

When Recorded Return To:
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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE
COTTAGES AT WESTERN SPRINGS**

This DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR WESTERN SPRINGS (“**Declaration**”) is made by Brighton Development Utah, LLC, a Utah limited liability company (“**Declarant**”) on the date set forth below.

RECITALS

A. The Declarant is the owner of certain real property located in the City of Riverton (“**City**”), Salt Lake County, Utah, more particularly described on **Exhibit A** attached hereto (“**Property**”). Declarant is developing the Property as a residential subdivision to be known as The Cottages at Western Springs Phase 1 and Phase 2 (“**Project**”). The Project shall be subdivided into individual single-family lots (“**Units**”) together with streets and certain common facilities.

B. Declarant intends to subject the Property to mutually beneficial restrictions under a common scheme and plan for the possession, use, enjoyment, repair, maintenance, and improvement of the Property.

C. The Cottages at Western Springs Homeowners Association (“**Association**”) has been incorporated as a Utah non-profit corporation to act as a homeowners association and to perform such other acts as are provided for or set forth in this Declaration, the Association’s Bylaws or which generally benefit the Project.

D. Declarant has adopted the covenants, conditions, restrictions, easements, servitudes, and limitations set forth in this Declaration (collectively, the “**Covenants**”) for the purpose of:

- i. Helping to insure uniformity in the development of the Units;
- ii. Creating certain covenants and use restrictions to help protect long-term property values and a desired quality of life in the Project;

iii. Facilitating the initial sale of Units by the Declarant, its successors and assigns, and subsequent sale by the individual Owners of Units in the Project, by assuring purchasers of uniformity and basic restrictions intended to preserve property values over time; and

iv. Providing for mandatory dispute resolution procedures and requirements to avoid litigation, as set forth in Article 13.

NOW, THEREFORE, the Declarant does hereby establish the Covenants and does hereby declare that the Property, and all Units within the Project, shall be held, sold, conveyed, leased, and rented subject to, and shall be encumbered by, the Covenants set forth below which shall be run with the Land and be binding on all persons or entities now or hereafter having or claiming any right, title, or interest in the Property, or any of the Units within the Project.

ARTICLE 1 – DEFINITIONS

Capitalized terms not identified shall have the meaning identified in the *Bylaws of The Cottages at Western Springs Homeowners Association*. 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:

1.1 “Act” means the Utah Community Association Act, Utah Code Ann. § 57-8a-101 *et seq.*, as amended from time to time.

1.2 “Association” means The Cottages at Western Springs Homeowners Association.

1.3 “Bylaws” means the *Bylaws of The Cottages at Western Springs Homeowners Association*.

1.4 “Board” means the Board of Directors of the Association.

1.5

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

1.7 “Common Areas” mean any portions of the Project intended for common use by the Owners which are not included within the Units and which are not dedicated or reserved for public use. Common Areas shown on the Plat Map for Phase 1 of the Project include Parcels A, B, and E, which are owned by Utah Power and Light Co, or its successor in interest, and Parcels C, D, F, and E1, which will be owned by the Association. Common areas shown on the Plat Map for Phase 2 of the Project include Parcel G1, which is owned by Utah Power and Light Co., or its

Common Areas shall remain open space and the Association shall be responsible for the maintenance and landscaping of the Common Areas within the Project.

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

1.8 “Declarant” means Brighton Development Utah, LLC, and any assign or successor that acquires Declarant’s interest in the Property.

1.9 “Declaration” means this *Declaration of Covenants, Conditions and Restrictions for The Cottages at Western Springs* as it may be amended from time.

1.10 “First Mortgage” means a recorded Mortgage or consensual lien granted by the Owner which is not subject to any senior lien or encumbrance except liens for taxes or other liens which are given priority by statute.

1.11 “First Mortgagee” means any person or entity named as a Mortgagee under a First Mortgage and any successor-in-interest to such Mortgagee.

1.12 “Improvement” means every structure, feature or improvement 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 other product of construction and also includes landscaping.

1.13 “Member” means a person or entity who is a member of the Association.

1.14 “Mortgage” means any mortgage, deed of trust, or other document pledging any portion of a Unit or interest therein as security for the payment of a debt or obligation.

1.15 “Mortgagee” means the mortgage or beneficiary identified in a Mortgage.

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

1.17 “Period of Declarant’s Control” means the period of time during which Declarant shall have administrative control of the 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, transfer administrative control of the Association to the Owners, but in no event shall the Period of

administrative control of the Association to the Owners, but in no event shall the Period of Declarant's Control extend beyond the time when t one hundred percent (100%) of the Units in the Project have been conveyed to individual purchasers.

1.19 "Plat Map" means the two plat maps for the Project entitled *Cottages at Western Springs Phase I* and *Cottages at Western Springs Phase 2*, together with any plat incorporating additional real estate into the Project. 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 during the period of Declarant's Control. Any such revisions or amendments recorded in Salt Lake County shall be deemed the Plat Map for purposes of this Declaration.

1.20 "Project" means The Cottages at Western Springs Phase 1 and Phase 2, as identified on the Plat Map. The Project is not a cooperative.

1.21 "Property" means the real property situated in Salt Lake County, State of Utah, as more particularly described in **Exhibit A**, against which this Declaration is recorded.

1.22 "Residence" means the dwelling structure on a Unit in the Project. As shown on the Plat Map, the Residences within the Project are intended for occupation by a single-family, meaning: (a) a single person, (b) a group of people related to each other by blood, marriage, adoption, guardianship, or other legally authorized custodial relationship, together with not more than two additional unrelated persons, (c) a group of not more than four unrelated persons, together with the children, if any, of such persons, maintaining a common household.

1.23 "Rules and Regulations" means the rules, regulations, and restrictions, not inconsistent with this Declaration or the Bylaws, duly adopted and promulgated by the Board.

1.24 "Unit" means a subdivided and individually numbered residential parcel as designated on the Plat Map recorded with Salt Lake County including the Residence and any other Improvements thereon.

ARTICLE 2 – PROPERTY SUBJECT TO THIS DECLARATION

2.1 **Property.** The Property, as identified in **Exhibit A**, together with any additional phases of the Project is, and henceforth shall be, held, occupied, transferred, sold, and conveyed subject to the Covenants set forth in this Declaration. The Project consists of single-family residential Units as shown on the Plat Map.

2.2 **Covenants Run with the Land.** This Declaration, and the Covenants herein, shall run with the land and shall be binding on all persons or entities holding or taking title to any

interest in the Property or any Unit therein, and all Owners shall hold or take title subject to this Declaration.

