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**DECLARATION**

OF 

**COVENANTS, CONDITIONS AND  
RESTRICTIONS**

FOR

**WALL FARM**

A PRIVATE SUBDIVISION  
IN DAVIS COUNTY

09-457-0001 → 0006

March 2021

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**DECLARATION**  
OF  
**COVENANTS, CONDITIONS AND RESTRICTIONS**  
FOR  
**WALL FARM**

**A Private Subdivision in Davis County**

This Declaration of Covenants, Conditions and Restrictions for Wall Farm, a Private Subdivision in Davis County ("Declaration") is made and executed by North Ogden Retail, LLC, a Utah limited liability company ("Declarant").

**RECITALS:**

**A. Name of Project and Description of Land.** The subdivision that is the subject of this Declaration shall be known as Wall Farm ("Project"), and is situated in and upon that certain real property ("Subject Land") located in Davis County, State of Utah, as specifically described in Exhibit "A" attached hereto and incorporated herein by this reference. Declarant has prepared and has recorded in the office of the County Recorder for Davis County, State of Utah, a plat map for Wall Farm ("Plat"). There will be five (5) Lots in the Project.

**B. Name of Association and Bylaws.** The name of the Association shall be the Wall Farm Homeowners Association ("Association"), which has been or will be created as a Utah nonprofit corporation by filing articles of incorporation with the Utah Division of Corporations and Commercial Code. The Association is the governing body of the Project and is to be operated in accordance with this Declaration, the Articles of Incorporation for the Wall Farm Homeowners Association, and the Bylaws of the Wall Farm Homeowners Association. The Articles of Incorporation are attached as Exhibit "B" and the Bylaws are attached hereto as Exhibit "C".

**C. Intent and Purpose.** Declarant, by recording this Declaration, does so for the purpose of: (1) creating a development for the use and enjoyment of the Owners of the Lots; and (2) to impose upon the Subject Land mutually beneficial restrictions under a general plan of improvement for the benefit of all Lots within the Project and the Owners thereof.

**ARTICLE I**  
**DEFINITIONS**

- 1.1 **Defined Terms.** Unless the context clearly indicates otherwise, certain terms as used in this Declaration shall have the meanings set forth in this Article I.
- 1.2 **Association** shall mean the Wall Farm Homeowners Association, a Utah nonprofit corporation, organized to serve and act as the governing body of the Project.
- 1.3 **Board of Directors or Board** shall mean the Board of Directors of the Association.

- 1.4 **Common Area** shall mean and refer to the "Private Drive" and "Private Lane" within the Project, as identified on the Plat, together with all equipment, facilities, fixtures, and other personal property and real property improvements located in the Common Area and/or owned by the Association for the use and benefit of all Owners. The Common Area shall be owned by the Owners as tenants in common, each Owner possessing an equal undivided interest in the Common Area. All Common Area shall be managed and controlled by the Association for the common use and enjoyment of the Owners as more fully described in this Declaration.
- 1.5 **Common Expense** shall mean the actual and estimated costs of maintenance, management, operation, repair and replacement of the Common Area (including any special assessments), and including those fees not paid by the Owner responsible for payment; costs of management and administration of the Association including, but not limited to, accountants, bookkeepers, attorneys and other employees and consultants; the costs of all utilities, landscaping and other services benefitting the Common Area; the costs of any casualty or liability insurance covering the Project; and the cost of bonding the Directors of the Association; any taxes paid by the Association; amounts paid by the Association for discharge of any lien or encumbrance levied against the Project, or portion thereof; and the cost of any other expense incurred by the Association for any reason whatsoever in connection with the Project, for the benefit of all of the Owners. In addition, the water costs and expenses described in Section 8.4 below shall be a Common Expense.
- 1.6 **Common Expense Fund** shall mean the fund created or to be created and into which all funds of the Association shall be deposited and used to pay common expenses.
- 1.7 **Declarant** shall mean the North Ogden Retail LLC, a Utah limited liability company, its assigns or its successor in interest that purchases substantially all the Lots from North Ogden Retail, LLC.
- 1.8 **Dwelling** shall mean and refer to each physically constructed residential dwelling or building containing a single family residence located as an improvement on a Lot.
- 1.9 **Lot** shall mean each individual parcel of real property shown on the Plat as a Lot, together with all improvements located thereon and all appurtenances thereunto appertaining.
- 1.10 **Manager** shall mean the person, firm, or company, if any, designated from time to time by the Association to manage, in whole or in part, the affairs of the Association and the Project.
- 1.11 **Member** shall mean a member of the Association and shall include all Owners.
- 1.12 **Mortgage** shall mean any mortgage, deed of trust, or other security instrument by which a Lot or any part thereof is encumbered.
- 1.13 **Mortgagee** shall mean (i) any person named as the mortgagee or beneficiary under any Mortgage, or (ii) any successor to the interest of such person under such Mortgage.

- 1.14 **Owner** shall mean any person or entity or combination thereof, including the Declarant, owning fee title to a Lot within the Project as shown on the records of Davis County, State of Utah. The term "Owner" shall not refer to any Mortgagee (unless such Mortgagee has acquired title for other than security purposes) or to any person or entity purchasing a Lot under contract until such contract is fully performed and legal title conveyed.
- 1.15 **Period of Administrative Control** shall end seven (7) years from the date of recordation of this Declaration or the date on which eighty percent (80%) of the Lots in the Project have been conveyed to Owners other than Declarant or Declarant's successor in interest, whichever ever is sooner.
- 1.16 **Plat or Map** shall mean the Plat or Plats for Wall Farm, as recorded in the office of the County Recorder for Davis County, State of Utah.
- 1.17 **Project** shall mean all Lots and all Common Areas, collectively.
- 1.18 **Subject Land** shall mean the land upon which the Project is situated, as more particularly described in Exhibit "A".
- 1.19 **Total Votes of the Association** shall mean the total number of votes appertaining to the Lots in the Project. After Class B membership ceases to exist, all Lots shall have an equal vote and each Lot shall be entitled to one vote.

## ARTICLE II DIVISION OF PROJECT

- 2.1 **Submission to Declaration.** All of the Subject Land is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, and improved as a subdivision to be known as Wall Farm. All of said Subject Land is and shall be subject to the covenants, conditions, restrictions, easements, uses, limitations, and obligations set forth herein and in the Plat, each and all of which are declared and agreed to be for the benefit of the Project and in furtherance of a plan for improvement of said property and division thereof into Lots. Further, each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit to the Lot Owners, their successors and assigns, and any person acquiring, leasing, or owning an interest in any Lot, their lessees, heirs, executors, administrators, devisees, successors and assigns.
- 2.2 **Subdivision into Lots.** Pursuant to the Plat, the Subject Land is divided into Lots as more particularly described on the Plat. The Owner of each Lot, regardless of the size, purchase price or location of the Lot, shall have the right to use the Common Area. The Declarant, with the recordation of this Declaration, hereby quitclaims all of its right, title and interest in and to all of the Common Area, as more particularly shown on the Plat, without warranty, to the Association, to be held and administered in accordance with the provisions of this Declaration.

- 2.3 **Not a Cooperative or Condominium.** The creation of the Wall Farm subdivision shall not constitute the creation of a cooperative and no portion of the Project shall contain any condominiums.
- 2.4 **Easements.** The Declarant, its successors and assigns, shall have a transferable easement over, on and across the Common Area for the purpose of doing all things reasonably necessary and proper for the construction, completion, development and sale of the Project.

### ARTICLE III IMPROVEMENTS

- 3.1 **Description of Improvements.** The Project shall consist of one phase and contain five Lots, as shown on the Plat. Each of the Lots shall, when improved, contain one single family dwelling.
- 3.2 **Description and Legal Status of Lots.** The Plats show or will show the number of each Lot. All Lots shall be capable of being independently owned, encumbered, and conveyed.
- 3.3 **Equal Ownership.** Except for the Class B Member pursuant to Section 7.2 below, each Lot Owner shall be entitled to one vote in the Association.

### ARTICLE IV NATURE AND INCIDENTS OF OWNERSHIP

- 4.1 **Ownership and Maintenance of Lots.** The maintenance, replacement and repair of the Common Area shall be the responsibility of the Association as directed by the Board and the cost thereof shall be a Common Expense. The Lot Owners shall each repair and maintain all portions of their Dwelling, including the exterior of the building, including but not limited to the roof and stucco. The Lot Owners shall have the responsibility to maintain, repair, replace and keep in a clean and sanitary condition, at the Lot Owner's expense, all portions of the Owner's Dwelling. The Lot Owners shall keep clean and in a sanitary condition their balconies and patios, if any. Lot Owners are responsible to maintain, repair and replace the foundation of a Dwelling and all concrete located on the Owner's Lot. Attached as Exhibit "D" is a Maintenance Chart that lists the division of responsibility for maintenance and repair of various portions of the Subject Land between the Association and the Owners. The provisions of Exhibit "D" govern to the exclusion of any other language contained in this Declaration. However, the Association is only responsible to maintain and repair the items listed on Exhibit "D", and is only responsible to replace the Common Area and is not responsible to replace any property or improvements associated with a Dwelling or a Lot.
- 4.2 **Landscape Installation.** The landscaping located on a Lot must be installed and completed within six (6) months of the time a certificate of occupancy is obtained or within six (6) months of the time a Dwelling is substantially completed. The six (6) month requirement may be extended during periods of inclement weather, but for no longer than three (3) additional months.

