Exhibit C. Nevertheless, the Declarant or the Design Review Committee may alter, amend, or supplement the applicable guidelines by adopting Architectural Guidelines as set forth in Section 5.5 of this Declaration.

6.4.1 The exteriors of all Residences must be of a material approved by Lehi City. The exterior front, side or rear elevations of any Residence within the Project must be of materials, colors, and quality commensurate with other existing residential structures in

nearby neighborhoods within the Traverse Mountain community which are subject to the Master Declaration..

6.4.2 Exterior colors of all Residences must match the colors required by the Design Review Committee.

6.4.3 All Residences will have at least a two (2) car garage. Some Residences in the Project will have a three (3) car garage.

6.4.4 The total minimum square feet, finished and unfinished, for each Single Family Residence shall be two thousand four hundred (2,400) square feet and for each Townhome, the total minimum square feet, finished and unfinished, shall be one thousand six hundred (1,600) square feet.

6.4.5 Residences shall be constructed with a minimum five to twelve (5:12) roof pitch, shed and accessory roofs less than the five to twelve roof pitch will be permitted as approved by the Design Review Committee.

6.4.6 The elevations for the Single Family Residences in the Project shall vary so that the same elevation plan is not built across the street or adjacent to any Residence with the same elevation.

6.5 Construction Time. The construction time for the exterior portion of any Residence may not exceed twelve (12) months from start to finish. "Start" means the time any dirt on a Lot is cut or removed in anticipation of construction or landscaping. All building debris, excavation dirt, etc., associated with the building process must be removed from the Lot within the twelve (12) month period. Such debris and excavation dirt is not permitted on any of the streets or sidewalks within the Project.

6.6 Building Location. All setbacks, side yards, and rear yards within the Project must be in conformance with this Declaration and Plat Map approved by Lehi City.

6.7 Landscaping. All landscaping must be in conformance with this Declaration, including the Acceptable Landscaping Materials Guidelines. In addition, each Owner shall be required to comply with all of the Master Association's guidelines, rules, or regulations regarding landscaping.

6.7.1 Single Family Lots. Trees, lawns, shrubs and other landscaping provided by the Owner either before or after the construction of a Single Family Residence on a Lot within the Project shall be properly maintained, cared for, and replaced at the Owner's expense. No landscaping, fence, wall, or screen may be erected which obstructs traffic sightlines or would otherwise constitute a traffic hazard. No landscaping or other Improvements may be placed on any Single Family Lot if doing so would damage or interfere with established slope ratios, cause erosion to any Lot, or change the direction or

location of drainage channels. All materials used to retain and contour the slope of any Single Family Lot or Improvement must conform to the natural beauty and color of the Project. Each Single Family Residence must have an outdoor sprinkler system for fire protection and irrigation.

6.7.2 Townhome Lots. All landscaping for the Limited Common Area upon the Townhome Lots shall be performed by, and be the responsibility of, the Neighborhood Association. All direct and indirect costs and expenses therefor shall be included in the Townhome Assessments.

6.7.3 Deadline for Completion of Landscaping on Single Family Lots. The front yard of each Single Family Lot (from the street to the front line of the Single Family Residence as defined by wing wall fencing) must be landscaped before the Single Family Residence may be occupied. However, if a Single Family Residence is to be occupied during a winter month or other time when landscaping is not practical, landscaping must be completed by the next May 30 following occupancy unless the Master Association's regulations provide otherwise. The remainder of the Single Family Lot must be landscaped within one (1) year of the issuance of a certificate of occupancy for the Single Family Residence. Landscaping is subject to this Declaration, including the Acceptable Landscaping Materials Guidelines, and any applicable provisions of the Architectural Guidelines.

6.8 Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, may be used at any time for residential purposes, on either a temporary or a permanent basis. Temporary buildings and structures used during construction of a Residence on any Lot must be removed immediately upon completion of construction.

6.9 Out Buildings. Out buildings such as swimming pool and tennis court dressing facilities may be constructed on a Single Family Lot so long as they conform to the provisions of this Declaration, the applicable ordinances of Lehi City, and are approved by the Design Review Committee. Any swimming pools or tennis courts must be fenced and comply with local ordinances.

6.10 Exterior Antennas and Power Lines. Exterior antennas are prohibited within the Project. Satellite dishes for television must not be visible from the front of the Lot. All power lines and cables must be buried underground.

6.11 Animals. Only pets that comply with the Area Plan and the Lehi City Development Code and that are domestic dogs, cats, fish, and similar household pets are permitted in the Project. Notwithstanding the foregoing, dogs and cats are limited to two (2) each per Lot. No animals may be raised, bred, or kept for commercial purposes. Animals within the Project must be kept at all times within an enclosure or on a leash held by a person capable of controlling the animal. Approved fencing enclosing the rear yard is required for any Owners who choose to have dogs, whether or not the Owner shares a property line with other Owners. Townhomes located along

Fox Canyon Road shall not be permitted to have enclosed front yards. Excessive barking or other disruptive animal noises will be deemed a nuisance as defined herein.

6.12 Nuisances; Construction Activities. No rubbish or debris of any kind may be placed or permitted to accumulate upon or adjacent to any Lot and no odors or loud or obnoxious noises are permitted to arise or emit from any Lot, so as to render any Lot or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other Lot in the Project or to the occupants of such other Lot. No other nuisance is permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other Lot in the Project or to the occupants of any Lot. Normal construction activities and parking in connection with the construction of Improvements on a Lot are not considered a nuisance or otherwise prohibited by this Declaration, but Lots must be kept in a neat and tidy condition during construction periods, trash and debris is not permitted to accumulate, and supplies of brick, block, lumber and other building materials must be piled neatly.

6.13 Parking and Storage of Vehicles. No articles, material, equipment or vehicles of any nature may be parked or stored on any street located within the Project; provided that licensed, regularly used passenger vehicles (i.e. visitor vehicles) may be parked in unrestricted areas on the sides of the streets of the Project; provided, however, in no event shall any such vehicle be permitted to park on the streets between 12:00 midnight and 5:00 a.m. Overnight parking shall be permitted on a Residence's driveway. No automobiles trailers, boats, racks, snowmobiles, motor homes, recreational vehicles or any other similar type of vehicles may be stored on driveways. All restricted vehicles must be stored in an enclosed garage. Commercial vehicles are not permitted to be parked or stored in the Project.

6.14 Garbage and Refuse Disposal. No Lot may be used as or maintained as a dumping ground for rubbish, trash, or other waste and such materials may not be kept except in covered containers. All Trash containers must be covered and kept screened from view from the street in suitable enclosed areas, except during collection. All equipment for the storage or disposal of such materials must be kept in a clean and sanitary condition. The burning of rubbish, leaves or trash within the Project is prohibited. Each Lot and its abutting street must be kept free of trash, weeds, and other refuse by the Lot Owner. No unsightly material or objects may be stored on any Lot in view of the general public.

6.15 Signs. With the exception of a sign which states that the premises are for sale and signs displayed for political, religious, and holiday purposes, no signs, posters, displays or other advertising devices may be erected or maintained on, or shown or displayed to the public view on any Lot without the express written consent of the Design Review Committee. The Design Review Committee may adopt reasonable restrictions on the time, place, and manner in which any signs are displayed as part of the Architectural Guidelines. The Design Review Committee may require all unauthorized signs to be removed. This Section does not apply to any signs used by Declarant or its agents in connection with the original construction and sale of the Lots.

6.16 Soil Erosion and Runoff. It is the responsibility of each Owner to conduct any construction, landscaping, or other activities on the Lot in such a manner as to minimize erosion and runoff. Each Owner shall also bear full responsibility for compliance with the applicable Storm Water Pollution Prevention Plan ("SWPPP") during construction, landscaping, or other activities on the Lot. Construction must be conducted in such a manner as to prevent the movement of earth materials or construction debris onto neighboring Lots or other portions of the Project or into the Project's storm drainage system. Each Owner shall cause all construction to take place in a good and workmanlike fashion so as not to interfere with the natural streams or drainage systems once constructed. Under no circumstance may landscaping or other Improvements on a Lot direct runoff onto another Lot or other portion of the Project. The Neighborhood Association's approval of any such plan shall not constitute a representation that Owner has complied hereunder.

6.17 Fire Protection. Due to potential for brush fire on land surrounding the Project, Owners are encouraged to consider sprinkler and other fire retardant systems and to use fire resistant materials in construction.

6.18 Repair of Improvements. No Improvements on any Lot shall be permitted to fall into disrepair and such Improvements shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any Residence or other Improvement on a Lot is damaged or destroyed, then subject to the approvals from the Design Review Committee or other approvals required hereunder, such Residence or other Improvement structure shall be immediately repaired or rebuilt.

6.19 Restrictions on Further Subdivision, Property Restrictions, and Rezoning. No Lot shall be further subdivided or separated into smaller Lots by any Owner, nor shall any easement or other interest therein be conveyed or transferred by any Owner. No further covenants, conditions, restrictions or easements shall be recorded by any Owner or other person against any Lot without the provisions thereof having been first approved in writing by the Board. Any covenants, conditions, restrictions, or easements recorded without such approval being evidenced thereon are null and void. No application for rezoning of any Lot, and no applications for variances or use permits may be filed with any governmental authority unless the proposed use of the Lot has been approved by the Design Review Committee and the proposed use otherwise complies with this Declaration.