2.3 Applicability of the Act. Declarant hereby confirms and acknowledges that the Project is subject to the provisions of the Act with respect to items not addressed in this Declaration but covered by the Act.

2.4 Local Laws and Ordinances Applicable. The Property is located in Riverton City, Salt Lake County. In addition to the Covenants set forth in this Declaration, the Property and any Unit therein is subject to local laws and ordinances, including applicable building codes and zoning ordinances, now or hereafter in effect.

2.5 Expandability. The Project is not expandable.

2.6 Enforcement of Covenants.

2.6.1 By the Association. The Association, through its Board, shall have the right to enforce compliance with the Covenants set forth in this Declaration, the terms of the Bylaws, and the Rules and Regulations promulgated by the Board. As set forth in Article 4, the Board may impose reasonable fines for non-compliance or may pursue legal action. Any costs associated with the Association's enforcement of this Declaration shall be paid by the non-complying Owner.

2.6.2 By an Owner. Any Owner aggrieved by another Owner's non-compliance with the Covenants set forth in this Declaration, the terms of the Bylaws, or the Rules and Regulations promulgated by the Board may commence an action seeking to enforce compliance with the same.

2.6.3 Injunction; Legal Fees. Under appropriate circumstances, the Association or an aggrieved Owner may seek a temporary restraining order or preliminary injunction to stop or prevent non-compliance with the Covenants set forth in this Declaration, the terms of the Bylaws, or the Rules and Regulations promulgated by the Board. In any such legal action, the prevailing party shall be entitled to an award of reasonable costs and attorney fees. In addition, the Association shall have all enforcement rights and remedies set forth in the Act as the same may be amended from time to time.

ARTICLE 3 – ASSOCIATION AND MEMBERSHIP THEREIN

3.1 Membership. Each and every Owner, by accepting a deed for any Unit, whether or not it shall be so expressed in such deed, automatically becomes a Member of the Association, and agrees to be bound by the Covenants identified herein and by such reasonable Rules and

Regulations as may, from time to time, be established by the Association. Membership is mandatory for all Owners. When more than one person or entity is an Owner of a Unit, all such persons or entities shall be Members. Membership shall be appurtenant to and may not be separated from ownership of a Unit. The rights and obligations of an Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way, except upon transfer of ownership of such Unit, whether by conveyance, intestate succession, testamentary disposition, foreclosure of a Mortgage, or such other legal processes as are now in effect or as may be hereafter established pursuant to the laws of the State of Utah. The foregoing is not intended to include persons or entities holding an interest merely as security for the performance of an obligation.

3.2 Transfer. Upon the transfer or conveyance of any Unit, the transferee or grantee shall become a Member, and the transferor or grantor shall immediately cease being a Member. The Board shall maintain a list of all Members and shall note each transfer of ownership on such list. Upon the transfer or conveyance of any Unit, the selling or transferring Owner shall promptly inform the Association of the name of the transferee or grantee.

3.3 Voting Rights. The Owner or Owners of each Unit shall be entitled to one (1) vote for each Unit owned. The one (1) vote for such Unit shall be exercised as they, among themselves, determine. Where a Unit is owned by more than one Owner, the vote of any one of them shall be conclusively presumed to have been exercised as a result of an agreement among such Owners and in the event multiple Owners attempt to exercise a vote for such Unit on any question or issue, the Owners of such Unit will forfeit the right to vote on that question or issue. In no event shall more than one (1) vote be cast with respect to any Unit. With respect to any question or issue requiring a vote of the Association, vote of the Owners, or vote of the Members of the Association, the total number of votes cast shall not exceed the number of Units in the Project. Unless otherwise required by this Declaration or the Bylaws, the number of affirmative votes required for approval of any matter submitted to vote of the Members shall be a majority of the votes cast with respect to such matter. All voting rights shall be subject to the restrictions and limitations provided herein and in the Bylaws.

3.4 Meetings. Unless otherwise provided by this Declaration or by the Bylaws, all matters requiring a vote of the Members of the Association shall be decided at a meeting of the Members held for that purpose. Except in the case of an emergency or other situation which requires shorter notice, written notice designating the time and place of such meeting shall be provided to each Member no less than thirty (30) or more than sixty (60) days in advance of a meeting. Other provisions for giving notice of such meetings, determining a quorum, and tallying votes shall be included in the Bylaws, or shall be established by the Board. In lieu of attending a meeting held for the purpose of exercising voting rights, Members may exercise such voting rights in writing or through a proxy, if designated in writing before the time for such vote. By

attending a meeting where a vote is held, by exercising a vote in writing, or by designating a proxy, an Owner shall be conclusively deemed to have received adequate notice of such meeting or such vote.

3.5 Declarant Approval During Period of Declarant's Control. Notwithstanding any other provision of this Declaration, during the Period of Declarant's Control all matters for which the Declaration or the Bylaws call for a vote of the Members of the Association may be decided solely by the Declarant with or without a meeting and with or without a vote of the Members. Any matters which are submitted to a vote of the Members during the Period of Declarant's control shall be approved and implemented if, and only if, the Declarant also approves such matters. After the Period of Declarant's Control, all such matters shall be submitted to a vote of the Members of the Association and shall be decided solely by the votes of the Members.

3.6 Board of Directors. The Board shall be the governing body of the Association. In addition to those set forth herein, the powers, rights, privileges, and duties of the Board shall be set forth in the Bylaws. During the Period of Declarant's Control, the Declarant shall appoint the members of the Board, which shall number no less than three (3) directors. After the Period of Declarant's Control, the members of the Board shall be chosen, removed, or replaced by the vote of the Members of the Association in accordance with the provisions of the Bylaws.

3.7 Bylaws. Nothing in the Bylaws shall substantially alter, amend, or impair the rights and obligations of the Owners set forth in this Declaration.

ARTICLE 4 – FEES, FINES, AND ASSESSMENTS.

4.1. Assessments. The making and collection of Common Assessments by the Association from Owners of Units for their share of Common Expenses shall be pursuant to the Bylaws and subject to the following provisions:

- (a) Declarant, for each Unit owned by Declarant which is not an Exempt Unit, and each Owner, other than Declarant, by becoming an Owner of a Unit is deemed to covenant and agree to pay Assessments to the Association in accordance with this Declaration. Each Unit in the Project (except for Exempt Units) shall be liable for an equal share of the Common Expenses of the Association. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital reserve expenses. Such combined expenses shall constitute the Common Expenses, and the funds received from Common Assessments under this Section shall be the Common Expense Account. Common Assessments shall include both Regular Common Assessments and Special Common Assessments. Regular Common Assessments must be made at least annually, based on a budget adopted at least annually by the Association in accordance with the provisions of this Declaration and the Bylaws. Regular Common Assessments shall be levied

against each separate Unit annually. The Regular Common Assessment for each year may be divided into twelve equal portions, payable to the Association monthly.