- 4.3 **Prohibition Against Subdivision of Lot.** No Owner, by deed, plat or otherwise, shall subdivide or in any manner cause his Lot to be subdivided, partitioned or separated into physical tracts or parcels smaller than the whole Lot as shown on the Plat.
- 4.4 **Ownership and Use of Common Area.** The Association shall own the Common Area and the Association shall have the exclusive right and obligation to manage and maintain all Common Area, and to repair, replace and reconstruct any existing or new Common Area. The Association shall not be required to maintain any other areas. Each Owner shall have an irrevocable license and easement to use, occupy and enjoy all Common Area in common with all other Owners. Except as otherwise provided in this Declaration, each Owner shall be entitled to the nonexclusive use of the Common Area in any manner that does not hinder or encroach upon the rights of other Owners and is not contrary to any rules or regulations promulgated by the Association. Each Owner will be responsible for an equal share of the insurance, maintenance and other costs and expenses relating to the Common Area.
- 4.5 **Exclusive Use of Lot.** All Lots and all improvements on a Lot are reserved for the exclusive use of the Owner of that Lot, and such Owner's invitees and guests and such areas shall be maintained and repaired at the expense of the Lot Owner as indicated on the attached Exhibit "D".
- 4.6 **Inseparability.** Title to any part of a Lot within the Project may not be separated from any other part thereof. Every devise, encumbrance, conveyance, or other disposition of a Lot, or any part thereof, shall be constructed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the entire Lot, together with all appurtenant rights created by law or by this Declaration, including appurtenant membership in the Association as hereinafter set forth, and an irrevocable license to use, occupy and enjoy the Common Area in common with all Owners.
- 4.7 **No Partition.** The Common Area shall be owned by the Association, in accordance with the provisions of this Declaration, and no Owner nor the Association may bring any action for partition thereof except as allowed by law.
- 4.8 **Separate Mortgages by Owners.** Each Owner shall have the right separately to mortgage or otherwise encumber his Lot. No Owner nor the Association shall attempt to or shall have the right to separately mortgage or otherwise encumber the Common Area or any part thereof. Any mortgage or other encumbrance of any Lot shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise.
- 4.9 **No Separate Taxation.** Each Lot and all improvements located thereon shall be assessed separately for all taxes, assessments, and other charges of the State of Utah or of any political subdivision thereof or of any special improvement district or of any other taxing or assessing authority. The Common Area shall be taxed in accordance with the ownership interest possessed by each Lot Owner. All such taxes, assessments, and other charges on each respective Lot shall be separately levied against the Owner thereof. No forfeiture or sale of

any Lot for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Lot.

- 4.10 **Mechanic's Liens.** No labor performed or material furnished for use in connection with any Lot with the consent or at the request of an Owner or his agent or contractor shall create any right to file a statement, claim, or notice of mechanic's lien against the Lot of any other Owner not expressly consenting to or requesting the same.
- 4.11 **Mortgages and Liens on Common Area.** The Association shall not attempt nor shall it have the right to mortgage or otherwise encumber the Common Area or any part thereof. No labor performed or material furnished for use in connection with the Common Area shall create any right to file a statement, claim, or notice of mechanic's lien against the Common Area.

## ARTICLE V EASEMENTS

- 5.1 **Easement for Maintenance.** The Association shall have the irrevocable right to have access from time to time to all Common Areas during such reasonable hours as may be necessary for the maintenance, cleaning, repair, and replacement thereof or for making emergency repairs at any time herein necessary to prevent damage to the Common Areas.
- 5.2 **Easements Deemed Created.** All conveyances of Lots within the Project hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.
- 5.3 **Easements Reserved by Declarant and Association.** The Association shall have power, without the vote or consent of the Owners or of any other person, to grant and convey to any third party, and Declarant hereby reserves unto itself, easements and rights of way, including but not limited to rights of ingress and egress, in, on, over and under the Common Areas, for the purpose of constructing, erecting, operating and maintaining lines, cables, wires, conduits or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities to provide common utility services to the Project and other property that may be added to the Project.

## ARTICLE VI RESTRICTIONS ON USE

- 6.1 **Residential Uses Only.** Each Lot contained in the Project is intended to be used for single family residential housing and is restricted to such use. No Lot or Dwelling shall be used for business or commercial activity except that an Owner may operate an office or business out of their Dwelling provided that no business activity involving clients coming to the home on a regular basis (more than once a day) may take place nor shall the deliveries to the Dwelling more than twice per day. Nothing herein shall be deemed to prevent (a) Declarant or its duly

authorized agent from using any Lots owned by Declarant as sales models or property management offices, or (b) any Owner or his duly authorized agent from freely renting or leasing his Lot from time to time.

- 6.2 **No Noxious or Offensive Activity.** No noxious or offensive trade or activity and no nuisance shall be carried on upon any Lot nor shall anything be done which may be or may become an annoyance in the neighborhood. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.
- 6.3 **Restriction on Recreational Vehicles.** No boats, trailers, recreational vehicles, or inoperable vehicles shall be parked or stored on the driveway or in any area in front of any Dwelling for more than 72 hours in any 30 day period. If such vehicles are stored on a Lot, they shall be stored in a garage or behind a fence so as not to be visible from the street. No automobile, recreation or commercial vehicle, other motorized vehicle, or any portion thereof shall be dismantled, rebuilt, serviced, repaired or repainted on or in the driveway of a Lot or in front of any Dwelling or Lot unless performed within a completely enclosed garage or other structure located on the Lot which screens the sight and sound of such activity from the public streets and neighboring Lots.
- 6.4 **Temporary Structure.** No trailer, basement, tent, shack, garage, barn or other out building erected in the subdivision shall at any time be used as a residence temporarily or permanently, nor shall any structure of a temporary character be used as a residence.
- 6.5 **No Obstructions.** There shall be no obstruction of the Common Area by any Owner. Owners shall neither store nor leave any of their property in the Common Area, except with the prior written consent of the Association
- 6.6 **Prohibition of Damage and Certain Activities.** Except with the prior written consent of the Association, nothing shall be done or kept in or on any Lot, in the Common Area, or in any other part of the Project which may result in cancellation or any insurance on the Project or any part thereof, nor shall anything be done or kept in or on any Lot or Dwelling which may increase the rate of insurance on the Project or any part hereof over that which the Association, but for such activity, would have to pay. Nothing shall be done or kept in or on any Lot or Dwelling or in the Common Area or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental authority. No damage to, or waste of, the Common Area or any part thereof shall be committed by any Owner or guest or invitee of any Owner, and each Owner shall indemnify and hold the Association and other Owners harmless against all loss resulting from any such damage or waste caused by such Owner, his guests, lessees, licensees, or invitees.
- 6.7 **Construction Period Exemption.** During the course of actual construction of any structures or improvements which are permitted to be located on the Project, the provisions, covenants, conditions, and restrictions contained in this Declaration shall be deemed waived to the extent necessary or convenient to permit such construction; provided, however, that during

the course of such construction, nothing shall be done which would result in a violation of any of said provisions, covenants, conditions, or restrictions following completion of such construction.

- 6.8 **Garbage Cans and Trash.** Garbage cans may be placed in the street for collection the afternoon or evening prior to the day of collection, and must be removed from the street within twelve (12) hours of collection. Garbage cans may not be stored in front of an Owner's Dwelling but must be stored in an Owner's garage or behind the Owner's sideyard fence where it is not visible from the street. No trash may be collected, placed or stored on any portion of an Owner's Lot.

