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DAVIS COUNTY, UTAH RECORDER  
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SEPTEMBER 22 2005 D

DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
SCHICK FARM DEVELOPMENT  
KAYSVILLE, UTAH

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**DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR  
SCHICK FARM DEVELOPMENT  
DAVIS COUNTY, UTAH**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SCHICK FARM DEVELOPMENT is made this 30<sup>th</sup> day of September, 2005, by FIELDSTONE HOMES UTAH, L.L.C., a Utah limited liability company (“Fieldstone”) referred to below as “Declarant.”

**RECITALS:**

A. Fieldstone is fee title owner of the following described real property (the “Initial Property”) located in Kaysville, Davis County, Utah, and known as Schick Farm, more particularly described as:

Schick Farm Cluster Subdivision, Phase 1, lots 101 through 149 and the open space, EXCLUDING lot 119.

B. The Initial Property is part of a larger tract of real property more particularly described Schick Farm Cluster Subdivision (the “Entire Property”). The Entire Property consists of the Initial Property and the Schick Farm Development Phases 2 – 8 (the “Additional Property”). The Additional Property is the portion of the Entire Property which is not a part of the Initial Property.

C. Pursuant to written purchase contracts, Fieldstone has the contractual right to purchase the Additional Property.

D. Declarant intends to develop a residential subdivision on the Initial Property. Declarant will develop and convey all of the lots within the subdivision subject to certain protective covenants, conditions and restrictions all as set forth in this Declaration, and which are deemed to be covenants running with the land mutually burdening and benefiting each of the lots within the subdivision.

E. Declarant intends to develop the subdivision on the Entire Property in phases, with the initial phase consisting of the Initial Property in accordance with the Preliminary Phase as on record with Kaysville City. The Declarant reserves the right to subject the Additional Property to the terms and conditions of this Declaration at a later time. As used herein, the term “Property” shall refer to the Initial Property and such portion of the Additional Property as may be subject to the terms and conditions of this Declaration from time to time. The subdivision project on the Entire Property will be known as “Schick Farm”.

F. Declarant desires to provide for a Homeowner’s Association and an organization and forum for the enforcement of the covenants, conditions, and restrictions set forth herein.

**DECLARATION:**

DECLARANT HEREBY DECLARES that all of the Lots within the Subdivision shall be held, sold, conveyed, encumbered, leased, used, occupied and improved subject to the protective covenants, conditions, restrictions and equitable servitudes set forth in this Declaration, all of which are created for the mutual benefit of the owners. It is the intention of the Declarant in imposing these covenants, conditions and restrictions to protect and enhance the property values and aesthetic values of the Lots by eliminating inconsistent uses or improvements, all for the mutual protection and benefit of the Owners. The covenants, conditions and restrictions are intended to, and shall in all cases run with the title of the land, and be binding upon the successors, assigns, heirs, lien holders, and any other person holding any interest in the Lots, and shall inure to the benefit of all other Lots in the Subdivision to be located on the Property. The covenants, conditions and restrictions shall be binding upon the Declarant as well as its successors in interest, and may be enforced by the Declarant or by any Owner.

Portions of the Additional Property may also be made subject to the terms of this Declaration through recordation of a supplementary declaration. The supplementary declaration may contain protective covenants, conditions and restrictions substantially similar to the covenants set forth in this Declaration, with such modifications or supplemental provisions as may be deemed appropriate by Declarant on a phase by phase basis to address differences in market conditions, financially or technically unworkable design standards, changes mandated by law, or differences in the circumstances affecting lots to be constructed after the Initial Phase.

Notwithstanding the foregoing, no provisions 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 the Subdivision Improvements; (2) use of any Lot owned by the Declarant as a model home, or for the placement of a temporary construction or sales office; (3) installation and 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 homes within the Subdivision; (5) retention of Declarant's rights with respect to subsequent phases of the Subdivision; (6) construction of any improvements, including homes, by Declarant as approved by the City; (7) access over any lot for the installation of improvements; and (8) erection of permanent or temporary signs for use during the selling and marketing of the project.

**COVENANTS, CONDITIONS AND RESTRICTIONS:**

**ARTICLE I**

**DEFINITIONS**

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

“Additional Improvements” shall mean Improvements other than those constructed by Declarant.

“Additional Property” shall mean the balance of the Entire Property not included within the recorded Phases.

“Architectural Guidelines” shall have the meaning provided in the preamble of Article III of this Declaration.

“Architectural Review Committee” shall mean the committee created under Article IV of this declaration.

“Association” shall mean the Schick Farm Homeowners Association, whether incorporated or not, and as the context requires, the officers and directors of the Association.

“Bylaws” shall mean the bylaws of the Association as adopted and amended from time to time by the Association’s Board of Trustees.

“City” shall mean Kaysville City, Utah, and its appropriate departments, officials, and boards.

“Declarant” shall mean and refer to Fieldstone, TNC, and any successor to in the ownership of Lots where ownership is conveyed in connection with a total or limited assignment and assumption of Declarant’s rights and obligations under this Declaration.