- (b) After the Period of Declarant's Control, the Association may not impose a Regular Common Assessment per Unit which is more than 20% greater than the previous year's Regular Common Assessment per Unit, without first obtaining the majority vote of Owners, constituting a quorum, in attendance (in person or by proxy) at a meeting of the Owners called for such purpose. The Association shall provide notice, by first class mail or email to all Owners, of any increase in the Regular Common Assessments not less than fifteen (15) or more than sixty (60) days prior to the date the increased Regular Common Assessment is due.
- (c) In addition to the Regular Common Assessments, the Association may levy in any calendar year, Special Common Assessments applicable to that year only. However, in any fiscal year after the Period of Declarant's Control, except as otherwise provided in this Declaration, the Board shall not, without the vote or written assent of Owners, casting a majority of the Total Votes of the Association at a meeting or by written ballot, levy Special Common Assessments which in the aggregate exceed 10% of the budgeted gross expenses of the Association for that fiscal year. All Units within the Project, except Exempt Units, shall pay an equal portion of any Special Common Assessment. These provisions with respect to the imposition or allocation of Special Common Assessments shall not apply when the special assessment is to pay an increase in real property taxes or when the special assessment against an Owner is a remedy utilized by the Board to reimburse the Association for costs incurred in bringing the Owner and/or his Unit into compliance with the provisions of this Declaration, the Bylaws, Rules and Regulations of the Association, or any other governing instrument for the Project. The Board shall provide notice by first class mail to all Owners of any Special Common Assessments not less than fifteen (15) nor more than sixty (60) days prior to the date such Assessment is due. Special Common Assessments shall be paid as determined by the Board and the Board may permit Special Common Assessments to be paid in installments extending beyond the fiscal year in which the Special Common Assessment is imposed.
- (d) All Common Assessments shall be due as determined pursuant to the Bylaws. Common Assessments and any installments thereof not paid on or before ten (10) days after the date when due shall be delinquent and 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 their Common Assessments when due shall be subject to a late fee pursuant to a fee schedule adopted by the Board, which fee schedule shall be adjustable at the discretion of the Board. All payments of Common Assessments shall be first applied to accrued interest and late fees, and then to the Common Assessment payment first due. All Common Assessments to pay a judgment against the Association may be made only against the Units in the Project at the time the judgment was entered, in proportion to their liabilities for Common Expenses. If any Common Expense is caused by the misconduct of any Owner, the Association

may assess that expense exclusively against such Owner's Unit(s). If the Owners' percentage interests in the Common Areas and Facilities are reallocated, assessments for Common Expenses and any installment thereof not yet due must be recalculated in accordance with the reallocated percentage interests of the Owners.

- (e) There shall be a lien upon the applicable Unit for all unpaid Common Assessments, together with late fees, interest and costs (including attorneys' fees) charged pursuant to the Declaration and the Act. The Association may bring an action at law against the Owner personally obligated to pay the same, and may foreclose the lien against such Owner's Unit in the manner provided by the laws of the State of Utah, and in the event a judgment is obtained, such judgment shall include interest on the assessment and reasonable attorney fees to be fixed by the court, together with the costs of the action. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose the Association's lien for any subsequent assessments, charges, costs or fees, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Unit at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the membership votes appurtenant to ownership of such Unit, and to convey or otherwise deal with such Unit. In addition to the other rights and remedies set forth herein, the Association shall have all of the rights and remedies pertaining to enforcement of assessment liens as set forth in, and to be exercised in accordance with, the provisions of the Act, including, without limitation, the provisions in Utah Code Ann. §§ 57-8a-302 and -303, as the same may be amended. To this end, the Declarant (and each Owner by acceptance of a deed to a Unit or Lot) hereby conveys and warrants pursuant to Utah Code Ann. §§ 57-1-20 and 57-8a-302 to Paxton R. Guymon, Esq., an attorney licensed in the State of Utah, as trustee, with power of sale, the Unit and Lot and all improvements thereto for the purpose of securing payment of assessments under the terms of this Declaration. The Association shall have the right to substitute said trustee and appoint a successor trustee as provided by statute. The lien of the Association shall be superior and prior to all other liens and encumbrances except liens and encumbrances recorded prior to the recordation of this Declaration, a First Mortgage on a Unit, and assessments, liens, and charges in favor of the State of Utah or a political subdivision thereof imposed for taxes or other governmental assessments or charges past due and unpaid. In any action brought by the Association (or counterclaim or cross-claim brought by the Association) to collect assessments or to foreclose a lien for unpaid assessments, the Association shall be entitled to have a receiver of the Owner appointed to collect all sums alleged to be due from the Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's assessments of any kind or nature permitted hereunder.

The lien procedures described herein do not prohibit actions to recover sums for which the Act creates a lien or prohibit the 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 Association, the Board, the Association's agents and employees, and every Owner, in favor of all who rely on such statement in good faith.

- (f) The amount of any Common Assessment against any Unit shall be the personal obligation of the Owner(s) of such Unit to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the 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 and Facilities 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 assessments hereunder, the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorneys' fees.
- (g) The personal obligation of an Owner to pay unpaid assessments against his or her Unit shall not pass to successors in title unless assumed by them; provided, however, that a lien to secure unpaid 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 assessments that were payable before the foreclosure sale, but shall not relieve any subsequent Owner from paying further assessments.
- (h) All Exempt Units shall be exempt from the Common Assessments (including regular common assessments and special assessments). For purposes of this Declaration, "Exempt Unit" shall mean any Unit in the Project until the occurrence of the earlier of the following: (i) the sale of such Unit to a third-party purchaser intending to occupy the Unit for residential purposes, or (ii) twelve (12) months following the issuance of a certificate of occupancy for a Residence constructed on the Unit. On the date on which a Unit loses its status of being an Exempt Unit, then it shall automatically be subject to its share of Common Assessments from that date forward.

4.2. 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 and Facilities for which the Association is responsible and for which the reserve fund was established or for litigation involving such matters. At least once every three (3) years (or as otherwise required by applicable State law) the Board shall cause a study to be conducted of the reserve account of the 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:

- (a) Identification of the major components which the 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.