## **ARTICLE VII THE ASSOCIATION**

- 7.1 **Membership.** Each Owner shall be entitled and required to be a Member of the Association. Membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Lot is held by more than one person, the membership appurtenant to that Lot shall be shared by all such persons in the same proportionate interests and by the same type of tenancy in which title to the Lot is held. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. An Owner shall be entitled to one membership for each Lot owned by said Owner. Each membership shall be appurtenant to the Lot to which it relates and shall be transferred automatically by conveyance of that Lot. Ownership of a Lot within the Project cannot be separated from membership in the Association appurtenant thereto, and any devise, encumbrance, conveyance, or other disposition of a Lot shall be construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the Owner's membership in the Association, and the rights appurtenant thereto. No person or entity other than an Owner may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Lot.
- 7.2 **Voting Rights.** The Association shall have the following-described two classes of voting membership:
- (a) **Class A.** Class A Members shall be all Owners, but excluding the Declarant until the Class B membership ceases. Class A Members shall each be entitled to one vote.
  - (b) **Class B.** The Class B Member shall be in the Declarant and its assigns or successors, and shall consist of the interest the Declarant has in the existing Lots. For voting purposes the Class B Member shall be entitled to five (5) votes for each Lot owned by Declarant. The Class B Membership shall automatically cease and be converted to a Class A Membership on the first to occur of the following events:
    - (i) When the total number of votes held by all Class A Members exceeds the total number of votes held by the Class B Member.

- (ii) The expiration of seven (7) years after the date on which this Declaration is filed for record in the office of the County Recorder of Davis County, Utah.

7.3 **Board of Directors.** The Board of Directors shall consist of three (3) members. Declarant reserves the right to appoint all of the Board of Directors until the first of the following occurs:

- (a) Seven (7) years from the date of recordation of this Declaration.
- (b) The date on which eighty percent (80%) of the Lots in the Project have been conveyed to Owners other than Declarant or Declarant's successor in interest.

7.4 **Amplification.** The provisions of this Article VII may be amplified by the Articles of Incorporation and Bylaws of the Association; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Declaration.

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

## ARTICLE VIII RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

8.1 **The Common Area.** The Association shall be responsible, as described in herein and subject to the rights and duties of the Owners as set forth in this Declaration, for the exclusive management and control of the Common Area and all improvements thereon. Except as otherwise provided for in this Declaration, the Association shall be responsible for maintenance, repair, and replacement of all improvements or other materials located upon or used in connection with the Common Area. All goods and services procured by the

Association in performing its responsibilities under this Section shall be paid for with funds from the Common Expense Fund.

- 8.2 **Manager.** The Association may by written contract delegate in whole or in part to a professional Manager such of the Association's duties, responsibilities, functions, and powers hereunder as are properly delegable. The services of any Manager retained by the Association shall be paid for with funds from the Common Expense Fund.
- 8.3 **Miscellaneous Goods and Services.** The Association may obtain and pay for the services of such personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project, the enforcement of this Declaration, or any other matter. In addition to the foregoing, the Association may acquire and pay for as a Common Expense, insurance, some exterior lighting, and other necessary or desirable utility services for the goods and services common to the Lots.
- 8.4 **Culinary and Secondary Water.**
- (a) **Culinary Water.** Lot 1 within in the Project shall have its own culinary water meter. As such, the owner(s) of Lot 1 shall be responsible to pay their own culinary water bill. In contrast, there will be one "master meter" for the culinary water used by Lots 2 through 5. As such, the Association shall pay the water bill associated with the culinary master meter and shall assess the Owners of Lots 2 through 5 an equal amount of said bill as a Common Expense.
- (b) **Secondary Water.** There will be one "master meter" for the secondary water used by Lots 1 through 5. As such, the Association shall pay the water bill associated with the secondary water master meter and shall assess the Owners of Lots 1 through 5 an equal amount of said bill as a Common Expense.
- 8.5 **Rules and Regulations.** The Association by action of its Board of Directors may make reasonable rules and regulations governing the use of the Lots and of the Common Area, which rules and regulations shall be consistent with the rights and duties established in this Declaration. The Association may take judicial action against any Owner to enforce compliance with such rules and regulations or other obligations of Owners arising hereunder, or to obtain damages for noncompliance therewith, as permitted by law. The Association is empowered to adopt rules allowing for the termination of utilities upon non-payment of fees, as provided in Utah Code Annotated § 57-8a-309 (as amended), to adopt rules for the collection of lease payments from tenants as provided in Utah Code Annotated § 57-8a-310 (as amended), and to adopt rules allowing the Association to assess a fine against those residents, Owners or tenants who violate the Association's Declaration, bylaws or rules and regulations, which rules shall be consistent with those permitted in Utah Code Annotated § 57-8a-208 (as amended). In the event of such action, with or without the filing of a judicial action, the Association shall be entitled to recover its costs, including reasonable attorney

fees, from the offending Owner. During the Period of Administrative Control the Declarant is exempt from Association rules and rule making procedures.

- 8.6 **Construction Period Exemption.** During the course of actual construction of any structures or improvements which are permitted to be located on the Project, the provisions, covenants, conditions, and restrictions contained in this Declaration shall be deemed waived to the extent necessary or convenient to permit such construction; provided, however, that during the course of such construction, nothing shall be done which would result in a violation of any of said provisions, covenants, conditions, or restrictions following completion of such construction.
- 8.7 **Implied Rights.** The Association may exercise any right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably necessary to effectuate any such right or privilege.
- 8.8 **Reserves.** Following the Period of Administrative Control, the Association shall maintain an adequate reserve fund for maintenance, repair and replacement of those Common Areas that must be replaced on a periodic basis, and such reserves shall be funded from the monthly assessments described in Article IX below.

#### ARTICLE IX ASSESSMENTS

- 9.1 **Agreement to Pay Assessments.** Declarant, for and as the owner of the Project and every part thereof on the date hereof, hereby covenants, and each Owner of a Lot by the acceptance of instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association, to pay to the Association all assessments, both regular and special, made by the Association for the purposes provided in this Declaration. Such assessments shall be fixed, established and collected from time to time as provided in this Article IX.
- 9.2 **Uniform Assessments.** Except as otherwise stated in this Declaration, Common Expense assessments shall be computed and uniformly assessed against all Lots in the Project.
- 9.3 **Annual Budget.** Annually, the Association shall prepare, or cause to be prepared, an operating budget setting forth an itemized statement of the anticipated receipts and disbursements for the coming calendar year and taking into account the general condition of the Common Area. Each such budget, together with a written statement from the Association outlining a plan of operation for the year in question and justifying in every important particular the estimates made, shall be submitted to the Owners annually. Said operating budget shall serve as the basis for the schedule of proposed monthly assessments for the annual period for which it is prepared. Said budget shall also constitute a major guideline under which the Association shall operate during such annual period.
- 9.4 **Basis of Annual Budget.** The annual budget shall be based upon the Association's estimates of the cash required to provide for payment of expenses ("Common Expenses")

arising out of or connected with maintenance and operation of the Common Areas. Such actual expenses and estimated expenses may include, among other things, the following: expenses of management; governmental taxes and special assessments; premiums for all insurance that the Association is required or permitted to maintain; repairs and maintenance; wages for Association employees, including fees for a Manager, if any; utility charges; legal and accounting fees; any deficit remaining from a previous period; creation of a reasonable contingency reserve and reserve fund required or allowed herein; and any other expenses and liabilities which may be incurred by the Association for the benefit of all of the Owners or by reason of this Declaration.

- 9.5 **Annual Assessments.** The Association shall establish a regular monthly assessment against each Owner which assessment shall be equal for each Owner (except for the water costs described in Section 8.4 above) and be paid by each Owner into a Common Expense fund ("Common Expense Fund"). The foregoing method of assessing the Common Expenses to the Owners may be altered by the Association so long as the method it adopts is consistent with good accounting practice and requires that the portion of Common Expenses borne by each Lot shall be equal (except for the water costs described in Section 8.4). Each monthly installment of the regular assessment not timely paid by the 5<sup>th</sup> day of the month shall bear interest at the rate of one and one-half percent (1½ %) per month from the date it becomes due and payable until paid, as well as a late fee in an amount established by the Board, not to exceed \$50.00 per month. Failure of the Association to give timely notice of any assessment as provided herein shall not affect the liability of the Owner of any Lot for such assessment.
- 9.6 **Inadequate Funds.** In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Association may levy additional assessments as needed. No vote of the Owners shall be required to approve an assessment needed to repair or maintain portions of the Common Area that the Association is responsible to repair and maintain. Any amounts assessed pursuant hereto shall be apportioned equally among and assessed equally to all Lots. Notice in writing of the amount of such assessment and the time for payment thereof shall be given promptly to the Owners. No payment shall be due less than thirty (30) days after such notice shall have been mailed. All unpaid portions of any assessment shall bear interest at the rate of one and one-half percent (1½ %) per month from the date such portions become due until paid plus late fees as established by the Board not to exceed \$50.00 per month.
- 9.7 **Declarant's Obligations.** Notwithstanding the preceding provisions of this Article IX to the contrary, Declarant or Declarant's successor in interest shall not be obligated to pay any Common Expense assessment or any other assessment to the Association. Assessments shall begin to become due when the Lot has been conveyed to a third party and a Dwelling has been constructed on the Lot.
- 9.8 **Lien for Assessments.** All sums assessed to the Owner of any Lot within the Project pursuant to the provisions of this Article IX, together with interest thereon as provided herein, is secured by virtue of this Declaration as a lien on such Lot in favor of the Association. To evidence a lien for sums assessed pursuant to this Declaration, the

Association may prepare a written notice of lien in conformance with Utah law. Each Owner shall be deemed to have consented to the filing of a notice of lien against such Owner's Lot. Such notice shall be signed and acknowledged by a duly authorized officer of the Association or its attorney and may be recorded in the office of the Davis County Recorder. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by nonjudicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed in the State of Utah. In any such foreclosure, the Owner shall also be required to pay to the Association any assessments against the Lot which shall become due during the period of foreclosure and the costs and expenses of such proceeding, the costs and expenses of filling the notice of lien, and all reasonable attorney fees.