“Declaration” shall mean this Declaration of Covenants, Conditions and Restrictions, together with any subsequent amendments or additions.

“Dwelling” shall mean the single family residence built or to be built on any Lot, including the attached garage.

“Entire Property” shall have the meaning set forth in the recitals.

“Family” shall mean one household of persons related to each other by blood, adoption or marriage, or one group of not more than five people not so related living together as a unit who maintain a common household.

“Improvement” shall mean all structures and appurtenances of every type and kind, including but not limited to buildings, Dwellings, garages, storage buildings, walkways, retaining walls, sprinklers, pipes, driveways, fences, landscaping, pools, decks, stairs, poles, lighting, signs, satellite dishes or other antennas, and any mechanical equipment located on the exterior of any building.

“Initial Property” shall have the meaning set forth in the recitals.

“Lot” shall mean any numbered building Lot shown on any official Phase of all or a portion of the Subdivision.

“Owner” shall mean the person or persons having title to any Lot. Owner shall mean the person holding fee simple title, including the Declarant, and buyers under any contract for deed, but shall exclude any person or entity holding title for purposes of securing performance of an obligation.

“Person” shall mean a natural person or any legal entity with a right to hold title to real property in its own name in the State of Utah.

“Phase” shall mean an official ownership Phase of any phase of the Schick Farm Development as approved by the City and recorded in the office of the Davis County Recorder, as it may be amended from time to time.

“Subdivision” shall mean all phases of the Schick Farm Development and all Lots, Common Areas, and other property within the Subdivision as shown on the Phases covering the Entire Property.

“Subdivision Improvements” shall mean all subdivision improvements to be installed outside of the boundaries of Lots or within easements as identified on the Phases that are necessary to provide public road access and utility service to the Lots, and including other construction work required to comply with any conditions of the City or other governmental agencies to the approval of the Subdivision or any Phase thereof.

“Trustees” shall mean the duly elected and acting Board of Trustees of the Association.

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**ARTICLE II****HOMEOWNERS ASSOCIATION**

2. To effectively enforce these Covenants, the Declarant has created, or will create, a Utah non-profit corporation called the Schick Farm Homeowners Association. The Association shall be comprised of the Owners within the Subdivision, and is established to perform the following functions and exercise the following rights and powers for the benefit of the Owners and the enforcement of these covenants. Membership in the Association is deemed an appurtenance to the Lot, and is transferable only in conjunction with the transfer of title to the Lot. The Association shall have and exercise, as necessary, the following powers:

2.1 **Enforcement Powers.** The Association shall have the power to enforce these covenants by actions in law or equity brought in its own name, the power to retain professional services needed for the enforcement of these covenants and to incur expenses for that purpose. The officers of the Association shall have the authority to compromise claims and litigation on behalf of the Association resulting from the enforcement of these Covenants. The Trustees of the Association shall have the exclusive right to initiate enforcement actions in the name of the Association, however, this shall not limit the individual rights of Owners to personally enforce these Covenants in their own name. The Association may appear and represent the interests of the Subdivision at all public meetings concerning zoning, variances, or other matters of general application and interest to the Owners. Owners may appear individually.

2.2 **Assessments.** Except as provided in 2.2.1, the Association has the power to levy assessments against each Lot as necessary to carry out these functions. All assessments will be equal on all Lots, whether vacant or improved. Assessments will be made annually but shall be paid in equal monthly installments and shall be made to meet the anticipated and recurring costs, expenses and other expenditures of the Association including, but not limited to, the costs of reimbursement of expenses incurred by the Trustees in performance of their obligations, the costs of complying with and enforcing rights under these covenants, acquisition of liability insurance, working capital, and contingency reserves. Notice of the assessment and the proposed amount of the annual assessment will be given in advance along with the notice of the annual meeting of the Association, provided that the amount of the proposed assessment may be increased or decreased at the meeting in which it is approved by the Owners. The Association may also levy special assessments to cover unanticipated expenses or shortfalls. No special assessment will be levied without approval of a majority of the votes held by a quorum of the Owners (as defined in 2.7) in attendance in person or by proxy at a meeting called for that purpose.

2.2.1 Assessments on Lots Owned by Declarant. No assessments shall be levied against Lots owned by Declarant that do not have a completed Dwelling. Assessments levied against Lots owned by Declarant that have a completed Dwelling shall not include any portion of costs incurred for management and administration of the Association or for reserves for capital repairs, replacements, or improvements.