- (b) Identification of the probable remaining useful life of the components identified in subparagraph (a) above, as of the date of the study.
- (c) An estimate of the cost of repair, replacement, restoration or maintenance of each major component identified in subparagraph (a) above, during and at the end of its useful life.
- (d) 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.

4.3. FOR THE PURPOSES OF THIS SECTION, 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 ASSOCIATION IS OBLIGATED TO MAINTAIN.

4.4. If an Owner shall at any time lease his Unit and shall default in the payment of Common Assessments, 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 the payment of such rent to the Board shall be sufficient payment and discharge of such tenant and the Owner for such assessments to the extent of the amount so paid.

4.5 Fines. The Association may impose a fine for a violation of any of the Covenants set forth in this Declaration, the terms of the Bylaws, or any of the Rules and Regulations. Subject to the terms of the Act, before assessing a fine the Association must provide the appropriate Owner with written notice identifying the portion of this Declaration, the Bylaws or the Rules and Regulations which the Owner or the Owner's lot has violated and, if the violation is a continuing violation, giving the Owner forty-eight (48) hours to cure the violation. Prior to assessing any fines, the Association shall adopt and promulgate a schedule of fines for violations. If not paid when due, fines may accrue late fees, if late fees are provided for in the schedule of fines to be adopted by the Association. The fines may also accrue interest at the rate set forth above. Any Owner assessed a fine under this Section shall have the right to dispute such fine by requesting an informal hearing before the Board within thirty (30) days of notice that a fine is being assessed. At such hearing, the Owner shall be provided a reasonable opportunity to present such Owner's position regarding the fine. An Owner may appeal the decision of the Board by filing a legal action in the manner set forth in the Act.

4.5.1

ARTICLE 5 – COMMON AREAS

5.1 Identification. The Project shall have Common Areas including those portions of the Project that are not part of the Units or the Lots and are not dedicated to the public, but which are intended for the common use of all residents of the Project. The Common Areas include the areas designated on the Phase 1 Plat as Parcels A, B, C, D, E, E1, and F, and designated as Parcels E, F, G and G1 of Phase 2...

5.2 Maintenance. The Common Areas in the Project shall be open space areas and shall be landscaped and maintained by the Association. The Association shall not be responsible for snow-removal on the streets (it is understood that street snow removal services are provided by the City) within the Project. Each Owner shall be responsible for snow removal of their own driveways and sidewalks, and walkways within, or adjacent to, such Owner's Lot. The Association will be responsible for snow removal on all sidewalks within the Common Areas. In addition to Common Areas, the Association shall maintain any other portions of the Project shown on the Plat Map to be open space or required by the Plat Mat to be maintained by the Association.

5.3 Limitations on Use. The Association may promulgate Rules and Regulations governing the manner of use of the Common Areas. No Owner, directly or indirectly, shall obstruct, permanently occupy, or make any alterations to any Common Areas without the prior written consent of the Board.

ARTICLE 6 – PROPERTY RIGHTS, LIMITATIONS, AND USE RESTRICTIONS

6.1 Residential Use and Occupancy. Each Unit, and all Improvements thereon, shall be used only for residential purposes. No Unit shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Unit, so as to create a nuisance or interfere with the rights of any Owners, or in any way which would result in an increase in the cost of any insurance.

6.2 No Further Subdivision. No Unit shall be further subdivided or separated into smaller parcels. No conveyance of less than all of any Unit shall be permitted without prior written approval from the Board.

6.3 Prompt Repair. Each Residence and other Improvement on an Owner's Unit shall be kept in good repair. As applicable, the Owner or Association shall promptly repair damage to any Residence or Improvement on such Owner's Unit. Repairs shall be made in accordance with the design guidelines promulgated by the Association's Architectural Control Committee.

6.4 Nuisance. No Owner shall use, or permit a guest or invitee to use, a Unit in a manner that constitutes a nuisance or unreasonably interferes with the use and enjoyment of any other Unit by the Owner or Owners thereof. Each Unit shall be bound by, and the Owner shall comply with, the Covenants set forth in this Declaration, the terms of the Bylaws, and the Rules

and Regulations promulgated by the Board. Without limiting the foregoing, no rubbish or debris of any kind may be permitted to accumulate on the Project in a manner that becomes unsightly or causes offensive odors. No unreasonably loud or disruptive noises shall be permitted in the Project.

6.5 Temporary and Other Structures. No temporary or prefabricated structures shall be permitted or used in the Project.

6.6 Offensive, Unsightly, and Unsafe Conditions. No Owner shall permit any noxious, offensive, unsightly, or unsafe activity, object, animal, or condition to exist on such Owner's Unit. Refuse, garbage and trash shall be kept at all times in a covered, noiseless container and any such container shall be kept within an enclosed structure or appropriately screened from view. Service areas, storage piles, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view. No lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials or scrap or refuse or trash shall be kept, stored or allowed to accumulate on any Unit, except within an enclosed structure or when appropriately screened from view. No Owner shall dispose, or permit to be disposed, any oil, gas, toxic or hazardous material, or other unsafe substance within the Project. The Board may adopt reasonable Rules and Regulations to further clarify the responsibilities of Owners under this Section.

6.7 Signs. Without restricting the right to display political, religious, and holiday signs, the Association may impose design guidelines for the display of any signs in the Project and may adopt Rules and Regulations restricting the time place and manner in which signs are displayed. However, the Declarant may display signs in connection with the development of the Project and the sale of Units, and Owners may display signs of customary and reasonable dimensions on a Unit advertising a Unit for sale or lease. Except for signs maintained by Declarant, display of any "for sale" or "for lease" sign more than three (3) feet by two (2) feet shall require the prior written approval of the Association. A residential identification sign is permitted but should not exceed one (1) square foot in surface area. Numbers on Residences shall be located in a position clearly legible from the street, but not more than six (6) feet above the floor of the main floor level.

6.8 Rooftop Antennas. The Architectural Control Committee's design and maintenance criteria shall include guidelines regulating the installation of television, ham radio, citizens band, or radio antennas, satellite dishes, and other similar devices ("Antennas"). The ACC's design and maintenance criteria regulating Antennas shall comport with all applicable federal, state, and local laws and regulations governing Antennas and no Antennas shall be installed within the project without the approval of the ACC. Notwithstanding the foregoing, however, Declarant reserve the right and option, for itself and for the association, to install cable

or other data service lines and antennas as needed throughout the Project in connection with its development.