- 9.9 **Personal Obligation of Owner.** The amount of any regular or special assessment against any Lot shall be the personal obligation of the Owner of such Lot 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 Area or by abandonment of his Lot, or by waiving any services or amenities. In the event of any suit to recover a money judgment for unpaid assessments hereunder the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorney fees.
- 9.10 **Non-Judicial Foreclosure.** All costs, expenses, assessments and fees owed to the Association for Common Expenses may be secured by a lien, which lien may be foreclosed in the same manner as foreclosures of deeds of trust under Utah law. The lien shall also secure and the Owner shall also be required to pay to the Association any assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney fees, and a reasonable rental for the Dwelling during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. If the Association elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Lot hereby irrevocably appoints the attorney of the Association, provided he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In addition, Owner hereby transfers in trust to said Trustee all of his right, title, and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein. Declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-302 to Richard W. Jones, as trustee, an attorney licensed in the State of Utah, with power of sale, the Lot and all improvements to the Lot for the purpose of securing payment of assessments under the terms of the Declaration. The Association may appoint a substitute trustee by executing a

substitution of trustee as authorized in Utah Code Annotated, Section 57-1-22, without amending this paragraph.

- 9.11 **Statement of Account.** Upon written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Lot and payment of any reasonable fee assessed as authorized by law, the Association shall issue a written statement setting forth the following: (a) the amount of the unpaid assessments, if any, with respect to such Lot, and (b) the amount of the current regular assessment with respect to such Lot and the date such assessment becomes or became due. Such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith.
- 9.12 **Personal Liability of a Purchaser.** In a voluntary conveyance, the purchaser of a Lot shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Lot up to the time of the grant of conveyance; provided, however, that the provisions of this Section shall not prejudice the purchaser's right to recovery from the seller of the amount of such assessments paid by the purchaser for such assessments.
- 9.13 **Amendment of Article.** Except as may be necessary to conform to the law, as it may be amended from time to time, this Article IX shall not be amended unless the Owners of two-thirds (2/3) of the Lots in the Project consent and agree to such amendment by a duly recorded instrument.

## ARTICLE X INSURANCE

- 10.1 **Types of Insurance.** The Association shall obtain and keep in full force and effect at all times the following types of insurance coverage, provided by a company licensed to do business in the State of Utah:
- (a) **Public Liability and Property Damage Insurance.** The Association shall obtain a broad form of comprehensive public liability insurance coverage for the Common Area, in such amounts and in such forms as it deems advisable to provide adequate protection against liability for personal injury, death and property damage.
  - (b) **Fidelity Insurance or Bond & Directors and Officers Insurance.** Fidelity insurance or a bond in such amounts and in such forms as the Association deems appropriate to cover against dishonesty or employees or the Manager, destruction or disappearance of money or securities, and forgery, and adequate director's and officer's liability insurance (aka Errors and omissions insurance).
- 10.2 **Fire and Casualty Insurance.** The Association shall not be responsible to purchase insurance coverage on the Lots or on the Dwellings. Each Owner is required to obtain insurance on their own Lot and Dwelling for their own protection and benefit and as a requirement of any loan they may have on their Dwelling, which Owner's insurance is for the purpose of insuring the Dwelling against fire damage, water damage, water pipe damage, theft and vandalism, plus those additional types of losses normally covered by homeowners

insurance that are not covered under the Association. Each Owner shall provide a copy of this Article X to their insurance agent to make sure they obtain adequate and complete insurance coverage.

- 10.3 **Additional Coverage.** The provisions of this Declaration shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required by this Declaration in such amounts and in such forms as the Association may from time to time deem appropriate.
- 10.4 **Adjustment and Contribution.** Exclusive authority to adjust losses under the insurance policies hereafter in force on the Project shall be vested in the Association. In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees.
- 10.5 **Insurance Carried by Owners.** Each Owner is responsible for and shall obtain insurance, at his own expense, providing coverage upon his own Lot and/or in his Dwelling, and for general liability coverage, including without limitation, coverage for personal injury, property damage, and such other risks as each Owner may deem appropriate.

#### **ARTICLE XI COMPLIANCE WITH DECLARATION AND BYLAWS**

- 11.1 **Compliance.** Each Owner shall comply with the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, rules and regulations promulgated by the Association, and the decisions and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Association or by an aggrieved Owner.
- 11.2 **Enforcement and Remedies.** The obligations, provisions, covenants, restrictions and conditions contained in this Declaration, or in any supplemental or amended Declaration, enforceable against the Association, shall be enforceable by Declarant or by any Owner of a Lot, by a proceeding for a prohibitive or mandatory injunction. The obligations, provisions, covenants, restrictions and conditions contained in this Declaration, or in any supplemental or amended Declaration, enforceable against an Owner or any other person, shall be enforceable by Declarant or the Association by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid.

#### **ARTICLE XII DECLARANT'S SALES PROGRAM**

- 12.1 **Declarant's Right to Promote and Sell the Project.** Notwithstanding any other provisions of this Declaration, until Declarant ceases to be an Owner ("Occurrence"), Declarant, its successor or assigns shall have the following rights in furtherance of any sales, promotional or other activities designed to accomplish or facilitate the sale of Lots owned by Declarant:

- (a) **Sales Offices and Model Lots.** Declarant, its successors and assigns, shall have the right to maintain sales offices, including a trailer, and model homes on Lots. Sales offices may be located on any Lot (at any location) owned by Declarant or may be located on any of the Common Area. Declarant shall have the right to maintain any number of model homes it may desire using the Lots Declarant owns.
  - (b) **Promotional Devices.** Declarant, its successors and assigns, shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners and similar devices at any place or places on the Common Area or Lots owned by Declarant, but any such devices shall be of sizes and in locations as are reasonable and customary.
  - (c) **Right to Use the Common Area.** Declarant shall have the right to use the Common Area of the Project to entertain prospective purchasers or to otherwise facilitate Lot sales, provided said use is reasonable as to both time and manner.
- 12.2 **Declarant's Rights to Relocate Sales and Promotional Activities.** Declarant shall have the right from time to time to locate or relocate its sales offices, trailer, model homes and signs, banners and similar devices, but in connection with each such location or relocation Declarant shall observe the limitations imposed by the preceding portions of this Article. Within a reasonable period of time after the happening of the Occurrence, Declarant shall have the right to remove from the Project any sales structures, fixtures, improvements, signs, banners and similar sales materials and properties.
- 12.3 **Limitation on Amending Association Documents.** During any time Declarant holds an ownership interest in any Lot or in any portion of the property, no amendment shall be made to the Declaration, Bylaws or Rules without the written consent and approval of the Declarant.

### ARTICLE XIII MORTGAGEE PROTECTION

- 13.1 **Mortgage Protection.** No breach of any of the covenants, conditions, restrictions, and limitations contained herein shall defeat or render invalid the lien of any Mortgage made in good faith and for value; provided, however, that all such covenants, conditions, restrictions and limitations contained herein shall be binding upon an Owner whose title is derived through foreclosures or trustee's sale.
- 13.2 **Priority of Liens.** No enforcement of any lien provision herein contained shall defeat or render invalid the lien of any Mortgage. All sums assessed in accordance with the provisions herein shall constitute a lien on each respective Lot prior and superior to all other liens except (1) all taxes, bonds, assessments, and other levies which, by law, would be superior thereto; and (2) the lien or charge of any recorded Mortgage on such Lot made in good faith and for value and recorded prior to the date on which any such assessment or assessments become due.