2.3 Assessments Constitute Lien, Mortgagee Protection. Any validly imposed assessment by the Association shall constitute a lien against the Lots in the Subdivision. The Association shall have the right to foreclose on that lien under the procedures available for the foreclosure of mortgages in the state of Utah when any assessment remains unpaid for a period of more than 90 days from the date the assessment was levied. Alternatively, if the lien is not foreclosed upon, it may be renewed from year to year by recording a new notice of the lien, together with accumulated interest. The lien of the Association against any Lot shall have priority from the date that the first Notice of Lien on a specific Lot is recorded in the office of the Davis County Recorder, and is subordinate to any previously recorded liens or encumbrances filed against that Lot, specifically including any purchase money mortgage or trust deed. Notwithstanding the lien rights of the Association, the obligation to pay any assessments is a personal obligation of the Owner of each Lot, and the Association may proceed to collect against the Owner, or the prior Owner of any Lot (in the event of a sale) without any obligation to first take recourse against the Lot and Improvements to which the Lien has been attached. The legal and administrative costs of any foreclosure or non-judicial proceeding, interest on all amounts due and owing, and all late fees shall be added to the assessment amount past due and shall constitute part of the assessment. Interest shall be charged on all assessments at a rate of 1.5% per month, beginning 15 days after such amount is due. In addition, a late fee of 5% shall be charged for each assessment installment paid 15 days or more after the installment is due. No Mortgagee or Beneficiary under a Trust Deed who takes title by foreclosure or non-judicial sale, or accepts a deed in lieu of foreclosure or non-judicial sale, shall be held liable for the unpaid assessments of the Owner whose Lot was acquired by the Mortgagee or Beneficiary under a Trust Deed. However, all other successor Owners shall be deemed to assume the obligation to pay unpaid assessments on the Lot.

2.4 Statement of Account. Any Owner may request the Association to provide a statement of his account to any lender or prospective buyer of that Lot showing the assessments to be paid in full, or the amounts of any past due assessments. The buyer or lender for whom such a statement was prepared will entitled to rely on its accuracy, and will not be held liable for any amounts not shown on the statement.

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

2.6 Election. The Association shall have two classes of membership. Declarant shall be the only Class A member and shall be entitled to cast 3 votes for each Lot it owns in the

election of Trustees and for any other matter that is presented to the Association. All other Owners shall be Class B members and shall be entitled to case one vote for each Lot he or she owns in the election of Trustees and for any other matter that is presented to the Association. in the case of a Lot with multiple Owners, the Owners will agree among themselves how the vote applicable to that Lot will be cast, and if no agreement can be reached, no vote will be received from that Lot. Any of the multiple Owners appearing at the meeting in person or by proxy is deemed to be acting with proper authority for all of the other Owners of that Lot unless the other Owners are also present or have filed written objections to that Owner's representation of the other Owners of the Lot in question.

2.7 Notice of Election, Notice of Meeting. Unless otherwise provided in the Bylaws of the Association, notice of any meeting for the election of members to the Board of Trustees or for any other purpose shall be sent to the Owners at their last known address (which may be determined from the most recent property tax assessment if no other address is known). Notice will be mailed not less than 30 days, nor more than 60 days in advance of the meeting. Any notice will state the purpose of the meeting, and the time, date and place of meeting. At any such meeting, a quorum will exist of Owners holding 51% of the total voting power within the Association are present, and notice was properly given. Those present at the meeting may vote to continue the meeting to any date within 30 days. Notice of the continued meeting will be given by mail, and at the subsequent continued meeting, a quorum will consist of those members present. The Chairman of the Board of Trustees will give notice of any meetings, and will chair meetings of the Owners.

2.8. Special Meeting. When circumstances warrant, a special meeting of the Owners may be called as provided in the Bylaws. No business may be conducted at a special meeting without a full quorum of the Owners (as defined in 2.7) being present in person or by written proxy.

2.9. Number of Trustees, Term of Office. Unless otherwise provided in the Bylaws of the Association, there shall be three (3) members of the Board of Trustees, who will serve for terms of three years, or until their successors have been elected. At such time as the first Board of Trustees is named, whether by appointment by the Declarant or by election from among the Owners, the Trustees will draw lots to divide themselves into terms of one, two and three years. Members of the Board of Trustees may serve consecutive terms.

### **ARTICLE III**

#### **RESTRICTIONS ON ALL LOTS (excluding lot 119)**

3. The following restrictions on use apply to all Lots within the Subdivision:

3.1 Zoning Regulations. The lawfully enacted zoning regulations of the City, and any building, fire, and health codes are in full force and effect in the Subdivision, and no Lot may be occupied in a manner that is in violation of any such statute, law, or ordinance.

3.2 No Mining Uses. The property within the Subdivision shall be used for residential purposes only, and no mining, drilling, prospecting, mineral exploration or quarrying activity will be permitted at any time.

3.3 No Business or Commercial Uses. No portion of the Subdivision may be used for any commercial business use, provided, however, that nothing in this provision is intended to prevent (a) the Declarant from using one or more Lots for purposes of a construction office or sales office during the actual period of construction of any Improvements, including the Subdivision Improvements, or (b) the use by any Owner of his Lot for a home occupation. No home occupation will be permitted, however, which requires or encourages the Owner's clients, customers, patients or others to come to the Lot to conduct business, or which requires any employees outside of the Owner's immediate family or household or is inconsistent with City ordinances. No retail sales of any kind may be made in the Subdivision.

3.4 Restrictions on Signs. No signs will be permitted on any Lot or within the Subdivision, except for traffic control signs placed by the City or temporary signs warning of some immediate danger. Signs indicating the Lot is for sale may be placed in accordance with City sign regulations, and no such sign may exceed three square feet. The Declarant may erect signs within the Subdivision in accordance with City sign regulations during the marketing of the Subdivision announcing the availability of homes or Lots and giving sales information.