6.20 Declarant's Exemption. Notwithstanding any other provision of this Declaration, the Declarant may use any Lot or Unit owned by it, and during the Period of Declarant's Control may also use the Common Areas, for any purposes, including construction purposes, consistent with or intended to facilitate the development and sale of the Lot owned by Declarant without regard to the design standards set forth herein, the other Covenants, the Bylaws, rules and regulations of the Neighborhood Association, or the Architectural Guidelines, but subject to the provisions of the Master Declaration. Declarant is not bound by the time limitation or other restrictions on development or construction activities set forth in this Declaration. Notwithstanding

any provision of the the Master Declaration, Declarant may (i) use and maintain temporary structures on the Project but only if the Master Declarant approves the design, exterior colors / materials, and location of such temporary structures, which approval will not be unreasonably withheld, (ii) operate one or more construction or sales offices and one or more model homes within the Project (as of the date of this Declaration, Declarant is approved to operate construction and / or sales offices within model homes to be constructed on Lots 167 and Lot 129 and as construction proceeds, Declarant may request approval for additional sales offices from Master Declarant which approval will not be unreasonably withheld), (iii) maintain a reasonable number of signs, banners, or similar devices throughout the Project consistent with the provisions and locations identified on Exhibit E hereto, and (iv) from time to time relocate any of its sales offices, model homes, signs, banners or similar devices with approval of the Master Declarant which approval shall not be unreasonably withheld.

## ARTICLE 7 – MAINTENANCE

7.1 Owner's Maintenance Obligation. In order to create, maintain, and improve the Project as a pleasant and desirable environment, to establish and preserve a harmonious design for the Project, and to protect and promote the value of the Project, each Owner covenants and agrees to maintain such Owner's Lot in accordance with the terms of this Declaration.

### 7.2 Maintenance Standards.

7.2.1 Single Family Lots. Each Single Family Owner shall maintain such Single Family Owner's Lot, and the Single Family Residence and all other Improvements thereon, including landscaping, in good repair and in a clean and tidy manner, and in accordance with all the Covenants set forth in this Declaration so as to not detract from the overall appearance of the Project. Each Single Family Owner shall maintain the Single Family Residence and all other Improvements in a safe and functional condition. Each Single-Family Owner shall maintain such Single-Family Owner's Lot at the Single-Family Owner's expense.

7.2.2 Townhome Lots. Each Townhome Owner shall maintain the Townhome and all other Improvements upon the Townhome Lot (excluding the exterior of the Townhome and landscaping), in good repair and in a clean, safe, and tidy manner, and in accordance with all the Covenants set forth in this Declaration so as to not detract from the overall appearance of the Project and as set forth on the Maintenance Matrix identified in Section 7.2.3. The exterior of the Townhome and some of the Townhome landscaping shall maintained by the Neighborhood Association. All direct and indirect costs and expenses of maintaining the exteriors of the Townhomes or any Limited Common Areas

associated with the Townhomes shall be assessed as a Townhome Assessment to the Townhome Owners.

7.2.3 Maintenance Matrix. Without limiting the foregoing, the Townhome Owners' respective maintenance obligations will be determined by the Declarant during the Period of Declarant's Control and the Board thereafter. A spreadsheet showing the current allocation of maintenance responsibilities ("**Maintenance Matrix**") is attached hereto as **Exhibit D**. During the Period of Declarant's Control, the Maintenance Matrix may be modified at Declarant's discretion upon notice to Owners. After the Period of Declarant's Control, the Board may modify the Maintenance Matrix after giving notice to the Owner's and holding a meeting of the Neighborhood Association for the purpose of addressing modifications to the Maintenance Matrix. In the event of a conflict between the Maintenance Matrix and other provisions of this Declaration, the Maintenance Matrix will control.

7.3 Maintenance of Parking Strip and Flower Beds. Each Single-Family Owner is responsible to landscape and maintain the parking strip associated with each Single Family Owner's Lot. Required maintenance will include, without limitation, the mowing and watering of the parking strips, removal of weeds, clearing of debris, other general care, and removal of snow from the sidewalk. In addition, in the event that Declarant installs any flower beds, plants, or other vegetation on any Single Family Lot, the affected Owner must maintain the same type and number, type, and quality of flowers, plants, or other vegetation as installed by Declarant. In the event that any Single Family Owner fails to landscape or maintain the parking strip, such failure will be a breach of this Declaration and the Neighborhood Association shall have the remedies set forth in Section 4.2 and Section 4.3.

7.4 Failure to Maintain a Lot.

7.4.1 Each Single Family Lot within the Project, including the parking strip associated with such Single Family Lot, must be maintained by its Owner without regard to whether any Improvements have been constructed thereon by said Owner. Without limitation, the following actions or conditions constitute a failure to properly maintain a Single Family Lot: (a) any portion of any Single Family Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of the Project; or (b) any portion of a Single Family Lot is used in a manner which violates this Declaration; or (c) any Single Family Owner fails to maintain acceptable vegetation on any slope greater than 30% on said Single Family Owner's Lot; or (d) any Single Family Owner fails to perform any of its obligations under this Declaration, the Bylaws, rules and regulations of the Neighborhood Association, or the



Architectural Guidelines, including without limitation, the obligation to obtain appropriate approvals from the Design Review Committee.

7.4.2 In the event any Single Family Owner fails to properly maintain such Owner's Lot as required under this Declaration, the Bylaws, the rules and regulations of the Neighborhood Association, or the Architectural Guidelines, then, in addition other remedies available to it, the Neighborhood Association shall have the right to cause appropriate maintenance or repairs to be performed, or to commence appropriate legal action to enforce the terms of this Declaration, the Bylaws, rules and regulations, or the Architectural Guidelines, and the cost of such maintenance, repairs, or legal action, may be recovered by the Neighborhood Association as provided in Section 4.2.

7.5 Notice to Single Family Owner. In the event that any Single-Family Lot, including the parking strip associated with such Lot, is not maintained or repaired as required under this Declaration, then the Board may, by resolution, make a finding to such effect. Said Resolution shall specify the particular condition or conditions which exist on said Single Family Lot. The Board shall give written notice thereof to the Owner of the applicable Single-Family Lot that unless the conditions stated in the Resolution are corrected within thirty (30) days of the date of such notice, the Board shall have the right without further notice or demand, to cause the conditions set forth in the Resolution to be corrected, including by legal action if necessary, at Owner's cost. If at the expiration of said thirty (30) days the requisite corrective action has not been taken, the Board shall be authorized and empowered to take such action as provided under Section 4.2 or Section 4.3.

## ARTICLE 8 – EASEMENTS

8.1 Use of Easement Rights. To the limited extent necessary for Declarant to complete installation of utilities within the Project, and after written request from Declarant, Master Declarant will grant to Declarant a non-exclusive right to use the easement rights of Master Declarant provided in the Master Declaration which affect, touch on, or relate to easements within or affecting the Project.

8.2 Grading, Drainage, Parking Strip and Public Utility Easements. Declarant reserves easements over the Property and the Project for the purpose of entering and performing grading ("**Grading Easement**") over all the Lots or any portion thereof. Any Improvements that are damaged during grading must be restored to substantially the same condition that existed immediately before entry. Notwithstanding any other provision of this Section, the Grading easement does not extend into any Residence constructed on a Lot. Declarant also reserves easements for installation, maintenance, repair and use of utility and drainage facilities over the Project and all of the Lots (each, a "**Drainage and Utility Easement**"). Declarant reserves the right to impose additional restrictions on the use of any Drainage and Utility Easement.

Notwithstanding any other provision of this Section, the Drainage and Utility easement does not extend into any Residence constructed on a Lot.

## **ARTICLE 9 - DESCRIPTION AND OWNERSHIP OF COMMON AREAS**

9.1 Common Areas. The Common Areas are those portions of the Property that are not part of the Units or the Lots and are not Limited Common Areas, and which are designated as Common Areas on the Plat Map or are intended for use by all Owners. The Common Areas shall mean and include any clubhouse, the playgrounds, and any other areas in the Project designated as part of the Common Areas on the Plat Map.

9.2 Limited Common Area. The Limited Common Areas are those areas within the Project designated as such on the Plat Map recorded with Utah County, the portion of a Townhome Lot designated as a Limited Common Area, and the exterior and rooftop of each Townhome.

9.3 Ownership and Maintenance. The Common Areas and Limited Common Areas in the Project shall be owned by the Neighborhood Association and maintained in accordance with the Maintenance Matrix. Without limiting the foregoing, the Neighborhood Association shall be responsible for maintenance and repair of the exteriors of the Townhomes and snow-removal on, and maintenance of, the private streets within the Project, and for maintenance of all other Common Areas.

9.3 No Alteration. No Owner, directly or indirectly, shall make any alterations to any Common Areas without the prior written consent of the Board.