- 13.3 **Prior Liens Relate Only to Individual Lots.** All taxes, assessments and charges which may become liens prior to the first Mortgage under local law shall relate only to the individual Lot and not to the Project as a whole.
- 13.4 **Mortgage Holder Rights in Event of Foreclosure.** Any Mortgagee of a Mortgage of record which obtains title to a Lot by the foreclosure of the Mortgage on the Lot or any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid assessments and charges against the Lot which accrued prior to the date of the acquisition of title to such Lot by such acquirer.
- 13.5 **Amendment.** No provision of this Article XIII shall be amended without the consent of at least two-thirds of all first Mortgagees as appear on the official records of Davis County, Utah, as of the date of such amendment, which consent may be deemed as permitted by the provisions of the Community Association Act, U.C.A. § 57-8a-220. However, should this Article XV be amended without the prior of at least two-thirds of all first Mortgagees, the first Mortgagees who have received a security interest in a Lot as indicated on the official records of Davis County, Utah, will not be subject to the amendment but will be bound by the provisions of Article XIII that existed of record at the time the first Mortgagee received a security interest. Any Mortgagee who receives a security interest in a Lot will be bound by the provisions of this Article XIII that existed of record at the time the Mortgagee received a security interest in a Lot.

#### ARTICLE XIV DISPUTE RESOLUTION

- 14.1 **Statement of Intent.** Prior to purchasing a Lot, every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, any inspection on any Lot and Dwelling the Owner is purchasing regarding any aspect of the Project. Moreover, if any warranty is provided, it identifies only those items warranted by the Declarant. Having had the ability to inspect prior to purchasing a Lot, having received a written warranty if any warranty is provided, and having paid market price for a Lot in the condition the Lots and Common Area are in at the time of purchase, it is acknowledged that it is unfair and improper to later seek to have the Declarant and/or any subcontractor performing work in the Project to change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, the Owners (by purchasing a Lot) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving disputes and conflicts in that it can be slow, expensive, uncertain, and can often negatively impact the sale value and ability to obtain financing for the purchase of Lots for years, unfairly prejudicing those Owners who must or want to sell their Lot during any period when litigation is pending. For this reason, the Owners by purchasing a Lot and the Declarant agree and acknowledge 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 herein. In addition, the Association and the Owners agree that they take ownership and possession of the Lots and Common Area AS IS, with no warranties of any

kind except as otherwise required as a matter of law. The Declarant specifically disclaims any warranties of merchantability, fitness for a particular use, or of habitability, to the full extent allowed by law.

14.2 **Arbitration.** 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 arises from or is in any way related to a Lot, Dwelling, Common Area, or any other 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 shall not be commenced unless the Pre-Arbitration Requirements set forth in Section 14.3 below have been satisfied in full. Without in any way limiting the foregoing, Disputes subject to binding arbitration shall include:

- (a) Any allegation that a condition in any of the Lots, Dwellings, or Common Area is a construction defect;
- (b) Any disagreement as to whether an alleged construction defect has been corrected;
- (c) Any disagreement about whether any warranties, including implied warranties, are applicable to the subject matter of any Dispute;
- (d) Any disagreement as to the enforceability of any warranties alleged to be applicable to the subject matter of any Dispute;
- (e) Any disagreement about whether any warranty alleged to be applicable to the subject matter of any Dispute has been breached;
- (f) Any alleged violations of consumer protection, unfair trade practice, or other statutes;
- (g) 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;
- (h) Any allegation that any condition existing in the Project or created by the Declarant, including construction-related noise, dust, and traffic, is a nuisance;
- (i) Any disagreement concerning the issues that should be submitted to binding arbitration;
- (j) Any disagreement concerning the timeliness of performance of any act to be performed by Declarant;
- (k) Any disagreement as to the payment or reimbursement of any fees associated with binding arbitration;
- (l) Any other claim or disagreement arising out of or relating to the sale, design, or construction of any of the Lots, Dwellings, or Common Areas.

14.3 **Pre-Arbitration Requirements.** An Owner or the Association may only pursue a claim against the Declarant, to the extent described herein or by law after the following dispute resolution efforts have been completed:

- (a) **Right to Cure:** the Owner 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;

- (b) If the dispute is not resolved within the 180-day Right to Cure period, the parties agree to mediate the dispute prior to taking further action or commencing arbitration. If additional, different, or modified claims, damages, calculations, supporting information, or descriptions are added, provided to, or asserted against the Declarant 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.
- (c) "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 condition, if applicable, (5) samples of any alleged defective conditions or materials, (6) all 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.

**14.4 Arbitration Approval.** 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 first obtaining 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 member of the American Arbitration Association's Panel of Construction Arbitrators, or by a different arbitrator or arbitration service provider if mutually approved by the parties. The binding arbitration shall be conducted according to the rules and procedures set forth in the Construction Industry Arbitration Rules promulgated by the American Arbitration Association. The award of the arbitrator shall be final and may be entered as a judgment by any court of competent jurisdiction.

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

**14.6 Waiver.** 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 of that or any other Dispute and such court 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.

- 14.7 **Subrogation.** The Association and each Owner waives any right to subrogation against the Declarant and any builder 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 engineer, and 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, their respective officers, employees, owners, 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, or representatives from any claims barred or released by this provision, including but not limited to any claim brought under any right of subrogation.
- 14.8 **No Right of Action Created.** Nothing in this Declaration or in this Article XIV shall grant or otherwise create a right of action by the Association against the Declarant, the developer or the builder, that does not otherwise already exist under Utah law.

#### ARTICLE XV GENERAL PROVISIONS

- 15.1 **Intent and Purpose.** The provisions of this Declaration and any supplemental or amended Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Project. Failure to enforce any provision, restriction, covenant, or condition in this Declaration, or in any supplemental or amended Declaration, shall not operate as a waiver of any such provision, restriction, covenant, or condition or of any other provisions, restrictions, covenants, or conditions.
- 15.2 **Construction.** The provisions of this Declaration shall be in addition and supplemental to all applicable provisions of law. Wherever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders. The Article and Section headings set forth herein are for convenience and reference only and are not intended to describe, interpret, define or otherwise affect the context, meaning, or intent of this Declaration or any Article, section or provision hereof. The provisions hereof shall be deemed independent and

severable and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

- 15.3 **Registration of Mailing Address.** Upon the purchase of any Lot, the Owner of such Lot shall register with the Association his current mailing address. All notices or demands intended to be served upon any Owner shall be sent as provided in the Bylaws.
- 15.4 **Audit.** Any Owner may at any reasonable time, upon appointment and at his own expense, cause an audit or inspection to be made of the books and records maintained by the Association.
- 15.5 **Amendment.**
- (a) Except as otherwise provided herein, this Declaration, and any amendments to the Declaration, may be amended with or without a meeting of the Owners by the affirmative consent or vote of at least sixty-seven percent (67%) of the Owners. All necessary written consents must be obtained prior to the expiration of ninety (90) days from the date the first written consent is obtained. Any amendment so authorized shall be accomplished through the recordation of an instrument executed by an officer of the Association certifying that the vote required by this Article has occurred, which properly approved amendments shall be evidenced by instruments which are duly recorded in the office of the County Recorder for Davis County, State of Utah.
  - (b) During the Period of Administrative Control, the Declarant shall have and is hereby vested with the right to amend this Declaration and the Plats by an instrument duly executed and acknowledged by Declarant and recorded in the Official Records of the County Recorder of Davis County, Utah. Such right of amendment shall apply without regard to the subject matter or the nature of the amendment involved, and such amendment shall not take away any substantive legal rights of those Owners who own a Lot at the time of such amendment by the Declarant.
- 15.6 **Effective Date.** This Declaration and any amendments thereto shall take effect upon recording.
- 15.7 **Agent for Service.** The person to receive service of process for the Association shall be the then current registered agent of the Association as shown on the records maintained in the office of the Division of Corporations and Commercial Code of the State of Utah.
- 15.8 **Limitation on Association's Liability.** The Association shall not be liable for any failure of water service or other utility service to be obtained and paid for by the Association hereunder, or for injury or damage to any person or property caused by the elements or by another Owner or person in the Project, or resulting from electricity, water, ground water, rain, snow or ice, or the settling of ground beneath a Dwelling. No diminution or abatement of any assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs, maintenance or improvements to the Project

or any part thereof, or from any action taken to comply with any law, ordinance or order of a governmental authority.

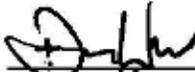
- 15.9 **Owner's Obligations.** All obligations of an Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that he may be leasing, renting, or selling on contract his Lot. The Owner of a Lot shall have no obligation for expenses or other obligations accruing after he conveys title to such Lot.

[Signature on Next Page]

EXECUTED BY DECLARANT on the date of notarization appearing below:

**Declarant:**

**NORTH OGDEN RETAIL, LLC**

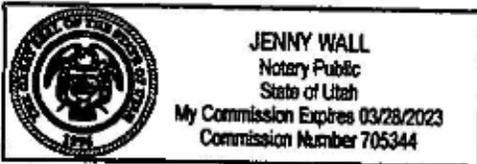
  
Its: Manager

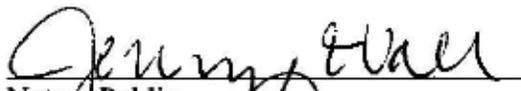
STATE OF UTAH )

:ss.