3.5 Additional Improvements. No Additional Improvements shall be constructed on any Lot unless such Additional Improvement conforms with all applicable building requirements and other requirements of the City.

3.6 Antennas. All antennas must be enclosed within the Dwelling. Any satellite dishes must be located and screened in a manner so that they are not directly visible from adjoining Lots. Solar panels will be permitted only with the consent of the Trustees, and if permitted at all, must lie flat against the roof and may not differ in pitch or color from the roof surface on which they are mounted.

3.7 No Used or Temporary Structures. No previously erected, used, or temporary structure, mobile home, trailer house, or any other non-permanent structure may be installed or maintained on any Lot.

3.8 Number of Dwellings. Only one Dwelling may be constructed on any Lot. All Dwellings shall have an attached garage for at least two cars. No other outbuilding or habitable structure may be permitted on any Lot.

3.9 Completion Required Before Occupancy. No Dwelling may be occupied prior to its completion and the issuance of a certificate of occupancy by the City.

3.10 No Other Construction. No Additional Improvements, including but not limited to garages, storage units, or other out buildings, may be made to any Lot without the prior approval of the Trustees.

3.11 Animals. No animals other than (not to exceed three) ordinary household pets may be kept on any Lot unless permitted by City ordinance. Each Owner shall be responsible for preventing pets from entering the Common Areas and Lots held by other Owners.

3.12 Underground Utilities. All new gas, electrical, telephone, television, and any other new utility lines installed by the Declarant or its assigns in the Subdivision are to be underground, including lines within any Lot which service installations entirely within that Lot. No propane tanks or oil tanks may be installed on any Lot except for temporary heat during construction.

3.13 Service Yards. There shall be no clothes lines, service yards, or storage yards. Exterior mechanical equipment must be screened in a manner so that it is not visible from adjoining Lots.

3.14 Maintenance of Property. All Lots, and the Improvements on them, shall be maintained in a clean, sanitary, attractive and marketable condition at all times. No Owner shall permit his Lot or the Improvements on it to fall into disrepair.

3.15 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried out on any Lot, including the creation of loud or offensive noises or odors that detract from the reasonable enjoyment of nearby Lots.

3.16 No Hazardous Activity. No activity may be conducted on any Lot that is, or would be considered by a reasonable person to be unreasonably dangerous or hazardous, or which would cause the cancellation of a conventional homeowners insurance policy. This includes, without limitation, the storage of caustic, toxic, flammable, explosive or hazardous materials in excess of those reasonable and customary for household uses, the discharge of firearms or fireworks, and setting open fires (other than properly supervised and contained barbecues).

3.17 No Unsightliness. No unsightliness is permitted on any Lot. This shall include, without limitation, the open storage of any building materials (except during the construction of any Dwelling unit or addition); open storage or parking of farm or construction equipment, boats, campers, camper shells, trailers, trucks larger than pick-up trucks (except during periods of actual loading and unloading) or inoperable motor vehicles; accumulations of lawn or tree clippings or trimmings; accumulations of construction debris or waste; household refuse or garbage except as stored in tight containers in an enclosure such as a garage; and the storage or accumulation of any other material, vehicle, or equipment on the Lot in a manner that it is visible from any other Lot or any public street.

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

3.19 No Annoying Sounds. No speakers, or other noise making devices may be used or maintained on any Lot which create noise that might reasonably be expected to be unreasonably or annoyingly loud from adjoining Lots, except for security or fire alarms.

3.20 Sewer Connection Required. All Lots are served by sanitary sewer service, and no cesspools, septic tanks, or other types of waste disposal systems are permitted on any Lot. All Dwelling units must be connected to the sanitary sewer system.

3.21 No Fuel Storage. No fuel oil, gasoline, propane, or other fuel storage tanks may be installed or maintained on the property. Dwellings shall be heated with natural gas, solar, or electric heat. Propane or other such containerized fuels may be used only during construction of the Dwelling until the permanent heating system is installed and operational. Notwithstanding the foregoing, propane tanks for outdoor barbecues shall be permitted.

3.22 Drainage. No Owner shall alter the direction of natural drainage from his Lot, nor shall any Owner permit accelerated storm run-off to leave his Lot without first using reasonable means to dissipate the flow energy.

3.23 Vehicles Restricted to Roadways. No motor vehicle will be operated on the Subdivision except on improved roads and driveways.

3.24 Kennels. No kennel or dog run may be placed closer than 20 feet to any Dwelling other than that of the Owner of the kennel. No wire fencing shall be allowed which is unscreened from the view of adjoining Lots.

3.25 No Transient Lodging Uses. The Lots are to be used for residential housing purposes only, and shall not be rented in whole or in part for transient lodging purposes, boarding house, "bed and breakfast", or other uses for providing accommodations to travelers. No lease of any Dwelling on a Lot shall be for a period of less than 30 days. No Dwelling on a Lot shall be subjected to time interval ownership.