6.9 Pets. The Board may adopt Rules and Regulations establishing reasonable restrictions on the type and number of pets permitted within the Project. Poultry, livestock, and other non-domesticated farm animals shall not be permitted within the Project. No pets which constitute a danger or nuisance shall be permitted within the Project.

6.10 Bees. The raising, keeping, or husbandry of bees or beehives is not permitted within the Project.

6.11 Ingress and Egress. Each Owner shall have a right of ingress to and egress from such Owner's Unit, with such right of ingress and egress being perpetual and appurtenant to ownership of the Unit.

6.12 Vehicles. The Board may adopt Rules and Regulations governing the parking, repair, and storage of vehicles within the Project.

6.13 Encroachment. No Improvement on any Unit shall encroach on an adjoining Unit and any such encroaching Improvements must immediately be removed at the expense of the Owner of the Unit from which the Improvement encroaches. If, however, encroachment occurs due to natural settling or shifting or for other reasons beyond the control of the Owner, the Owner shall be deemed to have an easement for the maintenance of such encroaching Improvement which shall exist, and shall run with the land, for so long as the encroaching Improvement exists.

6.14 Leases. Any lease agreement relating to any Unit shall be subject to all the Covenants set forth in this Declaration, the terms of the Bylaws, and the Rules and Regulations promulgated by the Board. All leases shall be in writing and shall specifically reference the existence and applicability of this Declaration, the terms of the Bylaws, and the Rules and Regulations. An Owner shall be responsible and liable for any damage to the Project caused by such Owner's tenant.

6.15 Declarant Exemption. Notwithstanding any other provision of this Declaration, the Declarant may use any Unit owned by it, and during the Period of Declarant's Control may also use the Project, for any purposes, including construction purposes, consistent with or intended to facilitate the improvement and sale of the Units owned by Declarant. Declarant may use and maintain temporary structures on the Project. Declarant may operate one or more construction or sales offices and one or more model homes within the Project. Declarant shall also have the right to maintain a reasonable number of signs, banners, or similar devices

throughout the Project. Declarant may from time to time relocate any of its sales offices, model homes, signs, banners or similar devices.

ARTICLE 7 – MAINTENANCE AND OTHER OBLIGATIONS

7.1 Owner's Compliance with Declaration. Each Owner shall fully comply with, and shall cause such Owner's guests and invitees to fully comply with, the Covenants set forth in this Declaration, the terms of the Bylaws, and the Rules and Regulations promulgated by the Board.

7.2 Maintenance by Owner. Each Owner shall maintain such Owner's Unit, and all the Residence and all other Improvements thereon, in good repair and in a clean and tidy manner, and in accordance with all the Covenants set forth in this Declaration and the ACC's design and maintenance criteria, so as to not detract from the overall appearance of the Project. The Owner shall maintain the Residence and all other Improvements in a safe and functional condition. Each Owner shall maintain such Owner's Unit at the Owner's expense without any setoff right. The Board may adopt reasonable Rules and Regulations governing the appearance and use of driveways, decks, patios, and balconies within the Project.

7.3 Remedies. Among other available remedies, the Association shall have the right to enter each Owner's Unit and perform maintenance otherwise required to be performed by an Owner and to recover the cost of such maintenance from such Owner as a fine if the Association determines that such Owner is unwilling or unable to timely perform such maintenance. Except in the case of an emergency, the Association may not exercise this remedy unless: (a) the Owner has been given written notice of the need to perform such maintenance and fifteen (15) days have elapsed since such notice was given without the required maintenance being performed by such Owner, and (b) the Owner is given the opportunity for a hearing before the Board before the associated fine is assessed.

ARTICLE 8 – ARCHITECTURAL CONTROL

8.1 Residential Structures. The primary Improvement on each Unit shall be residential structure. Any other Improvements on the Unit shall be consistent with and shall not detract from the residential nature of the Project. Subject to the Declarant exemption, below, there shall be no temporary or prefabricated structures, mobile homes, trailer houses, or other non-permanent structures allowed in the Project.

8.2 Construction. Unless otherwise permitted by the Board, all Improvements must be completed within twelve (12) months from the commencement of construction. For Residences, this includes all exterior painting and finish work and the installation of all required landscaping. During the construction of any Improvement, the affected Unit must be kept reasonably clean and tidy and all construction debris must be controlled and regularly removed. All construction activities must comply with the Covenants set forth in this Declaration, the terms of the Bylaws,

and the Rules and Regulations promulgated by the Board and all local zoning ordinances, building codes, and other applicable laws.

8.3 Architectural Control Committee.

8.3.1 There shall be an Architectural Control Committee (“ACC”) of the Association. During the Period of Declarant’s Control, Declarant shall select the members of the ACC, which shall number no less than three (3) members. During the Period of Declarant’s Control, members of the ACC do not need to be Owners. After the Period of Declarant’s Control, the Board shall select not less than three (3) Owners to be the members of the ACC. The Board may, from time to time, remove or replace members of the ACC. Until the ACC is appointed, the Board shall perform all functions and exercise all rights of the ACC set forth herein.

8.3.2 The ACC shall promulgate design and maintenance criteria for residential structures all other Improvements permitted within the Project. The design and maintenance criteria shall be consistent with the building, land use, and other ordinances and regulations promulgated by the City. The ACC may regulate the placement of signs, banners and similar displays within the Project. The ACC shall make such design and maintenance criteria available to all Owners or prospective Owners and, if possible, shall publish the design and maintenance criteria in electronic format.

8.3.3 All Residences, fences, and other Improvements shall be constructed and maintained in accordance with the ACC’s design and maintenance criteria. Prior to construction, alteration, modification, or replacement of any Improvements within the Project, an Owner shall submit plans for the same to the ACC. The ACC shall evaluate all such plans for compliance with the ACC’s design and maintenance criteria.

8.3.4 The ACC may employ architects, engineers, and other professionals to review plans submitted by an Owner. The Owner shall pay all expenses reasonably associated with the ACC’s review of the plans.

8.3.5 The ACC shall approve or deny such plans in writing within thirty (30) business days following receipt of the same. Failure to approve or deny such plans within the time period provided shall constitute an approval.

8.3.6 The ACC shall have the right, but not the duty, to enforce compliance with the design criteria, including by means of fines levied by the Association and by legal action, which may also seek injunctive relief. In the event of a legal action the ACC shall be entitled to recover the costs of enforcement, including reasonable attorney fees.