## **ARTICLE 10 – TERM AND AMENDMENT**

10.1 Term; Method of Termination. This Declaration will be effective upon the date of recordation hereof and, as amended from time to time, will continue in full force and effect until terminated. During the end of the Period of Declarant’s Control, Declarant may execute and record “Certificate of Termination.” After the Period of Declarant’s Control, this Declaration may be terminated by the vote of sixty-seven percent (67%) of the Owners within the Project. If such a vote occurs, the Neighborhood Association will certify the vote and its Board shall thereafter execute and record a “Certificate of Termination.” Notwithstanding any termination of this Declaration, any easements granted herein will continue in full force and shall run with the land. The dispute resolution provisions of Article 17, below, will survive termination of this Declaration.

10.2 Amendment. During the Period of Declarant’s Control, Declarant may amend this Declaration by means of an amendment signed by Declarant, and the Master Association. If this Declaration remains in effect after the Period of Declarant’s Control, this Declaration may then be amended upon approval of the Master Association and the affirmative vote of sixty-seven percent (67%) of the Owners in the Project. If such a vote occurs, the Neighborhood Association will certify the vote and its Board shall thereafter execute and record in the real property records of

Utah County a “Certificate of Amendment” containing all amendments to the Declaration approved by the Owners as provided herein.

10.3 Variances. The Board may grant a variance to of the Covenants, in its reasonable discretion, when an Owner presents the Board with evidence that circumstances require a variance and when the Board determines that granting a variance would be in keeping with the spirit of the Declaration; provided that any such variance must nevertheless comply with the provisions of the Master Declaration.

## **ARTICLE 11 - NEIGHBORHOOD ASSOCIATION AND BOARD OF DIRECTORS**

11.1 Each Owner shall be entitled and required to be a member of the Neighborhood Association. There shall be two (2) classes of membership in the Neighborhood Association, as set forth in Article 15 herein. Membership will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Unit is held by more than one person, the membership appurtenant to that Unit shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Unit is held. An Owner shall be entitled to one membership for each Unit owned by him. Each membership shall be appurtenant to the Unit to which it relates and shall be transferred automatically by conveyance of that Unit. Ownership of a Unit within the Project cannot be separated from the Neighborhood Association membership appurtenant thereto, and any devise, encumbrance, conveyance or other disposition of a Unit shall constitute a devise, encumbrance, conveyance or other disposition, respectively, of such Owner’s membership in the Neighborhood Association and the rights appurtenant thereto. No person or entity other than an Owner may be a member of the Neighborhood Association, and membership in the Neighborhood Association may not be transferred except in connection with the transfer of a Unit.

11.2 The Neighborhood Association shall be governed by the following provisions:

- (a) The management and maintenance of the Project and the administration of the affairs of the Neighborhood Association shall be conducted by a Board of Directors (“**Board**”) consisting of at least three (3) natural persons as provided in the Bylaws. The Board shall be elected as provided in the Bylaws.
- (b) Except as otherwise provided herein, the Board shall have all the powers, duties and responsibilities as are now or may hereafter be provided by the Act, this Declaration and the Bylaws, including but not limited to the following:

11.2.b.1 To make and enforce all rules and regulations covering the operation and maintenance of the Project and the Units.

11.2.b.2 To carry out through a professional manager licensed in the State of Utah (“**Manager**”) those of its functions which are properly the subject of delegation. The Manager so engaged shall be an independent contractor and not an agent or employee

of the Neighborhood Association or Board, shall be responsible for managing the Project for the benefit of the Neighborhood Association and the Owners, and shall, to the extent permitted by law and by the terms of the agreement with the Board, be authorized to perform any of the functions or acts required or permitted to be performed by the Board itself.

11.2.b.3 To engage the services of accountants, attorneys or other employees or agents and to pay to said persons a reasonable compensation therefore, and to appoint committees as determined by the Board.

11.2.b.4 To operate, maintain, repair, improve and replace the Common Areas and the Limited Common Areas.

11.2.b.5 To determine and pay the Common Expenses, Single Family Expenses, and Townhome Expenses.

11.2.b.6 To assess and collect the Neighborhood Assessments, Special Assessments, and other expenses and charges provided for herein.

11.2.b.7 To enter into contracts, deeds, leases and/or other written instruments or documents related to the Project on behalf of the Neighborhood Association and to authorize the execution and delivery thereof by the appropriate officers.

11.2.b.8 To open bank accounts on behalf of the Neighborhood Association and to designate the signatories therefor.

11.2.b.9 To purchase, hold, sell, convey, mortgage or lease any one or more Units or Lot in the name of the Neighborhood Association or its designee.

11.2.b.10 To bring, prosecute and settle litigation for itself, the Neighborhood Association and the Project, provided that it shall make no settlement which results in a liability against the Board, the Neighborhood Association or the Project in excess of \$20,000 (as measured in 2017 dollars and thereafter adjusted by the Cost of Living Index) without the prior approval of a majority of the total votes of the Neighborhood Association at a meeting or by written ballot distributed to Owners by mail; provided, any settlement which would be paid from proceeds of insurance which may be settled by the Neighborhood Association's insurance carrier and which in either case results in no actual liability of funds of the Neighborhood Association in excess of \$20,000 shall not require Neighborhood Association approval.

11.2.b.11 To obtain insurance for the Neighborhood Association as required by law, including with respect to the Units, the Common Areas, and the Limited Common Areas, as well as worker's compensation insurance, as needed, in accordance with the Act or such greater amount as the Board deems necessary.

11.2.b.12 To repair or restore the Project following damage or destruction or a permanent taking by the power of, or power in the nature of, eminent domain, or by an

action or deed in lieu of condemnation not resulting in the removal of the Project from the provisions of the Act.

11.2.b.13 To own, purchase or lease, hold and sell or otherwise dispose of, on behalf of the Owners, items of personal property necessary to or convenient to the management of the business and affairs of the Neighborhood Association and the Board and to the operation of the Project, including without limitation furniture, furnishings, fixtures, maintenance equipment, appliances and office supplies.

11.2.b.14 To keep adequate books and records and implement the policies and procedures for the inspection of the books and records of the Project by Owners. The Neighborhood Association or the Board shall make available to the Owners, mortgagees and the holders, insurers and guarantors of the first mortgage on any Unit current copies of the Declaration, Articles of Incorporation, Bylaws, rules governing the Project, and other books, records and financial statements of the Neighborhood Association. "Available" shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.

11.2.b.15 To do all other acts necessary for the operation and maintenance of the Project, including the maintenance and repair of any Unit if the same is necessary to protect or preserve the Project.

11.2.b.16 To prepare, adopt, amend and disseminate the Neighborhood Association's budget each year, as provided in the Bylaws, and other disseminate other information from time to time in accordance with the terms of the Bylaws.

11.2.b.17 To grant conveyances, easements and rights-of-way over the Common Areas.

11.2.b.18 Members of the Board, the officers and any assistant officers, agents and employees of the Neighborhood Association (i) shall not be liable to the Owners as a result of their activities as such for any mistake of judgment, negligence or otherwise, except for their own willful misconduct; (ii) shall have no personal liability in contract to an Owner or any other person or entity under any agreement, instrument or transaction entered into by them on behalf of the Neighborhood Association in their capacity as such; (iii) shall have no personal liability in tort to any Owner or any person or entity, direct or imputed, by virtue of acts performed by them, except for their own willful misconduct, nor for acts performed for them in their capacity as such; and (iv) shall have no personal liability arising out of the use, misuse or condition of the Project, which might in any way be assessed against or imputed to them as a result or by virtue of their capacity as such. In addition, any claims involving the Developer or Declarant are subject to the dispute resolution provisions of Article 17.

11.2.b.19 If a member of the Board or Officer is sued for liability for actions undertaken in his role as a member of the Board, the Neighborhood Association shall indemnify him for his losses or claims, and undertake all costs of defense, until and unless such person's willful misconduct is proven. After such proof, the Neighborhood

Association is no longer liable for the cost of defense, and may recover costs already expended from the member of the Board or Officer who so acted. Members of the Board are not personally liable to the victims of crimes occurring at the Project. Punitive damages may not be recovered against the Neighborhood Association, nor from any member of the Board or Officer except in the case of willful misconduct. In addition, any claims involving the Developer or Declarant are subject to the dispute resolution provisions of Article 17.

- (c) Neither the Board nor the Manager, if any, shall sell any Property of the Neighborhood Association except as permitted by the Act and this Declaration.

**ARTICLE 12 - MAINTENANCE, ALTERATION AND IMPROVEMENT**

12.1 The Board, acting on behalf of the Neighborhood Association and, subject to the rights and duties of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas, the Limited Common Areas, and all Improvements thereon, and shall keep the same in a good, clean, attractive, safe and sanitary condition, order and repair in accordance with the Maintenance Matrix. The costs associated with the maintenance, replacement and repair of the Common Areas shall be a Common Expense. The costs associated with the landscaping, maintenance replacement and repair of the Limited Common Areas associated with the Townhomes shall be a Townhome Expense.

12.2 The Neighborhood Association shall have the irrevocable right to have access to any Lot or Unit for the purpose of abating a nuisance or a known or suspected dangerous or unlawful condition. Such entry shall be made with as little inconvenience to the Owners as is practicable under the circumstances and any damage caused thereby shall be repaired by the Neighborhood Association.