3.26 Fences. The Declarant, or his assigns, shall install fencing within the Schick Farm Development per Exhibit "C" of the Development Agreement on record with Kaysville City. No fencing installed by the Declarant shall be altered in any way. All other fencing installed by Owners shall be no more than 6 feet in height and constructed of cedar, redwood, vinyl, masonry, or iron fencing material.

3.27 No Re-Subdivision. No Lot may be re-subdivided without the consent of the Architectural Committee, and no re-subdivision of any Lot may result in the construction of any additional Dwelling units within the Subdivision. All re-subdivision activity shall comply with state code.

3.28 Landscaping. No rock, bark, or other non-growing materials are allowed as a substitute for grass or ground cover in areas visible to other Owners.

3.29 Landscaping Required. Within sixty (60) days following an owner's closing of a lot from Declarant or its assignee, each owner shall complete minimum landscaping of his lot. If the owner closes on his lot from Declarant during the winter, i.e. October 15 through February 28, the owner shall landscape his lot by April 15 following severe winter months. Minimum landscape is grass and sprinklers. In its Real Estate Purchase Contracts for the sales of lots, developer shall require the Purchasers of such lots to deposit the sum of Five Hundred Dollars (\$500.00) into escrow (the "Landscape Deposit"). Said Real Estate Purchase Contracts shall permit the purchase of the Landscape Deposit to the purchaser of such lot upon the delivery of a letter from the Homeowner's Association certifying that the purchaser has complied with the landscaping provisions set forth above. In the event the Purchaser has not installed the landscaping as required by this section within the specified timeframes, the deposit shall be forfeited by the Purchaser to the Homeowner's Association and the Homeowner's Association may, in addition to any other remedies the Homeowner's Association may have, fine the Purchaser \$200 per month until the required landscaping has been installed.

3.30 Street Tree Preservation. No street tree installed by Declarant shall be altered or removed, and Owners are required to maintain all street trees on their Lots in good condition and replace any dead or diseased trees installed by Declarant. All new plantings of any such tree shall be at least two inch (2") caliper.

3.31 Variances. Variances to the design standards contained in this Declaration may be granted by the Trustees when strict application would create an unforeseen or unreasonable hardship to the Owner of any Lot. Each such variance must be approved by a majority of the Trustees. The granting of a variance shall not operate to waive or to render unenforceable any of the terms and provisions of this Declaration for any purpose except as to the particular Lot and the provisions and circumstances covered by the variance, nor shall the granting of a variance be deemed to set a precedent with respect to any subsequent requests for variances. The Trustees shall not delegate to any single member or group of members or to any other person the power to grant variances pursuant to this Section 3.4. No variance shall be granted if that variance has the effect of modifying applicable City zoning or building code regulations. Any request for variance must be in writing and specify the variance requested and the reasons for such variance. A request for variance shall be reviewed by the Trustees within 30 business days after the Association's receipt of a written request for same. The Trustees shall provide written notification of approval or disapproval. Notification of disapproval shall include a reasonably detailed explanation of the reasons for such disapproval. In the event that the Trustees shall fail to act within the 30-day period, the requested variance shall be deemed disapproved, and within 15 days from said date the Trustees shall provide written notification of the reasons for such disapproval.

#### ARTICLE IV

#### ARCHITECTURAL REVIEW COMMITTEE

4. It is the intention and purpose of these covenants, conditions and restrictions to allow the Architectural Review Committee (1) to enforce the architectural requirements of the Conditional Use Permit and Preliminary Phase approved by the City and (2) to impose construction rules on construction other than that performed by Declarant. To accomplish this goal, the Declarant hereby establishes the Architectural Review Committee, which is empowered to develop and enforce the Design Guidelines. However, Declarant shall not be subject to any review and/or approval by the Architectural Review Committee as long as it complies with all requirements of the Conditional Use Permit and Preliminary Phase requirements approved by the City.



4.1 Architectural Review Committee Created. The Architectural Review Committee will consist of three Owners, at least two of whom shall be members of the Board of Trustees of the Association. The initial committee will consist of three people appointed by the Declarant, who do not need to be Owners. At the time 150 Lots are sold to persons other than the Declarant, one member of the Committee will be elected from the Board of Trustees, other than a representative of the Declarant. At the time that 250 Lots are sold to persons other than the Declarant, two members of the Committee will be elected by the Owners from the Board of Trustees. At the time all Lots are sold to persons other than the Declarant, all of the members of the Architectural Committee will be elected by the Owners. Until such time as all Lots have been sold to persons other than the Declarant, Declarant shall have the right and power to veto any action undertaken by the Architectural Review Committee. The Homeowners Association shall use its enforcement powers to ensure that the Architectural Review Committee's actions result in buildings which are consistent with the Design Guidelines.