8.4 Specific Design Standards. Among other items, the design and maintenance criteria promulgated by the ACC shall include the following provisions for the Project:

- (a) Dwelling Quality and Size. All single family one (1) story detached dwellings shall have a minimum of 1300 square feet on the main floor exclusive of the basement, garage, patios, and porches for ramblers. Two (2) story homes shall have a minimum of 1,500 square feet exclusive of the basement, garage, patios, and porches. All single family detached dwellings shall have a basement type foundation, unless a soils professional recommends otherwise. No slab on grade foundations shall be permitted. Architectural design and style should be consistent in following generally a “Craftsman”, “Contemporary”, “Ranch” or “Prairie” residential style consistent with the other home styles in the immediate vicinity. Discretion is granted to the Committee to require modifications or changes to plans showing styles inconsistent with the general “style” of the community.
- (b) Exterior Design Requirements. The following exterior design requirements shall apply to all homes developed on the Property.
- (c) Exterior Elevations. Variations in the use of materials, roof design, substantial amount of windows, and window treatments are encouraged.
- (d) Garages. A minimum two (2) car garage is required on all homes. An option for three (3) car garages is encouraged where the Lot size allows.

8.5 Declarant Exemption. Nothing in this Article 8 shall prohibit or restrict the ability of the Declarant to use any Units owned by Declarant for any purposes consistent with or intended to facilitate the improvement and sale of Units owned by Declarant. Declarant may maintain and operate temporary structures for construction, sales, or business purposes. Declarant shall not be bound by the ACC’s design and maintenance criteria and reserves the right to alter or modify the plans for any Improvement on any Unit at any time Declarant owns such Unit. Declarant shall not be bound by the time limitation for construction activities set forth in this Declaration. Declarant’s sales and marketing activities are exempt from the ACC’s design and maintenance criteria.

ARTICLE 9 – EASEMENTS

9.1 Easements Shown on Plat Map. The Property and Units are subject to the easements, rights of way, encroachments, and other encumbrances as shown on the Plat Map. Within such easements, no Improvement of any type shall be placed or permitted to remain which may damage or interfere with the intended purpose of such easement.

9.2 Easements Reserved. In addition to easements shown on the Plat Map or otherwise provided for in this Declaration, the following easements are reserved for the benefit of the Owners and the Association:

9.2.1 Easement for Encroachment. If, because of natural settling or shifting of the earth or other similar causes beyond an owner's control, any part of a Unit encroaches on an adjoining Unit, an easement for the encroachment and for maintenance of the encroaching Unit shall exist in favor of the Owner.

9.2.2 Public Dedication. The Declarant reserves, for itself and its successors and assigns, the right to dedicate all roads, streets, alleys, open space, rights of way or easements shown on the Plat Map to public use. No road, street, avenue, alley, right of way or easement shall be laid out or constructed through or across any Unit or Units in the Project except as set forth in this Declaration, or as shown on the Plat Map.

9.2.3 Current Utility Easements. The Association and public utility or public service providers shall have an easement for the installation, maintenance, and repair of such utilities and services as shown on the Plat Map. Except for equipment or improvements for which the public utility or public service provider is responsible, each Owner shall maintain the portion of such Owner's Unit burdened by a utility easement.

9.2.4 Future Utility Easements. Declarant reserves, for itself and its successors and assigns, an easement, and the right to grant easements to any person, individual, corporate body, or municipality, across, over, under, upon, and through any Unit, road, street, open space, or other portion of the Project, for the installation, construction, maintenance, reconstruction and repair of public, quasi-public, or private utilities to serve the Project and the Units therein, including but not limited to the mains, conduits, pipelines, underground or above-ground lines and cables, transmission facilities, meters and other facilities and appurtenances necessary or useful for the provision of water, storm sewer, sanitary sewer, gas, electricity, telephone, cable television, internet and data and other public, quasi-public or private services or utilities deemed by Declarant necessary or advisable to provide any service to any Unit or other portion of the Project.

9.2.5 Grading. Declarant reserves, for itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Unit and grade a portion of such Unit adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any Residence built on such Unit, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

9.2.6 Right of Entry onto Units. The Declarant during the Period of Declarant's Control and the Association thereafter shall have the right, through authorized agents, to enter onto any Unit after reasonable notice to the Owner thereof for the purpose of performing maintenance or determining whether the Unit, or any Improvements thereon, complies with this Declaration, the Bylaws, and the Rules and Regulations. Except in the event of an emergency, entry made pursuant to this Section shall be during normal business hours, at a time convenient for the Owner, after reasonable notice.

ARTICLE 10 – DECLARANT RIGHTS AND CONTROL

10.1 Declarant's Administrative Control. During the Period of Declarant's Control, neither the Board nor the Association shall take any action without Declarant's prior written approval.

10.2 Construction Activities. So long as Declarant owns at least one (1) Unit within the Project, Declarant shall have the right to conduct construction activities on or related to such Unit and shall not be bound by any limitations related to construction activities set forth in this Declaration. During the Period of Declarant's Control, Declarant shall have a non-exclusive easement and right-of-way in, through, under, over and across the Project for the purpose of the storage of building supplies and materials, and for all other purposes reasonably related to the completion of construction and development of the Project and the provision of utility services and other services or facilities to the Project. Notwithstanding any other provision of this Declaration to the contrary, Declarant, in its absolute discretion, shall have the right to construct and install any and all Improvements within the Project which Declarant desires, so long as they comply with the applicable ordinances of the City, but this provision shall not be construed to impose any obligations on Declarant to construct any such Improvements.

10.3 Sales Activities. Notwithstanding any other provision of this Declaration, so long as Declarant owns at least one (1) Unit within the Project, Declarant shall have the right to conduct reasonable sales activities including, but not limited to maintaining one or more sales office or model home on Units owned by the Declarant and using the same for business purposes and maintaining a reasonable number of "for sale" signs or other similar marketing materials in the Project.

10.4 Declarant's Rights Assignable. Declarant may assign the rights of Declarant set forth under this Declaration, or those rights in any way relating to the Property. Upon such assignment, such assignee shall be deemed the Declarant for all purposes under this Declaration.

ARTICLE 11 – INSURANCE

11.1 Insurance Held by Owner. Each Owner shall obtain and maintain insurance covering the personal contents of the Residence or other Improvements on such Owner's Unit.

Each Owner shall also maintain a policy of homeowner's insurance on the Residence on such Owner's Unit, protecting such Residence against casualty and loss, in an amount not less than 100% of the current replacement value of such Residence.

11.2 Insurance Held by Association. The Association shall obtain and maintain all insurance policies required by Part 4 of the Act consistent with the terms and conditions of the Act. All premiums for insurance policies held by the Association shall be funded by Assessments.