COUNTY OF DAVIS )

On this 26 day of March, ~~2020~~<sup>2021</sup>, personally appeared before me, Daniel Wall, who acknowledged to me that he is authorized to, and did in fact execute this Declaration on behalf of North Ogden Retail, LLC.



  
Notary Public

**Exhibit "A"**  
**LEGAL DESCRIPTION**

**WALL FARM**  
Layton City, Davis County, Utah

BEGINNING AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 4 NORTH RANGE 1 WEST, SALT LAKE BASE & MERIDIAN AS WITNESSED BY AN EXISTING OLD FENCE, SAID POINT BEING LOCATED NORTH 89°28'00" WEST ALONG QUARTER SECTION LINE 1324.10 FEET (1323.182 FEET BY RECORD) FROM THE EAST QUARTER CORNER OF SAID SECTION 14, AND RUNNING THENCE SOUTH 89°28'00" EAST ALONG QUARTER SECTION LINE 247.56 FEET; THENCE SOUTH 277.12 FEET TO THE NORTH LINE OF CHERRY LANE; THENCE NORTH 88°27'53" WEST 136.05 FEET; THENCE NORTH 88°00'00" WEST 112.49 FEET; AND THENCE NORTH 00°11'06" EAST (NORTH 00°10'40" EAST BY RECORD) ALONG THE ONE-SIXTEENTH LINE OF SAID QUARTER SECTION 271.86 FEET (271.85 FEET BY RECORD) TO THE POINT OF BEGINNING.

CONTAINING: 68,133 SQ.FT. (1.564 ACRES)

**Exhibit "B"**

**ARTICLES OF INCORPORATION**

# ARTICLES OF INCORPORATION

for the

## WALL FARM HOMEOWNERS ASSOCIATION

The undersigned adult natural persons, acting as incorporators, hereby establish a nonprofit corporation pursuant to the Utah Revised Nonprofit Corporation Act (the "Act") and adopt the following articles of incorporation for such corporation;

### ARTICLE I NAME

The name of the corporation is the Wall Farm Homeowners Association (hereinafter the "Association").

### ARTICLE II DURATION

The Association shall have a perpetual existence.

### ARTICLE III PURPOSES AND POWERS

1. **Purposes.** The Association is organized as a nonprofit corporation and shall be operated to promote the health, safety and welfare of all members of the Association in connection with the Wall Farm subdivision and to establish, provide, and maintain a desirable community and environment for all member Lot owners.
2. **Powers.** In furtherance of the foregoing purposes, and subject to the restriction set forth in Section 3 of this Article, the Association shall have and may exercise all of the powers now or hereafter conferred upon nonprofit corporations organized under the laws of Utah and may do everything necessary or convenient for the accomplishment of any of the corporate purposes, either alone or in connection with other organizations, entities or individuals, and either as principal or agent, subject to such limitations as may be prescribed by law.
3. **Restrictions Upon Purposes and Powers.** The foregoing purposes and powers of the Association are subject to the following limitations:

- a. **Earnings of Association.** No part of the net earnings of the Association (if any) shall inure to the personal benefit of any member of the Association; however, this restriction shall not limit or impair the Association's right to compensate Members for services rendered or for goods sold or leased to the Association;
- b. **Nonprofit Organization.** The Association shall be organized and operated exclusively for non-profitable purposes as set forth in Section 528 of the Internal Revenue Code as it is now or may hereafter be amended, or in any corresponding provision of any future law of the United State of America providing for exemption of similar organizations from income taxation; and

#### **ARTICLE IV DIVIDENDS & DISTRIBUTIONS**

The Association shall not pay any dividends. No distribution of the corporate assets to Members (as such) shall be made except as permitted by the Internal Revenue Code and the Utah Code sections governing condominiums and community associations. Upon dissolutions of the Association, the assets shall be distributed as provided in Article X herein.

#### **ARTICLE V MEMBERSHIP AND VOTING**

1. **Members.** The Association shall have Members. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Each membership shall be pertinent to and may not be separated from ownership of the Lot to which the membership is attributable.
2. **Stock.** No stock in the Association shall be issued. The Board may, in its discretion, issue certificates evidencing a Member's membership in the Association. A person's membership, however, is not affected by the holding of such a certificate and a Member is entitled to all the benefits and subject to all obligation of membership whether or not the Member holds a membership certificated.
3. **Voting.** The Association shall have two classes of voting during the period of Declarant's control as set forth in Article 8.2 of the Declaration. Thereafter, the Association shall have one class of voting membership. Each Lot shall be entitled to one vote on any given matter, regardless of the number of Members owing an interest in such Lot. The Members owning a particular Lot are authorized to cast the vote attributable to the Lot. The Board may suspend the voting rights of Members for a particular Lot if the Members are in violation of the Declaration.
4. **Right to Vote.** No change in the ownership of a membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each Lot must be cast as a Lot, and

factional votes shall not be allowed. If a Lot is owned by more than one person or entity and such owners are unable to agree among themselves as to show their vote or votes shall be cast, they shall not be entitled to vote on the matter in question. If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other owners of the same Lot unless objection thereto is made at the time the vote is cast. If more than one vote is cast for a particular Lot, none of the said votes shall be counted and all said votes shall be deemed void. Voting by proxy is allowed as set forth in the Association's Bylaws.

5. **No Cumulative Voting.** In any election of the members of the Board, the Owner(s) of a given Lot shall collectively have one vote for each Director position to be elected. The candidate receiving the highest number of votes for a given Director position shall be deemed elected to such position. Cumulative voting shall not be allowed in the election of members of the Board or for any other purpose.
6. **Transfer of Membership.** The rights and obligations of memberships in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to an owner's Lot and then only to the new Owner of the Lot. A transfer of ownership to a Lot may be effected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Utah. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall automatically transfer the membership appurtenant to said Lot to the new Owner thereof.

#### **ARTICLE VI SHARE OF STOCK**

The Association shall not issue any shares of stock.

#### **ARTICLE VII DIRECTORS**

The management of the affairs of the Association shall be vested in a Board of Directors, except as otherwise provided in the Act, these Articles of Incorporation or the Bylaws of the Association. The number of Directors, their classification, if any, their terms of office and the manner of their election or appointment shall be determined according to the Bylaws of the Association from time to time in force.

#### **ARTICLE VIII BYLAWS**

The initial Bylaws of the Association shall be those adopted as the Bylaws of the Association in connection with the Declaration. The Bylaws of the Association may contain any provisions for

the regulation or management of the affairs of the Association which are not inconsistent with law or these articles of incorporation, as these articles may from time to time be amended.

**ARTICLE IX  
INITIAL PRINCIPAL OFFICE, REGISTERED OFFICE AND AGENT**

The address of the initial principal office of the Association is: The Wall Farm Homeowners Association, 1565 W. Hillfield Rd., Ste. 104, Layton, Utah 84041. The address of the initial registered office is 1565 W. Hillfield Rd., Ste. 104, Layton, Utah 84041. The name of the Association's registered agent at such address is Jacob Wall.

**ARTICLE X  
DISSOLUTION**

The Association may be dissolved only upon termination of the Declaration of Covenants, Conditions and Restriction for Wall Farm, a private subdivision in Davis County. Written notice of a proposal to dissolve, setting forth the reasons therefore and the disposition to be made of the assets, as set forth below, shall be mailed to every Member at least 30 days in advance of any action taken. Upon dissolution of the Association, the assets both real and personal of the Association, shall be distributed to the Members according to the provisions of the Act and the Utah Code sections governing community associations.

**ARTICLE XI  
INCORPORATOR**

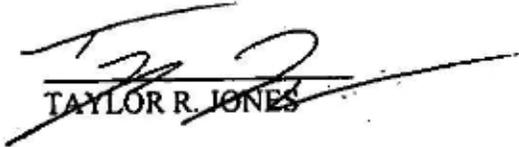
The name and address of the incorporator of this Association is:

Taylor R. Jones, 5732 S 1475 E, Suite 200, South Ogden, UT 84403

**ARTICLE XII  
AMENDMENT**

The Association may amend these Articles of Incorporation by a vote of not less than 66.7% of the members.

IN WITNESS WHEREOF, I, Taylor R. Jones, have executed these Articles of Incorporation this 27 day of March, 2021, and say: That I am the incorporator herein and have read the above and foregoing Articles of Incorporation and know the contents thereof and that the same is true to the best of my knowledge and belief.

  
TAYLOR R. JONES

**Exhibit "C"**

**BYLAWS**

**BYLAWS**  
FOR THE  
**WALL FARM**  
**HOMEOWNERS ASSOCIATION**

The following are adopted as the administrative Bylaws of the Wall Farm Homeowners Association ("Wall Farm").