4.2 Approval by Committee Required. No Owner other than Declarant shall construct, erect or install Additional Improvements of any kind, including without limitation the construction of any Dwelling, garage, out-building, parking area, driveway, , or other hard surfaced area in excess of 200 square feet, swimming pools, outdoor hot tubs or spas, walls, patio structures, gazebos, poles, satellite dishes or antenna, solar panels, or any other permanent structure in the Subdivision without the prior consent of the Architectural Review Committee. Approval of the committee will be sought in the following manner:

(a) Plans Submitted. Plans for the construction of any Additional Improvements must be submitted to the committee for review. It is recommended that a preliminary plan be submitted before the expense of final drawings is incurred. The plan must be in sufficient detail to show the location on the Lot of the exterior walls of a Dwelling (where applicable) and all other structures to be built with it; detailed drawings of all elevations of all proposed buildings showing locations of windows, doors, roof pitches, decks and other exterior elements; a list of exterior siding and roofing materials and/or a sample, including color samples; and a landscape plan showing the location of landscaped areas, driveways, walkways, patios, decks and other hard surfaced or irrigated areas and the areas to be disturbed by construction and the means of restoring those areas. In the case of an addition or modification of an existing Dwelling, the Committee may waive any of the foregoing it feels are unnecessary to its review of the remodel or addition.

(b) Review Fee. The applicant will pay a review fee to the Committee in an amount necessary to cover the costs of review and the administration of the program in an amount to be established from time to time by the Architectural Review Committee. The initial review fee shall be \$100 for each new Dwelling, \$50 for each addition or remodel, or \$25 for construction that makes no structural changes. In addition, the Architectural Committee may assess a fee for the professional review of the plans in accordance with the provisions of 4.4 below. The primary purpose of the fee is to document the date of submission, but the Committee may also use the proceeds to pay for

its expenses in reviewing the plans and giving notice of meetings. No fee will be accepted until the Chairman of the Architectural Committee considers the submission complete.

(c) Review. Within 30 days from receipt of a complete submission, the Committee will review plans and make an initial determination whether or not the plans comply with the conditions imposed by the Declaration and the standards developed by the Committee. If they do not, the plans will be rejected. If they are in compliance, the Committee will approve the plans. The Committee may also approve the plans subject to specific modifications or conditions. Owners may desire to submit preliminary plans for review. The Committee will review preliminary plans, without fee, and make its comments known to the Owner, provided, however, that no preliminary approval is to be considered a final approval, and no final approval will be granted on less than a complete submission. Upon approval, the Committee and the Owner will each sign a copy of the plans, which shall be left with the Committee. No construction that is not in strict compliance with the plans approved will be permitted.

(d) Written Record. The Committee will maintain a written record of its actions, and maintain in its files a copy of all plans approved or rejected for a period of five years. The Committee will also provide evidence of this approval for the City if requested by the Owners.

(e) Failure to Act. If the Committee has not approved or rejected any submission within 30 days after payment of the review fee and submission of complete plans, the submission is deemed to have been approved.

4.3 Variances. Variances to the design standards contained in this Declaration may be granted by the Trustees when strict application would create an unforeseen or unreasonable hardship to the Owner of any Lot. Each such variance must be approved by a majority of the Trustees. The granting of a variance shall not operate to waive or to render unenforceable any of the terms and provisions of this Declaration for any purpose except as to the particular Lot and the provisions and circumstances covered by the variance, nor shall the granting of a variance be deemed to set a precedent with respect to any subsequent requests for variances. The Trustees shall not delegate to any single member or group of members or to any other person the power to grant variances pursuant to this Section 4.3. No variance shall be granted if that variance has the effect of modifying applicable City zoning or building code regulations or the PUD. Any request for variance must be in writing and specify the variance requested and the reasons for such variance. A request for variance shall be reviewed by the Trustees within 30 business days after the Association's receipt of a written request for same. The Trustees shall provide written notification of approval or disapproval. Notification of disapproval shall include a reasonably detailed explanation of the reasons for such disapproval. In the event that the Trustees shall fail to act within the 30-day period, the requested variance shall be deemed disapproved, and within 15 days from said date the Trustees shall provide written notification of the reasons for such disapproval.

4.4 Costs of Professional Review. The Committee may engage the services of an architect, or civil or structural engineer to assist in its review of any proposed Additional Improvements on a case-by-case basis or may elect to require the review of a design professional for every application. All costs of such additional review will be paid by the Applicant, provided, however, that no architect or engineer will be hired without advance notice to the Applicant of the intention to hire a review architect or engineer and the estimated cost of that review. The costs of such review must be paid by the applicant prior to the commencement of any review. If the applicant does not withdraw the proposal within five days after receipt of that notice, he is deemed to have consented to the Committee retaining such professional assistance. Whenever the Committee retains outside professional services in its review, the reviewing architect or engineer is acting only in an advisory capacity, and all Owners and the applicant, for himself and his successors and assigns, waive any and all claims against the Committee in the event that advice from, or conditions imposed by, the reviewing professional prove ineffective, unnecessary, or inappropriate to the circumstances.

4.5 General Design Review. The Committee will use its best efforts to provide a consistent pattern of development, and consistent application of the Design Guidelines and this Declaration. These standards are, of necessity, general in nature, and it is the Committee's responsibility to apply them in a manner that results in a high quality, attractive and well designed community.