12.3 Additions or capital improvements to the Project which cost no more than \$5,000 may be authorized by the Board alone. Except as otherwise provided herein, additions or capital improvements the cost of which exceeds \$5,000 must, prior to being constructed, be authorized by at least a majority of Owners in attendance at an Owners’ meeting called for such purpose.

12.4 No Owner shall enlarge or otherwise modify the exterior of his/her Unit or add any devices or structures such as, for illustration and not limitation, fences, greenhouses, solariums, room additions, enclosing decks, hot tubs, unless and until the Owner has received prior written consent from the Board and the Master Association. The Board may function by itself or may appoint a committee to be charged with the responsibility of keeping the Project’s exterior and Common Areas consistent in appearance.

**ARTICLE 13 – MASTER ASSOCIATION MONTHLY ASSESSMENTS**

13.1 Master Association Common Assessments. This Section 13.1 shall apply to the terms of Section 7.7 and Section 7.9.4 of the Master Declaration. Declarant, Master Declarant, and the Master Association agree that regular or monthly assessments levied by the Master Association pursuant to the Master Declaration shall not commence with respect to any Lot within the Project until such time as an individual, third-party residential purchaser (i.e., not another commercial developer or builder) acquires title to a Lot or Residence.

#### **ARTICLE 14 – NEIGHBORHOOD ASSOCIATION ASSESSMENTS**

14.1 Neighborhood Assessments and Lien. The making and collection of Neighborhood Assessments by the Neighborhood Association shall be pursuant and subject to the following provisions and any applicable provisions of the Bylaws:

14.1.1 Declarant, and each Owner, other than Declarant, by becoming an Owner of a Unit is deemed to covenant and agree to pay Neighborhood Assessments, Special Assessments, and any other charges or assessments which are authorized by the Act to the Neighborhood Association in accordance with this Declaration. Each Unit in the Project (except for Exempt Units) shall be assessed a proportionate share of the Common Expenses of the Neighborhood Association. Each Single Family Lot in the Project (except for Exempt Units) shall be assessed a proportionate share of the Single Family Expenses. In addition, each Townhome Lot in the Project (except for Exempt Units) shall be assessed a proportionate share of the Townhome Expenses of the Neighborhood Association. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses of the Neighborhood Association and one for reserve expenses. Neighborhood Assessments must be assessed at least annually, and be based on the budget adopted by the Neighborhood Association in accordance with the provisions of this Declaration and the Bylaws. Neighborhood Assessments shall be levied against each separate Unit annually.

14.1.2 The Neighborhood Association may not impose a regularly assessed Neighborhood Assessment per Unit which is more than 20% greater than the previous year's Neighborhood Assessment per Unit, without first obtaining the majority vote of the Owners (in person or by proxy) at a meeting of the Owners called for such purpose. The Neighborhood Association shall provide notice, by first class mail or email to all Owners, of any increase in the Neighborhood Assessments not less than fifteen (15) or more than sixty (60) days prior to the date the increased Neighborhood Assessment is due.

14.1.3 In addition to the Neighborhood Assessments, the Neighborhood Association may levy in any calendar year, Special Assessments applicable to that year only. However, in any fiscal year, except as otherwise provided in this Declaration, the Board shall not, without first obtaining the majority vote of the Owners (in person or by proxy) at a meeting called for such purpose, levy Special Assessments which in the aggregate exceed 20% of the budgeted gross expenses of the Neighborhood Association for that fiscal year. If the expenses for which the Special Assessments are levied affect all Units within the Project, then all Units except Exempt Units, shall pay an equal portion of such Special Assessment. The Board may determine that Special Assessments are only attributable to less than all of the Units or less than all of the Owners, provided that before

making such a determination, the Board must give notice of and hold a meeting of the Neighborhood Association at which the allocation of Special Assessments will be discussed and at which any interested Owner will have the right to be heard. The Board shall provide notice by first class mail to Owners of any Special Assessments not less than fifteen (15) nor more than sixty (60) days prior to the date such Assessment is due. Special Assessments shall be paid as determined by the Board and the Board may permit Special Assessments to be paid in installments extending beyond the fiscal year in which the Special Assessment is imposed.

14.1.4 All Neighborhood Assessments and Special Assessments shall be due as determined pursuant to the Bylaws. Neighborhood Assessments and Special Assessments and any installments thereof not paid on or before ten (10) days after the date when due shall be delinquent and the Owners shall be assessed a late fee of ten dollars (\$10) and all outstanding amounts shall bear interest at the rate of eighteen percent (18%) per annum, or at such lower rate of interest as may be set by the Board, from the date when due until paid. In addition, Owners who do not pay Neighborhood Assessments and Special Assessments when due may be subject to a Fine pursuant to a schedule of Fines adopted by the Board as provided in the Act. All payments received by the Neighborhood Association shall be first applied to accrued interest and / or Fines, and then to the Neighborhood Assessment or Special Assessment payment first due. If any expense of the Neighborhood Association is caused by the misconduct of any Owner, the Neighborhood Association may assess that expense exclusively against such Owner and such Owner's Unit(s).

14.1.5 Pursuant to Utah Code Ann. § 57-8a-301, there shall be a lien in favor of the Neighborhood Association upon each Unit for all unpaid Neighborhood Assessments, Special Assessments, Fines, and other charges authorized by this Declaration or the Act together with late fees, interest and costs (including attorneys' fees) charged pursuant to the Declaration and the Act. The Neighborhood Association may record in the Office of the Utah County Recorder of a written notice of delinquent assessments. The written notice shall set forth the amount of the delinquent Neighborhood Assessment or other charge, the date(s) due, the amount remaining unpaid, the name of the Owner of the Unit and a legal description of the Unit. No notice shall be recorded until there is a delinquency in payment of a Neighborhood Assessment, Special Assessment, Fine, or other charge. The Neighborhood Association's lien may be enforced by sale or foreclosure conducted in accordance with the provisions of law applicable to the exercise of powers of sale or foreclosure of deeds of trust, by judicial action as allowed for the foreclosure of mortgages, or in any other manner permitted by law. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Neighborhood Association any Neighborhood Assessments, Special Assessments, or Fines against the Unit which shall become due during the period of foreclosure, and all such Neighborhood Assessments, Special Assessments, or Fines shall be secured by the lien being foreclosed. The Board shall have the right and power on behalf of the Neighborhood Association to bid at any foreclosure sale and to hold, lease, mortgage or convey the subject Unit in the name of the Neighborhood Association. In furtherance of such foreclosure rights, the Neighborhood Association may bring an action at law against the Owner personally obligated to pay the



same or the Neighborhood Association may foreclose the lien in accordance with the provisions of the Act. To this end, the Declarant (and each Owner by acceptance of a deed to a Lot) hereby conveys and warrants pursuant to Utah Code Ann. §§ 57-1-20 and 57-8a-302 to Bartlett Title Insurance Agency, Inc., as trustee, with power of sale, the Lot and all improvements to the Lot for the purpose of securing payment of Neighborhood Assessments, Special Assessments, Fines, and any other charges authorized under the terms of this Declaration. The Neighborhood Association shall have the right to substitute said trustee and appoint a successor trustee as provided by statute. The Neighborhood Association may, through its duly authorized agents, bid on the Unit at any foreclosure sale and acquire, hold, lease, mortgage and convey the same. The lien of the Neighborhood Association shall be superior (prior) to all other liens and encumbrances except liens and encumbrances recorded before recordation of this Declaration, a first mortgage on a Unit, and assessments, liens and charges in favor of the state or any political subdivision thereof, for taxes and other governmental assessments or charges past due and unpaid on the Unit. The lien procedures described herein do not prohibit actions to recover sums for which the Act creates a lien or prohibit the Neighborhood Association from taking a deed in lieu of foreclosure. The Board, upon written request, shall furnish to an Owner a statement setting forth the amount of unpaid assessments against the Unit. This statement must be furnished within ten (10) business days after receipt of the request and is binding on the Neighborhood Association, the Board, and every Owner, in favor of all who rely on such statement in good faith.

14.1.6 The amount of any Neighborhood Assessment, Special Assessment, and Fine shall be the personal obligation of the affected Owner owed to the Neighborhood Association. A lawsuit to recover a money judgment for such personal obligation shall be maintainable by the Neighborhood Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Unit or by waiving any services or amenities provided for in this Declaration. In the event of any suit to recover a money judgment of unpaid Neighborhood Assessments or other sums due hereunder, the involved Owner shall pay the costs and expenses incurred by the Neighborhood Association in connection therewith, including reasonable attorneys' fees.

14.1.7 The personal obligation of an Owner to pay unpaid Neighborhood Assessment against his or her Unit or other sums due hereunder shall not pass to successors in title unless assumed by them; provided, however, that a lien to secure unpaid Neighborhood Assessments shall not be impaired, nullified or otherwise affected by the sale or transfer of the Unit unless foreclosure by a first mortgagee is involved in which case the foreclosure will extinguish the lien for any Neighborhood Assessments or other sums due hereunder that were payable before the foreclosure sale, but shall not relieve any subsequent Owner from paying further Neighborhood Assessments or other sums due hereunder.