11.3 Deductible. The deductible on any claim made under a policy maintained by the Association shall be allocated among all Owners if the loss affects Common Areas or all the Units in the Project. If the loss affects or impacts less than all the Units in the Project, the deductible shall be allocated among the Owners of the affected Units.

ARTICLE 12 – DURATION AND AMENDMENT

12.1 Duration. This Declaration shall be effective, and the Covenants set forth herein shall encumber the Property, from the date the Declaration is recorded in Salt Lake County and, as amended from time to time, this Declaration shall continue in full force and effect against the Property and the Covenants shall run with the land in perpetuity, for as long as the law allows unless amended or terminated as provided herein.

12.2 Amendment. During the Period of Declarant's Control, the Declarant shall have the right to amend this Declaration without the consent of any other Owner. Any other amendment proposed during the Period of Declarant's Control must be approved by sixty-seven percent (67%) of the Members of the Association and must also be approved by the Declarant in writing before it can be effective. After the Period of Declarant's Control, this Declaration may be amended by the affirmative vote of not less than sixty-seven percent (67%) of the Members of the Association and such amendment must contain a statement from the Board certifying that the required vote has taken place. No amendment to this Declaration shall be effective until it is recorded in the real property records of Salt Lake County.

12.3 Termination. An agreement to terminate this Declaration and the Covenants set forth herein, shall require same approval required for an amendment as set forth in Section 12.2, above. In addition, after the Period of Declarant's Control any agreement to terminate must be approved, or deemed approved, by at least sixty-seven percent (67%) of the First Mortgagees.

ARTICLE 13 – MANDATORY DISPUTE RESOLUTION REQUIREMENTS AND DECLARANT'S REPURCHASE OPTION

13.1 Statement of Intent. Prior to purchasing a Unit, every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, an

inspection on any Unit that Owner is purchasing or any other aspect of the Project. Moreover, if any written warranty has been provided, it identifies the only items that are warranted by the Declarant. Having had the ability to inspect prior to purchasing a Unit, having received a written warranty if any warranty is provided, and having paid market price for a Unit in the condition it and the Units is in at the time of purchase, it is acknowledged that it is unfair and improper to later seek to have the Declarant 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 Unit) 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 Units for years, unfairly prejudicing those Owners who must or want to sell their Unit during any period when litigation is pending. For this reason, the Owners, by purchasing a Unit, 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 certain specific alternative dispute resolution mechanisms and only after full disclosure, right to cure periods, and knowing approval of the Owners, as set forth in the provisions of this Article 13. In addition, the Association and the Owners agree that they take ownership and possession of the Units 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.

13.2 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, or any agent, employee, executing officer, manager, affiliate or owner of the Declarant, 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 Unit, 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 and any Owner or between or involving the Declarant and the Association. Arbitration proceedings, however, shall not be commenced unless the Pre-Arbitration Requirements set forth in Section 13.3 below have been satisfied in full. Without in any way limiting the foregoing, Disputes subject to binding arbitration shall include the following:

13.2.1 Any allegation that a condition in any of the Residences on the Units or other Improvements in the Project is or involves a construction defect;

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

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

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

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

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

13.2.7 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;

13.2.8 Any allegation that any condition existing in the Project or created by the Declarant (or any of its 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;

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

13.2.10 Any disagreement concerning the timeliness of performance of any act to be performed by Declarant or any of its contractors;

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

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

13.2.13 Any other claim or disagreement arising out of or relating to the sale, design, or construction of any of Improvement on the Units, off-site improvements, management of the Association, or other claims regarding the Project.

13.3 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: (1) Right to Cure: the claimant (e.g. the Owner or the Association) shall provide to the Declarant a written Notice of Claim (defined below) and permit the Declarant 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; (2) 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. If additional, different, or modified claims, damages, calculations, supporting information, or descriptions are added, provided to, or asserted against the Declarant 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.

13.3.1 "Notice of Claim" shall mean and include the following information: (1) an explanation of the nature of the claim, (2) a specific breakdown and calculation of any alleged damages, (3) a specific description of the claim along with any supporting opinions, information, or factual evidence upon which the claim is based, (4) photographs of any alleged defective condition, if applicable, (5) samples of any alleged defective conditions or materials, if reasonably available, (6) an explanation of the efforts taken to avoid, mitigate, or minimize the claim or any alleged damages arising therefrom, and (7) 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.

13.4 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 American Arbitration Association's Panel of Construction Arbitrators appointed by the American Arbitration Association ("AAA"). The binding arbitration shall be conducted according to the rules and procedures set forth in the Construction Industry Arbitration Rules promulgated by the AAA. The award of the arbitrator shall be final and may be entered as a judgment by any court of competent jurisdiction.

13.5 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. Notwithstanding the foregoing, the arbitrator shall, as part of any decision, award to the prevailing party any applicable filing fees or other arbitration fees paid by that party.

13.6 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 13. 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.

13.7 Waiver of Subrogation. The Association and each Owner waives any and all rights to subrogation against the Declarant and any builder, contractor, 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 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 builder, 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.

13.8 Repurchase Option for Construction Defect Claims. In the event an Owner, group of Owners, or the Association shall assert a claim or commence an arbitration proceeding or other legal action against Declarant or any contractor in connection with an alleged construction defect in any Improvement in or on any Unit or Units in the Project – which proceeding may

only be filed and maintained by an Owner, group of Owners, or the Association after strict compliance with the notice and other provisions of this Article 13 – Declarant (or any assignee of Declarant) shall have the option, but not the obligation, to purchase such Unit or Units and all Improvements thereon subject to the following terms and conditions.

13.8.1 The purchase price for any Unit shall be an amount equal to the sum of the following less any sums paid to an affected Owner under any construction warranty in connection with the alleged defect:

13.8.1.1 The original price paid by the original Owner to purchase the Unit from the Declarant;

13.8.1.2 The value of any Improvements to the Unit made by the Owner as evidenced by invoices or receipts;

13.8.1.3 The Owner's reasonable moving costs; and

13.8.1.4 Any closing costs incurred by the Owner in connection with the Owner's purchase of another Unit within ninety (90) days after closing of the repurchase of the Owner's Unit by Declarant.

13.8.2 The close of escrow with respect to Declarant's repurchase of a Unit shall occur no later than forty-five (45) days after written notice from Declarant to Owner of Declarant's intent to exercise the repurchase option.

13.8.3 Title to the Unit shall be conveyed by Owner to Declarant free and clear of all monetary liens and encumbrances other than non-delinquent property taxes and other encumbrances shown on a preliminary title report approved by Owner.