4.6 Declarant, Trustees and Committee not Liable. The Declarant, the Trustees, and the Committee and its members shall not be liable to the applicant for any damages, or to the Owners of any Lots within the Subdivision for their actions, inactions, or approval or disapproval of any set of plans submitted to the Committee for review. In the absence of bad faith or malicious actions, the Owners shall have no claim against the Declarant or Committee as a result of the performance or failure to perform the duties created by this Declaration. Each Owner has the right to enforce these covenants against every other Owner, and may seek independent redress against any other Owner for violation of any covenant.

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

4.8 City Approval. The powers and approvals of the Architectural Review Committee shall be subject to the powers and necessary approvals of the City.

4.9 Construction Rules. Other than construction performed by the Declarant, with regard to any construction project affecting the exterior of any Dwelling and any construction of Dwellings, the Architectural Review Committee may impose reasonable rules and regulations to minimize the inconvenience to adjoining Owners during the period of construction. The Committee may impose rules requiring pre-construction conferences and regulations regarding portable offices and trailers, construction debris removal, construction area appearance, sanitary facilities, construction parking and vehicles, construction signs, hours of work, soil conservation and dust, removal of mud, and duration of construction.

## ARTICLE V

### ARCHITECTURAL GUIDELINES

5. The following architectural guidelines shall apply to all units constructed on the property in addition to any requirements of the City of Kaysville, and shall be reviewed for compliance by the Architectural Review Committee.

5.1 Neighborhood Guidelines. The Subdivision has been divided into several different areas ("Neighborhoods") per Exhibit "D" of the Development Agreement on record with Kaysville City, each of which have their own architectural guidelines. In addition to the general architectural review requirements within this Declaration, the following architectural guidelines shall apply to the Neighborhoods.

- (a) Lot Size. All Lots within Neighborhoods 1-3 shall be a minimum of 13,000 square feet. Neighborhood 4 shall be constructed as a gate-guarded community consistent with the Conditional Use Permit approved by the City and as part of a planned unit development.
- (b) Dwelling Size. The following above ground minimum finished square footages shall apply to all dwelling units constructed on the Property:
- a. Neighborhood One. Single story units shall be a minimum of 1,500 square feet above ground. Two story units shall be a minimum of 1,935 square feet above ground.
  - b. Neighborhood Two. Single story units shall be a minimum of 1,800 square feet above ground. Two story units shall be a minimum of 2,300 square feet above ground.
  - c. Neighborhood Three. Single story units shall be a minimum of 1,500 square feet above ground. Two story units shall be a minimum of 1,935 square feet above ground.

- d. Neighborhood Four. Single story units shall be a minimum of 1,200 square feet above ground. Two story units shall be a minimum of 1,600 square feet above ground.
- (c) Garages. All homes will be constructed with a minimum two-car attached garage. The following requirements shall apply to the Neighborhoods:
- a. Neighborhood Two. All homes constructed within this Neighborhood shall require a minimum three-car attached garage.
  - b. Neighborhood Three. Fifty percent (50%) of the homes constructed within this Neighborhood shall require a minimum three-car attached garage.
- (d) Exterior Materials. All residential dwellings shall be constructed of brick, stone and/or stucco. No aluminum or vinyl siding will be allowed. Roofing materials shall be 30-year asphalt type shingles or equivalent. All exterior building materials shall be approved by the Architectural Review Committee. In addition, the following shall apply to the Neighborhoods:
- a. Neighborhood One. A minimum of thirty percent (30%) of the front elevation of the home (excluding doors and windows) shall be constructed with brick or stone.
  - b. Neighborhood Two. A minimum of seventy percent (70%) of the front elevation of the home (excluding doors and windows) shall be constructed of brick or stone. A minimum 3' brick or stone wainscoat shall be constructed on the side elevations of the home.
  - c. Neighborhood Three. A minimum of fifty percent (50%) of the front elevation of the home (excluding doors and windows) shall be constructed of brick or stone.
  - d. Neighborhood Four. A minimum of fifty percent (50%) of the front elevation of the home (excluding doors and windows) shall be constructed with brick or stone. A minimum 3' brick or stone wainscoat shall be constructed on the side elevations of the home.
- (e) Mix Limitations. The following mix limitations shall apply to the Neighborhoods:
- a. Neighborhood One. No more than twenty percent (20%) of the homes shall be allowed to be constructed under 1,935 finished square feet.
  - b. Neighborhood Three. No more than twenty percent (20%) of the homes shall be allowed to be constructed under 1,935 finished square feet

5.2 Rear Elevation Guidelines. The following architectural guidelines shall apply to the rear elevations of homes on lots within the Subdivision per Exhibit “E” of the Development Agreement on record with Kaysville City (the “Rear Elevation Lots”), which have been deemed sensitive or highly visible from major roads and/or other properties (the “Rear Elevation Guidelines”).

(a) Rear Elevation Design Elements. Two story homes constructed on the Rear Elevation Lots shall be required to incorporate a minimum of one of the structural elements and one of the architectural elements into the design of the rear elevation of the home as follows:

a. Structural Elements.