14.1.8 Declarant and all Exempt Units shall be exempt from Neighborhood Assessments, Special Assessments, and other sums due hereunder. Declarant shall remain a Class B Member in the Neighborhood Association at all times so long as Declarant owns a Unit, notwithstanding its temporary exemption status from the required Neighborhood

Assessments and other payments. On the date on which a Unit loses its status of being an Exempt Unit, then such Unit and the Owner thereof shall automatically be subject to its share of Neighborhood Assessments and other sums due hereunder from that date forward.

14.1.9 Notwithstanding any provision of this Declaration, any liens imposed pursuant to this Declaration shall be subordinate to liens imposed pursuant to the Master Declaration.

14.2 Reserve and Reserve Fund. The Neighborhood Association shall maintain a reserve fund as required by the Act. The Board shall not expend funds designated as reserves for any purpose other than the repair, restoration, replacement or maintenance of major components of the Common Areas or Limited Common Areas for which the Neighborhood Association is responsible and for which the reserve fund was established, for any other matters for which reserve funds may be expended under the Act, or for litigation involving such matters. At least once every three (3) years (or as otherwise required under the Act) the Board shall cause a study to be conducted of the reserve account of the Neighborhood Association and its adequacy to satisfy anticipated future expenditure requirements. The Board shall, thereafter, annually review the reserve account study and shall consider and implement necessary adjustments to reserve account requirements and funding as a result of that review. Any reserve account study shall include, at a minimum:

14.2.1 Identification of the major components which the Neighborhood Association is obligated to repair, replace, restore or maintain which, as of the date of the study, have a useful life of less than 30 years.

14.2.2 Identification of the probable remaining useful life of the components identified above, as of the date of the study.

14.2.3 An estimate of the cost of repair, replacement, restoration or maintenance of each major component identified above, during and at the end of its useful life.

14.2.4 An estimate of the total annual contribution necessary to defray the cost to repair, replace, restore or maintain each major component during and at the end of its useful life, after subtracting total reserve funds as of the date of the study.

14.3 Reserve Requirements. For the purposes of this Article 14, the term “reserve account requirements” means the estimated funds which the Board has determined are required to be available at a specified point in time to repair, replace or restore those major components which the Neighborhood Association is obligated to maintain.

14.4 Remedies Relating to Leased Units. If an Owner shall at any time lease his Unit and shall default in the payment of Neighborhood Assessments, Special Assessments, or Fines, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due, and each Owner hereby assigns to the Neighborhood Association such rents in the event of such a default, and the payment of such rent

to the Neighborhood Association shall a credit against the amount of the Neighborhood Assessments, Special Assessments, or Fines owing.

## ARTICLE 15 - VOTING

15.1 Voting. The Neighborhood Association shall have two (2) classes of memberships which shall be governed by the following voting rights and restrictions:

15.1.1 Class A. Except as provided in Section 15.1.2, each Owner of a Unit shall be a Class A Member of the Neighborhood Association and shall be allotted one (1) vote per Unit owned. Each Class A Membership shall be held jointly by all Owners of such Unit. The vote for each Unit shall be indivisible and, in the event multiple parties own a Unit, such individuals must decide amongst themselves how the vote is to be cast. In no case shall more than one (1) Class A vote per Unit be cast with respect to any issue where a vote is required.

15.1.2 Class B. Declarant shall be the only Class B Member of the Neighborhood Association and shall be entitled to ten (10) votes for each Lot owned by Declarant within the Project. Declarant shall be entitled to cast votes for each such Lot even if Lots is temporarily classified as an Exempt Unit under this Declaration. Furthermore, Declarant shall be a Class B Member with respect to each Lot, as shown on the Plat Map, which Declarant has a contractual right to purchase for so long as such contractual right shall remain in effect.

15.2 Restrictions on Voting. Notwithstanding any provision to the contrary in this Declaration, Class A Members shall have no voting rights in the Neighborhood Association so long as Declarant is a Class B Member of the Neighborhood Association (by virtue of Declarant being an Owner of a Lot), unless governing statutes (State or Federal) require that Class A Members be allowed to vote on the topic or matter at issue. During the period of time in which Declarant is a Class B Member, all matters requiring a vote of the Members or otherwise submitted to a vote of the Members shall be determined solely by the Class B votes (i.e., solely by the Declarant). When Declarant is no longer a Class B Member of the Neighborhood Association, then (i) the Class B membership shall cease being a class of membership; (ii) there shall no longer be any Class B votes of the Neighborhood Association; and (iii) Class A votes shall become activated and shall be allowed to vote on all matters of the Neighborhood Association requiring votes of Members.

## ARTICLE 16 – MISCELLANEOUS

16.1 Interpretation. Except for judicial construction, the Declarant, the Board, and the Design Review Committee shall have the exclusive right to construe and interpret the provisions of this Declaration, the Bylaws, the rules and regulations of the Neighborhood Association, and the Architectural Guidelines, provided such interpretation is not arbitrary or capricious. In the

absence of any adjudication to the contrary by a court of competent jurisdiction, such construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by this Declaration and provisions hereof. Neither the Declarant, the Board, nor Design Review Committee shall be subject to any liability with such interpretation. Any errors or omissions in the design of any building or landscaping, or any violations of city, county ordinances or the Master Declaration are the sole responsibility of the Owners and/or their designated architects, engineers, or other agents. The Design Review Committee's review of plans shall in no way be construed as an independent review or opinion of the structural or mechanical adequacy or soundness of the building and the Design Review Committee shall bear no liability from its review of such plans. The Design Review Committee shall have the right to refuse to approve any plans and/or specifications which are not suitable or desirable, in its sole opinion, for aesthetic or other reasons, and in so passing upon such plans and/or specifications, it shall have the right to take into consideration the suitability of the proposed building or other structure or Improvements, the materials of which it is built, the site upon which it shall be erected, the harmony thereof with the surroundings and the effect of the building or other structures on the roadways as planned and the view from the adjacent to neighboring properties. In the event of the failure of the Owner of any Lot in Project to obtain or to comply with the Covenants set forth in this Declaration, the Bylaws, or the rules and regulations of the Neighborhood Association, or the required prior written approval of plans under this paragraph, said Owner shall reimburse the Declarant, the Board, or the Design Review Committee, as applicable, for all costs and expenses resulting from said failure, including costs of litigation, demolition and reconstruction, if necessary.

16.3 Severability. Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity of enforceability or any of the other provisions hereof.

16.4 Rules and Regulations. The Board shall have the right to adopt rules and regulations with respect to all aspects of the Board's rights, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration or the Master Declaration.

16.5 General Reservation. In addition to other reservations contained herein, Declarant reserves the right to grant, convey, sell, establish, amend, release and otherwise deal with easements, reservations, exceptions and exclusions which do not materially interfere with the best interests of Owners and/or the Design Review Committee including, but not limited to access and utility easements, road easement, pedestrian and equestrian easements, pedestrian and hiking trails and easements and drainage easements.

16.6 Covenants Run with the Land. Declarant for itself and its successors and assigns, hereby declares that all of the Property and the Project shall be held, used, occupied, conveyed, and leased subject to the provisions of this Declaration, and to the Covenants contained herein, and the Master Declaration, and that the provisions hereof shall run with the land and be binding

upon any person who hereafter becomes the Owner of any Lot or any interest in the Property or the Project.

16.7 No Recourse. The protective covenants, conditions and restrictions set forth within this Declaration, together with the Bylaws, the rules and regulations of the Neighborhood Association, and the Architectural Guidelines, are established for the benefit of the Project. Any damage, loss, claim or liability which might arise due to any decision, act, or failure to act of the Declarant, the Board, or the Design Review Committee shall be exempt from any civil by any person owning or having an interest in any Lot, any Unit, the Property, or the Project except in the case of willful misconduct. The Declarant, the Board, and the Design Review Committee and its members, shall be held harmless from any such action or failure to act, and exempt from any claim or action resulting from any act or failure to act (whether intended or implied) while functioning in their official capacities under this Declaration for decisions that they may render during the course of their service except in the case of willful misconduct. In addition, any claims against or involving Declarant or Developer are subject to the dispute resolution provisions of Article 17.

#### **ARTICLE 17 – DISPUTE RESOLUTION; MANDATORY BINDING ARBITRATION**

17.1 Statement of Intent. As used in this Article 17, “Association” means the Neighborhood Association, or any other association which the Owners, or any group of Owners, may form to control, manage, maintain or improve the Project or any portion of the Project. “Lot” means any Lot or Unit within the Project. Prior to purchasing a Lot, every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, an inspection on any Lot that Owner is purchasing or any other aspect of the Project, including, without limitation, the Common Areas. Moreover, if any written warranty has been provided, it identifies the only items that are warranted by the Declarant or the Developer. Having had the ability to inspect prior to purchasing a Lot, having received a written warranty if any warranty is provided, and having paid market price for a Lot in the condition it and the Lots and Common Area are in at the time of purchase, it is acknowledged that it is unfair and improper to later seek to have the Declarant, Developer, and/or any subcontractor performing work in the Project to change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, the Owners (by purchasing a Lot) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving disputes and conflicts in that it can be slow, expensive, uncertain, and can often negatively impact the sale value and ability to obtain financing for the purchase of Lots for years, unfairly prejudicing those Owners who must or want to sell their Lot during any period when litigation is pending. For this reason, the Owners, by purchasing a Lot, and the Declarant covenant and agree that claims and disputes shall not be pursued through court action, but shall be asserted and resolved only through the specific alternative dispute resolution mechanisms described below, and only after full disclosure, satisfaction of the right to cure periods, and knowing approval of the Owners, as set forth herein. In addition, the Association and the Owners agree that they take ownership and possession of the Lots and Common Areas AS IS, with no warranties of any kind except as otherwise required as a matter of law. The Declarant

specifically disclaims any and all warranties of merchantability, fitness for a particular use, or of habitability, to the full extent allowed by law.