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

- 1.1 **Submission.** These Bylaws are adopted by the Owners of Lots in the Wall Farm subdivision. These Bylaws shall govern the administration of the Wall Farm Homeowners Association.
- 1.2 **Definitions.** The words defined in Article I of the Declaration of Covenants, Conditions and Restrictions for Wall Farm, a Private Subdivision in Davis County, shall have the same meaning when used herein unless the context clearly requires another meaning.
- 1.3 **Conflict.** In the event of any conflict, incongruity or inconsistency between the provisions of these Bylaws and the provisions of the Declaration or any amendments thereto, the latter shall in all instances govern and control.
- 1.4 **Office and Registered Agent.** The Registered Agent of the Association shall be the President or Secretary of the Association and the Registered Office of the Association shall be the office of the President or such other place as shall be designated by him.
- 1.5 **Bylaws Applicability.** All present and future Owners, residents, tenants, renters, lessees, and their guests, licensees, invitees, servants, agents or employees, and any other person or persons who shall be permitted at Wall Farm shall be subject to and abide by these Bylaws.

**ARTICLE II**  
**ASSOCIATION**

- 2.1 **Composition.** The Association of Owners is a mandatory association consisting of all Owners at Wall Farm.
- 2.2 **Voting.** Each Owner shall have an equal number of votes.

- 2.3 **Place of Meeting.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place as may be designated by the Board from time to time and stated in the notice of meeting.
- 2.4 **Annual Meeting.** The annual meeting of the Association shall be held at such suitable day, date and time as may be designated by the Board from time to time. The place of meeting shall be the principal office of the Association unless otherwise specified in the notice of meeting.
- 2.5 **Special Meetings.** The President shall call a special meeting (a) if he or she so desires, (b) if a majority of the members of the Board of Directors direct him to do so, or (c) upon receipt of a petition signed and presented to the Secretary of the Board by at least fifty-one percent (51%) of the members of the Association. The notice of any special meeting shall state the date, time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.
- 2.6 **Notice of Meeting.** It shall be the duty of the Secretary to give notice of (a) each annual meeting of the Owners not less than ten (10) and not more than thirty (30) days in advance of such meeting; and (b) each special meeting of the Owners at least three (3) days and not more than twenty (20) days in advance of such meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Owner of record, at the address of his respective Lot or such other address as each Owner may have designated by notice in writing to the Secretary. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.
- 2.7 **Notification by Mail, Website and Email.** Any notice permitted or required to be delivered by the Board or from the Association to the Owners may be delivered either personally, by U.S. mail, or by electronic means.
- (a) If notice is by mail, it shall be deemed to have been delivered 24 hours after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to each Owner at the address given by such person to the Board of Directors for the purpose of service of such notice or to the Lot of such person if no address has been given. Such addresses may be changed by Owner from time to time by notice in writing to the Board of Directors.
- (b) If notice is by electronic means, any notice delivered by the Association to Owners under the provisions of the Declaration or these Bylaws may be sent by electronic means, including text message, email, or the Association's website. The Association shall maintain records of all notices sent to Members by electronic means, including the electronic address to which notice was sent. When a notice is sent electronically, the Association shall first compile a list of Owners' current electronic addresses (such as email or text messaging addresses or other types of well known electronic forms, such as Facebook) and the Association shall send notification of all Association meetings and business to the electronic address of the Owners. The Association secretary shall thereafter send an electronic notice, via email or a

comparable electronic means, of all Association meetings and business to those Owners who do not object to electronic notification in this manner. A member may, by written demand, require the Association to provide notice to the Lot Owner by mail.

- (c) If notice is by personal means, notice may be delivered to Owners by hand delivery directly to the Owner or a responsible occupant of an Owner's Dwelling, or by securely attaching a copy of the notice to the front entry door of the Owner's Dwelling.
- 2.8 **Voting Requirements.** An Owner shall be deemed to be in "good standing" and "entitled to vote" at any annual meeting or at any special meeting of the Association if, and only if, he shall be in full compliance with all of the terms, covenants, and conditions of the Project Documents, and shall have fully paid all Assessments due.
- 2.9 **Proxies.** The votes appertaining to any Lot may be cast pursuant to a proxy or proxies duly executed by or on behalf of the Owner, or in cases where the Owner is more than one person, by or on behalf of all such persons. No such proxy shall be revocable except by actual written notice to the person presiding over the meeting, by the Owner or by any of such persons, that it be revoked. Any proxy shall be void if it is not dated, if it purports to be revocable without notice, or if it is not signed by a person having authority, at the time of the execution thereof, to execute deeds on behalf of that person. Unless it expressly states otherwise, a proxy shall terminate automatically upon the adjournment of the first meeting held on or after the date of that proxy. Each proxy must be filed with the Secretary of the Board before the meeting. Only individual Owners or the legal representative of an Organizational Owner may be proxies.
- 2.10 **Quorum.** A majority of the members (51% or more) of the Association shall constitute a quorum for a meeting unless otherwise stated in the Declaration of Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Owners entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting and reschedule for a time no earlier than two (2) days nor more than thirty (30) days after the set time for the original meeting. No notice of such rescheduled meeting shall be required except an announcement thereof at the original meeting. The Owners present at the rescheduled meeting shall constitute a quorum for the adoption of decisions. When a quorum is present at any meeting, the vote of the Owners representing a majority of the members of the Association present at the meeting either in person or by proxy, shall decide any question brought before the meeting; provided, however, if the Declaration requires a fixed percentage of Owners to approve any action, however, that percentage shall be required anything to the contrary notwithstanding.
- 2.11 **Order of Business.** The order of business at all meetings of the Association shall be as follows:
- (a) roll call to determine quorum status;
  - (b) proof of notice of meeting;

- (c) reading of minutes of preceding meeting;
- (d) reports of officers;
- (e) report of special Boards, if any;
- (f) appointment of inspectors of election, if applicable;
- (g) election of Board Members, if applicable;
- (h) unfinished business; and
- (i) new business.

- 2.12 **Conduct of Meeting.** The President shall, or in his absence the Vice-president, preside over all meetings of the Association; the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted by the meeting as well as record of all transactions occurring thereat.

### **ARTICLE III BOARD OF DIRECTORS**

- 3.1 **Powers and Duties.** The affairs and business of the Association shall be managed by the Board of Directors. The Board of Directors shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Declaration, and may do all such acts and things necessary to operate and maintain the Project. The Board may delegate its authority to a manager or managers. Subject to any limitations or provisions contained in the Declaration, the Board shall be responsible for at least the following:

- (a) Preparation of an annual budget;
- (b) Determining the annual assessment of each Owner;
- (c) Managing the Association;
- (d) Maintaining the Common Area;
- (e) Collecting the Assessments;
- (f) Depositing the collections into a federally insured interest bearing account or accounts;
- (g) Adopting and amending rules and regulations;
- (h) Enforcing the Project Documents;
- (i) Opening of bank accounts on behalf of the Association and designating the signatories required therefor.
- (j) Making, or contracting for the making of, repairs, additions, and improvements to, or alterations of, the Property and repairs to, and restoration of, the Property, in accordance with the Declaration and other provisions of these Bylaws.
- (k) Commencing legal action when necessary;
- (l) Purchasing and maintaining insurance for the Association and the Board;
- (m) Paying the cost of all services rendered to the Project and not billed directly to Owners of individual Lots.
- (n) Keeping books and records of the Association;
- (o) Paying any amount necessary to discharge any mechanic's or materialman's lien or other encumbrance levied against the Common Area;

- (p) Giving notice of alleged violations of the Project Documents and providing the alleged violator the opportunity to be heard;
  - (q) Levying fines, sanctions and citations;
  - (r) Making emergency repairs;
  - (s) Towing or impounding motor vehicles;
  - (t) Evicting non-Owner residents in material violation of the Project Documents or who have created and failed to abate a nuisance; and
  - (u) Doing such other things and acts necessary to accomplish the foregoing.
- 3.2 **Composition of Board of Directors.** The Board of Directors shall be composed of three (3) members of the Association.
- 3.3 **Qualification.** Only individual Owners or officers or agents of organizational Owners other than individuals shall be eligible for Board Membership. Only one Owner per Lot shall serve on the Board at any given same time.
- 3.4 **Election and Term of Office of the Board.** The term of office of membership on the Board shall be one (1) year and each member shall serve on the Board until such time as his successor is duly qualified and elected.
- 3.5 **Initial Organizational Meeting.** The first meeting of the members of the Board shall be immediately following the annual meeting of the Association or at such other time and place designated by the Board.
- 3.6 **Regular Meetings.** Regular meetings of the Board shall be held from time to time and at such time and place as shall be determined by a majority of the members of the Board, but no less often than monthly.
- 3.7 **Special Meetings.** Special meetings of the Board may be called by the President, Vice-president or a majority of the members on at least forty-eight (48) hours prior notice to each member. Such notice shall be given personally, by regular U.S. mail postage prepaid, by telephone or electronic means, and such notice shall state the time, place and purpose of the meeting. Any meeting attended by all members of the Board shall be valid for any and all purposes.
- 3.8 **Waiver of Notice.** Before or at any meeting of the Board, any member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any such meeting of the Board shall constitute a waiver of notice. If all the members are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.
- 3.9 **Quorum.** At all meetings of the Board, a majority of the members then in office shall constitute a quorum for the transaction of business, and the acts of the majority of all the Board members present at a meeting at which a quorum is present shall be deemed to be the acts of the Board. If, at any meeting of the Board, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time but for no shorter than

two (2) days nor more than 5 days and give notice of the rescheduled meeting to the members not in attendance. At any such rescheduled meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