- i. Hip Roof.
- ii. Roof dormers on the rear of the roof.
- iii. Addition of “bay window” or other “popped out” element.
- iv. Offset second floor
- v. First floor roof break.
- vi. Second floor deck element.

c. Architectural Elements.

- i. Stucco trim detail around all windows and doors.
- ii. Window pane detail (i.e. added grid pattern to the window glass).
- iii. Shutters installed on all second floor windows.
- iv. Material or color break between the first and second floors. Material breaks could include stucco trim details, brick and/or stone details, or other options approved by the Architectural Review Committee.

(b) Fencing. All Rear Elevation Lots will require the installation of a 5’ solid vinyl fence or equivalent, on the rear property line of the lot.

5.3 Home Selection Requirements. Owners shall conform to the standards set forth on the Home Selection Form per Exhibit “F” of the Development Agreement on record with Kaysville City for Neighborhoods One, Two, and Three. No requirements will be in effect for Neighborhood Four.

5.4 Exceptions. The Architectural Review Committee reserves the right to grant exceptions to the above restrictions in order to place an appropriate home on a specific lot due to slope restrictions, existing easements, lot irregularity, or for any other reason they deem appropriate as long as these exceptions do not conflict with the requirements of the City approvals.

## **ARTICLE VI**

### **OWNERS' MAINTENANCE OBLIGATIONS**

6. It is the obligation of each Owner to maintain his Lot at all times in order to preserve and enhance the enjoyment of the Subdivision:

6.1 Duty to Maintain. It is the obligation of the Owner of each Lot to maintain his Lot and the Improvements to the Lot in a good state of repair and an attractive, safe, and healthy condition.

6.2 Repair Following Damage. In the event of casualty loss or damage to the Improvements, the Owner will be entitled to reconstruct the Improvements as they existed prior to the damage or loss. Nothing in this Declaration is intended to prevent an Owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent further damage, or to prevent injury or dangerous conditions following loss or damage, before re-construction begins. No damaged structure will be permitted to remain on any Lot for more than 90 days without repairs commencing, and any damaged structure which does remain un-repaired after 90 days following the occurrence of damage is deemed a nuisance.

## **ARTICLE VII**

### **GENERAL PROVISIONS**

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

7.1 Violation Deemed a Nuisance. Any violation of these Covenants which is permitted to remain on the property is deemed a nuisance, and is subject to abatement by any other Owner.

7.2 Remedies.

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

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

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

(d) The failure to take enforcement action shall not be construed as a waiver of the covenants contained in this Declaration in the future or against other similar violations.

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

7.4 Limited Liability. Neither the Declarant nor the Architectural Committee or its individual members, nor any other Owner shall have personal liability to any other Owner for actions or inactions taken under these covenants, provided that any such actions or inactions are the result of the good faith exercise of their judgment or authority, under these covenants, and without malice.

7.5 Amendment. At any time while this Declaration is in effect, the provisions of this Declaration may be amended only upon approval of seventy-five percent (75%) of the Owners of the lots, the Declarant (so long as Declarant remains an owner of any lot) and the City of Kaysville. Any amendment must be in writing. No such amendment will be binding upon the holder of any mortgage or trust deed holder unless such person joins in the amendment. No amendment which limits the rights of the Declarant or its successors in interest to expand the Subdivision or otherwise affects the Additional Land shall be effective without the written consent of the Declarant and other owner of the Additional Land.



7.6 Constructive Notice. Every person who owns, occupies, or acquires any right, title or interest in any Lot in the Subdivision is conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of each of the covenants, conditions and restrictions against his Lot, whether or not there is any reference to this Declaration in the instrument by which he acquires his interest in any Lot.

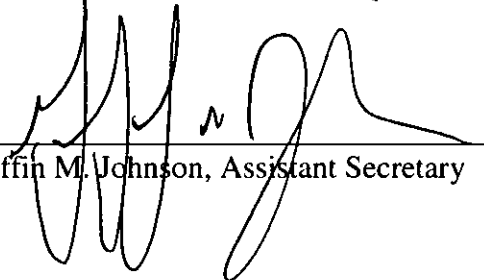
7.7 Notices. All notices under this Declaration are deemed effective 72 hours after mailing, whether delivery is proved or not, provided that any mailed notice must have postage pre-paid and be sent to the last known address of the party to receive notice. Notices delivered by hand are effective upon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

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

Executed on the date stated above.

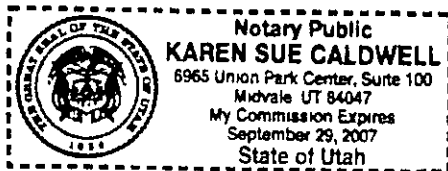
FIELDSTONE HOMES UTAH, L.L.C., A UTAH LIMITED LIABILITY COMPANY


By: Its Managing Member, Fieldstone Communities, Inc., a California corporation

By:   
Griffin M. Johnson, Assistant Secretary

STATE OF UTAH )  
 )  
:SS  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me Griffin M. Johnson, Assistant Secretary of Fieldstone Communities, Inc., a California corporation and managing member of Fieldstone Homes Utah, L.L.C.



  
Notary Public