17.1 **Binding Arbitration for All Disputes.** To the fullest extent permitted by law, all claims and disputes of any kind that any Owner or the Association may have involving the Declarant, the Developer, or any agent, employee, executing officer, manager, affiliate or owner of the Declarant or Developer, or any engineer or contractor involved in the design or construction of the Project, which arise from or are in any way related to a Residence or other Improvement on a Lot, Common Area, Limited Common Area, or any other Improvement on or component of the Project (a “**Dispute**”), shall be submitted to final and binding arbitration. Binding arbitration shall be the sole remedy for resolving claims and disputes between or involving the Declarant or Developer and any Owner or between or involving the Declarant or Developer and the Association. The term Dispute does NOT include any action by Declarant to enforce this Declaration or the terms hereof, including actions taken under Section 4.2 and 4.3. Arbitration proceedings, however, shall not be commenced unless the Pre-Arbitration Requirements set forth in Section 17.2 below have been satisfied in full. Without in any way limiting the foregoing, Disputes subject to binding arbitration shall include the following:

17.1.1 Any allegation that a condition in any of the Residences on the Lots, the Common Areas, the Limited Common Areas, or other Improvements in the Project is or involves a construction defect;

17.1.2 Any disagreement as to whether an alleged construction defect has been corrected;

17.1.3 Any disagreement about whether any warranties, including implied warranties, are applicable to the subject matter of any Dispute;

17.1.4 Any disagreement as to the enforceability of any warranties alleged to be applicable to the subject matter of any Dispute;

17.1.5 Any disagreement about whether any warranty alleged to be applicable to the subject matter of any Dispute has been breached;

17.1.6 Any alleged violations of consumer protection, unfair trade practice, or other statutes or laws;

17.1.7 Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and all other claims arising in equity or from common law;

17.1.8 Any allegation that any condition existing in the Project or created by the Declarant, Developer, or any of contractors, including construction-related noise, dust, and

traffic, is a nuisance, a defect, or a breach of any implied warranties of habitability or other implied warranties;

17.1.9 Any disagreement concerning the scope of issues or claims that should be submitted to binding arbitration;

17.1.10 Any disagreement concerning the timeliness of performance of any act to be performed by Declarant, Developer, or any contractors;

17.1.11 Any disagreement as to the payment or reimbursement of any fees associated with binding arbitration;

17.1.12 Any disagreement or dispute regarding management of the Association, or regarding reserve studies or funding of Association expenses; and

17.1.13 Any other claim or disagreement arising out of or relating to the sale, design, or construction of any of Improvement on the Lots, Common Areas, Limited Common Areas, off-site Improvements, management of the Association, or other claims regarding the Project.

17.2 Pre-Arbitration Requirements. An Owner or the Association may only pursue a claim against the Declarant in arbitration after all of the following efforts of dispute resolution have been completed: (a) Right to Cure: the claimant (e.g. the Owner or the Association) shall provide to the Declarant or Developer, as applicable, a written Notice of Claim (defined below) and permit the Declarant or Developer one hundred eighty (180) days to cure or resolve the claim or defect or to try to get the builder or the appropriate subcontractor to cure or resolve the claim or defect, prior to initiating any formal arbitration proceedings; and (b) if the dispute is not resolved within the 180-day Right to Cure period, the parties shall participate in formal mediation with a mutually-acceptable third-party mediator in an effort to resolve the Dispute prior to taking further action or commencing arbitration. If additional, different, or modified claims, damages, calculations, supporting information, or descriptions are added, provided to, or asserted against the Declarant or Developer that were not included in any previously submitted Notice of Claim, the Right to Cure period provided for in this Section shall immediately apply again and any pending action or proceedings, including any mediation or arbitration, shall be stayed during the 180-day period.

17.3 Notice of Claim. "Notice of Claim" shall mean and include the following information: (a) an explanation of the nature of the claim, (b) a specific breakdown and calculation of any alleged damages, (c) a specific description of the claim along with any supporting opinions, information, or factual evidence upon which the claim is based, (d) photographs of any alleged defective condition, if applicable, (e) samples of any alleged defective conditions or materials, if reasonably available, (f) an explanation of the efforts taken to avoid, mitigate, or minimize the

claim or any alleged damages arising therefrom, and (g) the names, phone numbers, and address of each person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim.

17.4 Member Approval; Legal Opinion; Arbitration. If a claim or dispute has not been resolved after satisfying and complying with the above-described “Pre-Arbitration Requirements,” then the claimant (Owner or Association) shall have the right to proceed with binding arbitration; however, the Association shall not pursue or commence binding arbitration unless such action is first approved by a majority of the total votes of the Association after the Association has obtained a written opinion from legal counsel advising the Association of the likelihood of success on the merits of the claims, the anticipated costs and legal fees, the anticipated expert witness fees, and the likelihood of recovery if the Association prevails. The written opinion from legal counsel, addressing these topics, must be provided to all Owners before the formal vote on whether to proceed with binding arbitration. The binding arbitration shall be conducted by a mutually-acceptable arbitrator (preferably a former judge), or, if an arbitrator cannot be mutually selected, then by a member of the National Panel of Construction ADR Specialists promulgated by Construction Dispute Resolution Services, LLC (“CDRS”). The binding arbitration shall be conducted according to the rules and procedures set forth in the Arbitration Rules and Procedures promulgated by CDRS. The award of the arbitrator shall be final and may be entered as a judgment by any court of competent jurisdiction.

17.5 Fees and Costs of Arbitration. Each party shall bear its own attorney fees and costs (including expert witness costs) for the arbitration. The arbitration filing fee and other arbitration fees shall be divided and paid equally as between the parties. The arbitrator shall not award attorney fees, expert witness fees or arbitration costs to the prevailing party.

17.6 No Waiver of Arbitration Right. If any Owner, the Association, or the Declarant files a proceeding in any court to resolve any Dispute, such action shall not constitute a waiver of the right of such party, or a bar to the right of any other party, to seek arbitration or to insist on compliance with the requirements set forth in this Article 17. If any such court action is filed, then the court in such action shall, upon motion of any party to the proceeding, stay the proceeding before it and direct that such Dispute be arbitrated in accordance with the terms set forth herein, including, without limitation, compliance with the Pre-Arbitration Requirements set forth above.

17.7 Waiver of Subrogation. The Association and each Owner waives any and all rights to subrogation against the Declarant, the Developer, and any builder, contractor, architect and engineer in the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner or of the Association from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant, the Project architect, engineer, and builder, contractors of the Declarant and the builder, and their officers, employees, owners, and representatives. To the full extent permitted by law, the Association and Owners hereby release Declarant, the Project engineer, and builder, and their



respective officers, employees, owners, contractors, insurers, and representatives from any and all liability to the Association and all Owners, and anyone claiming through or under them by way of subrogation or otherwise, for any loss, injury, or damage to property, caused by fire or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of Declarant or builder, their officers, employees, owners, and representatives. The Association and each Owner agrees that all policies of insurance shall contain a clause or endorsement to the effect that this release and waiver of subrogation shall not adversely affect or impair such policies or prejudice the right of the Association or any Owner to recover thereunder. The Association and all Owners shall indemnify and defend the Declarant, the Developer, and any of their officers, employees, owners, contractors, or representatives from any claims barred or released by this provision, including but not limited to any claim brought under any right of subrogation.

*[END OF DECLARATION. SIGNATURE PAGES FOLLOW.]*

IN WITNESS WHEREOF, Declarant has executed this Declaration on this 20<sup>th</sup> day of March, 2018.

**MASTER DECLARANT**

Mountain Home Development Corporation

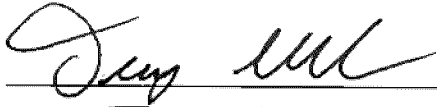
By: 

Name: ROY L. FREEMAN

Title: CEO

**DECLARANT**

Fieldstone Canyon Trail, LLC

By: 

Name: Troy Gebler

Title: Secretary

**MASTER ASSOCIATION**

Traverse Mountain Master Association

By: 

Name: ROY L. FREEMAN

Title: DECLARANT

STATE OF UTAH )

SS.

COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of March, 2018 by Troy Gabler as the Secretary of Fieldstone Canyon Trail, LLC.