13.8.4 Declarant shall pay all closing costs associated with the repurchase of the Unit.

13.8.5 By exercising the repurchase option, Declarant shall be conclusively deemed to have satisfied in full all claims of any nature Owner has against Declarant relating to the Unit, any Improvements on the Unit, or Owner's purchase and occupation of the Unit. Following repurchase, the Owner shall promptly execute and deliver a notice of dismissal with prejudice or other document necessary to evidence such satisfaction.

ARTICLE 14 – MISCELLANEOUS PROVISIONS

14.1 Notices. The Association shall keep a list of contact information for Owners of all Units within the Project and all First Mortgagees requesting notice. Each Owner, upon becoming an Owner, shall provide the Association with appropriate contact information including mailing address, telephone number, and email address. Each Owner or First Mortgagee requesting notice shall update the Association with any changes to contact information. Where written notice to an Owner is required under this Declaration, the Bylaws, or the Rules and Regulations, such notice will be deemed sufficient if it is sent to the mailing address or email address on file with the Association.

14.2 Interpretation. The captions and section headings set forth in this Declaration are for convenience and shall affect the provisions set forth in the sections hereof. The use of any plural shall, where the context requires, include the singular thereof, and vice-versa.

14.3 Governing Law. This Declaration shall be govern by, and interpreted in accordance with, the laws of the State of Utah.

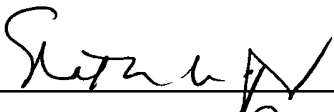
14.4 Severability. If any section, term, or provision of this Declaration is determined to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the remaining sections, terms, and provisions of this Declaration, which shall all remain in full force and effect.

14.5 Waiver. The failure by the Declarant, the Association, or any Owner to enforce any term or provision of this Declaration shall not be deemed as a waiver of the right to thereafter enforce such term or provision.

IN WITNESS WHEREOF, Declarant has executed this Declaration on this 21st day of October, 2015.

DECLARANT

Brighton Development Utah, LLC

By: 
Name: Nathan W. Pugsley
Title: Manager

STATE OF UTAH)

ss.

State of Utah
COUNTY OF Davis)

The foregoing instrument was acknowledged before me this 21 day of October,
2015 by Nathan W. Pugsley as the Manager of Brighton Development Utah,
LLC Brighton Development Utah, LLC.

Candice Davis

Notary Public

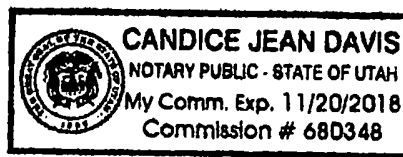


EXHIBIT A

(Property Description)

The land referred to is located in Salt Lake County, State of Utah, and is described as follows:

PARCEL No. 1:

Lots 101, 102, 103, 104, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, and 125, Phase 1, COTTAGES AT WESTERN SPRINGS, Riverton, Salt Lake County, Utah, according to the official plat thereof on file in the office of the Salt Lake County Recorder's office.

PARCEL No. 2:

Proposed Lots 201 through 235, COTTAGES AT WESTERN SPRINGS, Riverton, Salt Lake County, Utah, more or less described as follows to wit:

A portion of the NE1/4 of Section 31, Township 3 South, Range 1 West, Salt Lake Base & Meridian, located in Riverton, Utah, more particularly described as follows:

Beginning at a point located S89°31'48"E along the ¼ Section line 131.27 feet from the Center ¼ Corner of Section 31, T3S, R1W, S.L.B. & M.; thence N0°28'03"E 98.83 feet; thence N2°04'36"W 54.07 feet; thence N0°45'24"E 100.13 feet; thence N89°12'35"W 12.27 feet; thence N0°00'49"W 254.18 feet; thence N23°45'23"E 40.00 feet; thence N66°14'37"W 2.84 feet; thence N36°06'30"E 159.38 feet; thence Southeasterly along the arc of a 73.00 radius non-tangent curve (radius bears: N36°06'30"E) 15.74 feet through a central angle of 12°21'07" (chord: S60°04'04"E 15.71 feet); thence S66°14'37"E 89.50 feet; thence along the arc of a 73.00 foot radius curve to the left 32.75 feet through a central angle of 25°42'12" (chord: S79°05'43"E 32.47 feet) to a point of compound curvature; thence along the arc of a 15.00 foot radius curve to the left 24.43 feet through a central angle of 93°20'05" (chord: N41°23'09"E 21.82 feet) to a point of compound curvature; thence along the arc of a 73.00 foot radius curve to the left 13.04 feet through a central angle of 10°13'55" (chord: N10°23'51"W 13.02 feet); thence N15°30'49"W 212.03 feet; thence along the arc of a 277.00 foot radius curve to the right 335.23 feet through a central angle of 69°20'25" (chord: N19°09'23"W 315.14 feet); thence N37°09'17"W 270.33 feet; thence N50°43'16"W 85.30 feet; thence; thence North 50°43'16" W 85.30 feet; thence N37°09'17"W 184.63 feet; thence S89°50'30"E 200.69 feet; thence N89°18'00"E along a fence line 80.00 feet; thence N89°58'00"E along a fence line 391.00 feet to a fence corner on the westerly line of the Provo Reservoir Canal; thence along an existing fence line the following 7 (seven) courses and distances: S0°42'30"W 254.00 feet; thence S2°06'30"W 152.50 feet; thence S50°52'00"W 121.50 feet; thence S70°09'00"W 151.50 feet; thence S23°53'00"E 13.50 feet; thence along the arc of a 100.00 foot radius non-tangent curve (radius bears: S37°49'47"E) 108.85 feet through a central angle of 62°22'01" (chord: S20°59'13"W 103.56 feet); thence S11°49'00"E 281.07 feet; thence S2°59'11"W 494.69 feet along

the extension of, and along the easterly line of that Real Property described in Deed Book 10168 Page 8064 of the Official Records of Salt Lake County; thence S0°40'49"E along said deed 162.62 feet to the south line of the NE1/4 of said Section 31; thence N89°31'48"W along the ¼ Section line 368.97 feet to the point of beginning.

Together with the non-exclusive rights granted by that certain Roadway Easement, recorded March 26, 2015, as Entry No. 12017949, in Book 10308 at Page 5623; also the non-exclusive rights granted by that certain Public Recreation Easement recorded March 26, 2015 as Entry No. 12017950, in Book 10308 at Page 5629 of official records.

EXHIBIT B

(Plat Map)