[Signature]

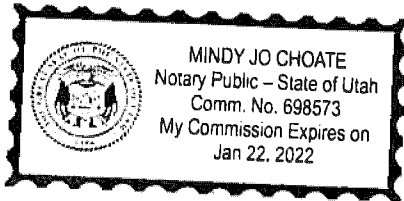
Notary Public

STATE OF UTAH )

SS.

COUNTY OF Utah)

The foregoing instrument was acknowledged before me this 22 day of March, 2018 by Ryan Freeman as the CEO of Mountain Home Development Corporation.



[Signature]

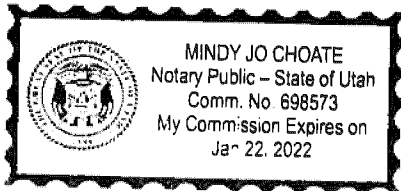
Notary Public

STATE OF UTAH )

SS.

COUNTY OF Utah)

The foregoing instrument was acknowledged before me this 22 day of March, 2018 by Ryan Morgan as the Declarant of Traverse Mountain Master Association.



[Signature]

Notary Public

## EXHIBIT "A"

## COMPOSITE SURVEY DESCRIPTION

A portion of the NE1/4 of Section 25, Township 4 South, Range 1 West & the SW1/4 of Section 19 & the NW1/4 of Section 30, Township 4 South, Range 1 East, Salt Lake Base & Meridian, located in Lehi, Utah, more particularly described as follows:

Beginning at a point on the southerly line of TRAVERSE MOUNTAIN ELEMENTARY SCHOOL Subdivision, according to the Official Plat thereof on file in the Office of the Utah County Recorder, located West 5,897.70 feet and North 3,863.35 feet from the Southeast Corner of Section 30, T4S, ~~R1W~~, S.L.B. & M. (Basis of Bearing: N0°17'58"W along the Section line from said Southeast Corner to the East ¼ Corner of said Section 30); thence along said Plat the following 11 (eleven) courses and distances: N30°07'09"W 21.95 feet; thence N31°52'51"E 188.66 feet; thence along the arc of a 71.00 foot radius curve to the left 52.60 feet through a central angle of 42°27'02" (chord: N10°39'20"E 51.41 feet) to a point of reverse curvature; thence along the arc of an 83.50 foot radius curve to the right 22.77 feet through a central angle of 15°37'33" (chord: N2°45'25"W 22.70 feet) to a point of reverse curvature; thence along the arc of a 71.00 foot radius curve to the left 52.60 feet through a central angle of 42°27'01" (chord: N16°10'09"W 51.41 feet); thence N37°23'39"W 20.97 feet; thence along the arc of a 193.00 foot radius curve to the right 301.18 feet through a central angle of 89°24'42" (chord: N7°18'42"E 271.54 feet) to a point of reverse curvature; thence along the arc of a 107.00 foot radius curve to the left 53.10 feet through a central angle of 28°25'56" (chord: N37°48'05"E 52.55 feet) to a point of reverse curvature; thence along the arc of a 5.00 foot radius curve to the left 9.34 feet through a central angle of 107°03'52" (chord: N29°56'49"W 8.04 feet) to a point of compound curvature; thence along the arc of a 109.00 foot radius curve to the left 36.92 feet through a central angle of 19°24'32" (chord: S86°30'48"W 36.75 feet); thence N13°11'20"W 51.69 feet to the southerly line of Fox Canyon Road as defined and dedicated as part of the FOX CANYON ROAD DEDICATION PLAT, according to the Official Plat thereof on file in the Office of the Utah County Recorder; thence along said Plat and also along FOX CANYON ROAD DEDICATION PLAT No. 2, according to the Official Plats thereof on file in the Office of the Utah County Recorder the following 13 (thirteen) courses and distances: N52°33'56"E 214.64 feet; thence along the arc of a 569.00 foot radius curve to the left 53.35 feet through a central angle of 5°22'18" (chord: N4°52'47"E 53.33 feet); thence N47°11'38"E 167.26 feet; thence along the arc of a 289.00 foot radius curve to the left 17.55 feet through a central angle of 3°28'44" (chord: N45°27'16"E 17.54 feet); thence N43°42'54"E 242.77 feet; thence along the arc of a 369.00 foot radius curve to the left 69.08 feet through a central angle of 10°43'37" (chord: N38°21'06"E 68.98 feet); thence N32°59'18"E 217.57 feet; thence along the arc of a 731.00 foot radius curve to the right 196.43 feet through a central angle of 15°23'46" (chord: N40°41'38"E 195.84 feet); thence N48°23'10"E 511.78 feet; thence along the arc of a 1,486.00 foot radius curve to the right 622.80 feet through a central angle of 24°00'48" (chord: N60°23'34"E 618.25 feet); thence N72°23'58"E 341.10 feet; thence along the arc of a 214.00 foot radius curve to the left 163.83 feet through a central angle of 43°51'44" (chord: N50°28'06"E 159.85 feet); thence along the arc of a 23.50 foot radius curve to the right 30.83 feet through a central angle of 75°09'47" (chord: N66°07'07"E 28.66 feet) to the southerly line of VIALETTO WAY ROAD DEDICATION PLAT, according to the Official Plat thereof on file in the Office of the Utah County Recorder; thence along said Plat the following 6 (six) courses and distances: S76°18'00"E 257.63 feet; thence along the arc of a 182.50 foot radius curve to the right 194.70 feet through a central angle of 61°07'30" (chord: S45°44'15"E 185.59 feet); thence S15°10'30"E 153.01 feet; thence along the arc of an 82.50 foot radius curve to the right 121.81 feet through a central angle of 84°35'57" (chord: S27°07'29"W 111.05 feet); thence S69°25'28"W 34.94 feet; thence along the arc of a 117.50 foot radius curve to the left 82.58 feet through a central angle of 40°15'56" (chord: S49°17'29"W 80.89 feet); thence N60°49'35"W 133.94 feet; thence N87°35'45"W 529.97 feet; thence S72°23'57"W 187.82 feet; thence S86°27'06"W 83.72 feet; thence S48°35'02"W 347.55 feet; thence S73°06'29"W 2.86 feet; thence S48°23'11"W

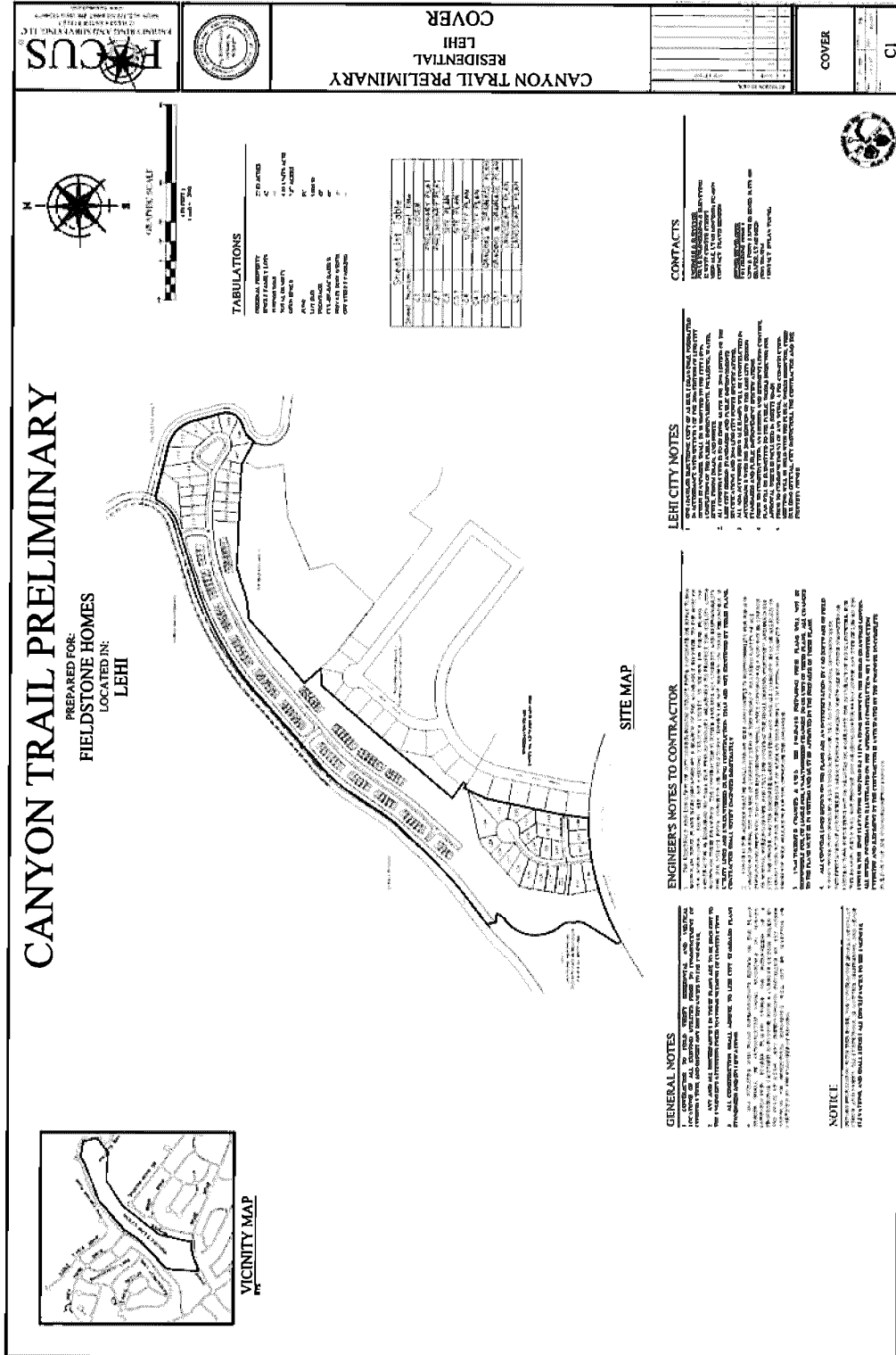
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90.54 feet; thence S41°57'01"E 112.82 feet to the northwesterly line of WOODHAVEN Subdivision, Phase 2, according to the Official Plat thereof on file in the Office of the Utah County Recorder; thence along said Plat the following 3 (three) courses and distances: S86°02'19"W 88.29 feet; thence S40°56'43"W 320.41 feet; thence S40°05'08"W 568.81 feet to a northeasterly corner of Lot 64, Phase 1, WOODHAVEN Subdivision, according to the Official Plat thereof on file in the Office of the Utah County Recorder; thence along said Lot the following 6 (six) courses and distances: S56°23'46"E 98.70 feet; thence Southwesterly along the arc of a 476.48 foot non-tangent curve (radius bears: S49°39'38"E) 20.09 feet through a central angle of 2°24'57" (chord: S39°07'53"W 20.09 feet); thence N56°23'46"W 20.50 feet; thence S25°26'31"W 126.37 feet; thence S11°42'01"W 340.40 feet; thence along the arc of a 1,148.00 foot radius curve to the left 90.58 feet through a central angle of 4°31'15" (chord: S9°26'24"W 90.56 feet); thence S7°10'46"W 99.72 feet; thence Southwesterly along the arc of a 1,247.00 foot radius non-tangent curve (radius bears: S0°21'47"W) 663.41 feet through a central angle of 30°28'54" (chord: S75°07'20"W 655.61 feet) to the point of beginning.

Contains: 27.83+/- acres

**EXHIBIT B**

**(Plat Map)**



**EXHIBIT C**

**(Acceptable Landscaping Materials Guidelines)**

**EXHIBIT D**  
**(Maintenance Matrix)**



**CANYON TRAIL  
MAINTENANCE RESPONSIBILITIES - TOWNHOMES**

ITEM	HOA	TH UNIT OWNER	NOTES
GENERAL NOTE			Shared items are to be resolved between the Owners involved in use of the item.
A/C Pad		X	
A/C Unit		X	
Address Numbers		X	
Ants - Interior		X	
Ants - Exterior		X	
Attic Trusses		X	
Cable TV		X	
Ceiling		X	
Chimney Cleaning		X	
Circuit Breakers for Unit		X	
Concrete Private Driveway - Replacement		X	*including snow removal
Concrete Private Driveway - Seal		X	
Concrete Walkways		X	This is in reference to walkways from driveway to front doors and any sidewalk in front of the home. The HOA only handled sidewalks not adjacent to a home. *including snow removal
Concrete Sidewalks	X		This pertains to sidewalks in the community not in front of/adjacent to a home.*including snow removal
Door and Door Frames - Exterior Back and Front Doors		X	
Door and Door frames - Interior Doors		X	
Door Hardware - exterior doors		X	
Door steps/stoops/porch		X	
Doorbell		X	
Doors - Thresholds		X	
Drains		X	
Drains - Limited Common Area Patio/Porches		X	
Dryer Vent Cleaning		X	
Electric		X	
Electrical Wiring/Panel		X	
Exterior Finishes (Siding/Rock/Stucco/Soffit/Fascia) - Future Replacement	X		*cracking in stucco will not be repaired
Exterior Finishes (Siding/Rock/Stucco/Soffit/Fascia) - Future Repairs	X		*cracking in stucco will not be repaired
Fence - Vinyl - future replacement	N/A	N/A	
Fence - Vinyl - repairs from wind/shifting	N/A	N/A	
Fence - Vinyl - repairs from damage caused by resident/guests	N/A	N/A	*any holes in fence from rocks/kids/air soft guns will not be repaired. If a residents wants the repair done, they will need to do so at their expense and/or resolve with neighbor if caused by a neighbor.
Fireplace Component, including spark arrestor		X	
Floor Coverings		X	
Foundation		X	
Front Landing/Porch		X	
Furnace		X	
Garage Door Openers, Springs, Hinges, Any Mechanical Part		X	
Garage Doors Paint		X	
Garage Doors Replace		X	
Gas		X	
Gas Pipes		X	
Gate Hardware & Locks		X	
Gate to Exclusive Use Area	N/A	N/A	HOA would budget to replace gates when fencing is due for replacement. HOA is not budgeted for repairs due to gate use/kicking closed gate/damages from regular use. If gate will not close from shifting/post movement, HOA would repair.

Hose Bib/Faucet/Spigot		X	
Hot Water Heater		X	
Insurance Coverage - Fire	X		Deductible (\$10,000) is assessed to specific building Owners equally in which a loss takes place.
Insurance Coverage - HO6 Policy		X	
Insurance Coverage - Loss Assessment/Deductible		X	Deductible (\$10,000) is assessed to specific building Owners equally in which a loss takes place. Deductible on Owners HO6 Policy is their responsibility.
Irrigation Lines / Heads - back yards		X	
Irrigation Lines / Heads - outside yard areas	X		
Landscape - outside fenced yard areas	X		
Landscape - fenced yard area		X	
Landscape Drains Around Building		X	
Landscape Drains - inside fenced yard area		X	
Lights - Garage Fixtures		X	
Lights - Garage Bulb		X	
Lights - Eaves (Electrical Issue/Replacement)		X	
Lights - Eaves Bulb		X	
Lights - Porch Bulb		X	
Lights - Porch Fixture		X	
Limited Common Area Driveways - Concrete Approach		X	
Limited Common Area Patios		X	
Limited Common Area Porches		X	
Limited Common Area Sidewalks	X		
Mailbox & Stand/Structure			USPS
Mailbox Lock & Key		X	
Paint - Exterior Wood Trim Finishes (Door Trim)		X	HOA is budgeted to repaint siding and trim material that is not the door frame in reserve study.
Paint - Interior		X	
Paint - Garage Doors			*No painting of garage doors permitted. Must maintain original finish and replace garage door if needed.
Patio Slab		X	
Pest Control Interior		X	
Pest Control Exterior		X	
Phone Lines		X	
Plumbing Gate Valves		X	Point of connection/Meter to the unit - Owner. Before point of connection, shared by Owners in use.
Plumbing Main Line		X	Point of connection/Meter to the unit - Owner. Before point of connection, shared by Owners in use.
Plumbing Pressure Regulator		X	
Plumbing Leak		X	Point of connection/Meter to the unit - Owner. Before point of connection, shared by Owners in use.
Plumbing Stoppage		X	Point of connection/Meter to the unit - Owner. Before point of connection, shared by Owners in use.
Plumbing Wall Pipes		X	
Rain Gutters - future replacement	X		
Rain Gutters - clean-out		X	
Rain Gutters - repair		X	
Rain Gutters - hooked to drain/draining away from building		X	
Rats/Rodents		X	
Roof - future replacement	X		
Roof - Ice dams		X	Owner is responsible to have heat tape installed if ice dams are an issue on their portion of the roof.
Roof Leak	X		See satellite dish for exceptions
Roof Leak - damages to interior		X	

		X	The unit owner is responsible for any roof repair as a result of a satellite dish, whether the prior owner or current owner installed said dish. Any removal of the dish must be done through the HOA's designated roof company, with the cost assessed to the unit owner.
Satellite Dishes - Roofs			
Screen Doors		X	*Must be approved by DRC
Sewer pipes		X	
Sewer pipes - portion to more than one unit		X	Responsibility shared by Owners in use.
Shutters		X	
Skylights		X	
Sliding Glass Doors		X	
Stairway		X	
Storm Drains	X		*Private road areas only
Street Lights	X		
Streets	X		
		X	An owner may choose to have stucco cracking repaired as the HOA will not do so, however if not exact match or noticeable, owner then responsible for coating of walls as the HOA sees fit to resolve situation, at the owner's cost.
Stucco - Repair			
Rock - Repair	X		
Rock - individual unit aesthetic issues		X	
Termite Inspection		X	
Termites - Attic		X	
Termites - Exterior		X	
Termites - Garage		X	
Termites - Interior		X	
Trash		X	
TV Reception		X	
Utility Doors		X	
Vent covers - Exterior		X	
Walkways to individual unit- not shared		X	
Wall - Bearing Interior Wall		X	
Wall - Partition Interior Wall		X	
Wasps		X	
Water - Culinary		X	
Water - Landscape	X		
Weatherstripping		X	
Window Boxes		X	
Window Frames		X	
Window Glass		X	
Window Screens		X	

**EXHIBIT E**

**(Identification and Location of Signage)**

# FieldStone HOMES