- 3.10 **Vacancies.** Vacancies in the Board caused by any reason other than removal of a member by a vote of the Association shall be filled by vote of the majority of the remaining members of the Board at a special meeting of the Board held for that purpose promptly after the occurrence of any such vacancy, even though the total members remaining may constitute less than a quorum of the Board; and each person so elected shall be a member for the remainder of the term of the member so replaced. A vacancy created by the removal of a member by a vote of the members of the Association at a special meeting called for that purpose shall be filled by the election and vote of the members of the Association at said meeting.
- 3.11 **Removal of Board Member.** A member may be removed, with or without cause, and his successor elected, at any duly called regular or special meeting of the Association at which a quorum of the Association is present, by an affirmative vote of a majority of the members of the Association. Any member whose removal has been proposed by the Owners shall be given at least thirty (30) days notice of the calling of the meeting and the purpose thereof and an opportunity to be heard at the meeting. Any Board Member who misses twenty-five percent (25%) or more of the Board Meetings in any twelve month period or who misses three (3) consecutive meetings in any calendar year, shall be automatically removed from the Board.
- 3.12 **Compensation.** Board members shall not be compensated for their services but shall be reimbursed for all expenses reasonably incurred in connection with Board business and approved by the Board.
- 3.13 **Conduct of Meetings.** The President shall preside over all meetings of the Board and the Secretary shall keep a Minute Book of the Board recording therein all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings, subject to the following:
- (a) **Open Meetings.** A portion of each meeting of the Board shall be open to all members of the Association, but members other than members of the Board may not participate in any discussion or deliberation unless expressly so authorized by a majority of a quorum of the Board. The Board shall establish procedures, policies, and guidelines for conducting of its meetings, retiring to executive session, and prohibiting photographs and/or any electronic (video or audio) recordation of the meetings, or any part thereof.
  - (b) **Executive Session.** The Board may, with approval of a majority of a quorum, adjourn a meeting and reconvene in an Executive Session to discuss and vote upon private, confidential, sensitive or personnel matters, litigation, and orders of business of a similar nature. The nature of any and all business to be considered in an Executive Session shall first be announced in open session.

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

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

#### **ARTICLE IV NOMINATION AND ELECTION OF BOARD MEMBERS**

4.1 **Nomination Process.** The process for the nomination and election of the Board of Directors shall proceed as set forth herein.

4.2 **Nominating Committee.** Nominations for election to the Board shall be made by a Nominating Committee, whose purpose is to seek out and locate qualified individuals as candidates for election to the Association's Board of Directors. The Nominating Committee shall consist of a Chairman, who shall be a member of the existing Board, and three or more additional members of the Association, who may or may not be current members of the Board. The Nominating Committee shall be appointed by the Board not less than 30 days prior to each annual meeting of the Association at which an election will be held. The Nominating Committee shall serve for a term of one year. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of vacant Board seats to be filled. The Nominating Committee may notify members that it is seeking qualified candidates and interview all candidates interested in serving on the Board to determine if, in the Nominating Committee's sole discretion, the potential candidate has the proper demeanor, experience, ability and character to serve the interests of the Association if elected. The Nominating Committee shall submit to the Board those names as candidates which a majority of the Nominating Committee recommend be placed on the Association ballot. Those nominated as candidates shall have the opportunity to communicate their qualifications to the members and to solicit votes. Should the Board fail to follow the procedures outlined in this Article 4.2, then nominations shall be made from the floor at the annual meeting or any special meeting.

4.3 **Nomination Approval.** Anyone nominated as a candidate prior to or at the Association's election meeting should have first granted their approval and affirmatively stated that he or she is willing to serve for the term if elected.

4.4 **Nominations.** The names of the candidates recommended by the Nominating Committee shall be included in the Notice of the annual meeting sent to members of the Association, and may be included on proxy and absentee ballots sent to members. Write-in candidates are permitted. Nominations may also be received from members of the Association from the floor at the annual meeting of the members.

- 4.5 **Election.** At the annual meeting for the election of new Board members, the Board shall prepare and distribute a ballot to each Owner. Owners who do not attend the meeting may vote by proxy ballot or by written ballot. Each Lot is entitled to vote as provided in the Declaration and Bylaws. Voting need not be conducted by secret ballot.

## ARTICLE V OFFICERS

- 5.1 **Designation.** The principal officers of the Association shall be a President, a Vice-president, a Secretary and a Treasurer, all of whom shall be elected by the Board. The Board may appoint assistant secretaries and such other officers as in its judgment may be necessary. All officers shall also be members of the Board. Two or more offices may be held by the same person, except that the President shall not hold any other office.
- 5.2 **Election of Officers.** The officers of the Association shall be elected by the members of the Board of Directors at their first meeting after the annual meeting of the Association. Any vacancy in an office shall be filled by the remaining members of the Board of Directors at a regular meeting or special meeting called for such purpose.
- 5.3 **Removal of Officers.** The officers shall hold office until their respective successors are chosen and qualify in their stead. Any officer elected or appointed by the Board may be removed at any time by the affirmative vote of a majority of the Board, and his successor may be elected at any regular meeting of the Board, or at any special meeting of the Board called for such purposes.
- 5.4 **President.** The President shall be the chief executive officer; he shall preside at meetings of the Association and the Board and shall be an ex officio member of all Boards; he shall have general and active management of the business of the Board and shall see that all orders and resolutions of the Board are carried into effect. He shall have all of the general powers and duties, which are usually vested in or incident to the use of president of a stock corporation organized under the laws of the State of Utah.
- 5.5 **Vice-president.** The Vice-president shall, in the absence or disability of the President, perform the duties and exercise the powers of the President, and shall perform such other duties as the Board or the President shall prescribe. If neither the President nor the Vice-president is able to act, the Board shall appoint a member of the Board to do so on an interim basis.
- 5.6 **Secretary.** The Secretary shall attend all meetings of the Board and all meetings of the Association and record all votes and the minutes of all proceedings in a book to be kept by him or her for that purpose and shall perform like duties for Boards when required. He shall give, or cause to be given, notices for all meetings of the Association and the Board and shall perform such other duties as may be prescribed by the Board. The Secretary shall compile and keep current at the principal office of the Association, a complete list of the Owners and their last known post office addresses. This list shall be open to inspection by all Owners and other persons lawfully entitled to inspect the same, at reasonable hours during regular

business days. The Secretary shall also keep current and retain custody of the Minute Book of the Association, containing the minutes of all annual and special meetings of the Association and all sessions of the Board including resolutions.

- 5.7 **Treasurer.** The Treasurer shall have custody of all funds and securities. He shall keep full and accurate records of receipts and disbursements, shall prepare all required financial data, and shall deposit all monies and other valuable effects in such depositories as may be designated by the Board. He shall disburse funds as ordered by the Board, taking proper vouchers for such disbursements, and shall render to the President and members, at the regular meetings of the Board, or whenever they may require it, an account of all his transactions as Treasurer and of the financial condition of the Project.

#### ARTICLE VI FISCAL YEAR

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

#### ARTICLE VII AMENDMENT TO BYLAWS

- 7.1 **Amendments.** These Bylaws may be modified or amended either (i) by the affirmative vote of a majority of the members of the Association or (ii) pursuant to a written instrument of consent duly executed by a majority of the members of the Association provided all of the written consents are obtained within a ninety day period.

#### ARTICLE VIII COMPLIANCE, CONFLICT, AND MISCELLANEOUS PROVISIONS

- 8.1 **Compliance.** These Bylaws are set forth in compliance with the requirements of the Declaration.
- 8.2 **Conflict.** These Bylaws are subordinate to and are subject to all provisions of the Declaration, except in those cases where the provisions of the Bylaws are clearly intended to govern (administrative matters). All of the terms hereof, except where clearly repugnant to the context, shall have the same meaning as they are defined to have in the Declaration.
- 8.3 **Severability.** If any provisions of these Bylaws or any section, sentence, clause, phrase, or work, or the application thereof in any circumstance is held invalid, the validity of the remainder of these Bylaws shall not be affected thereby and to this end, the provisions hereof are declared to be severable.
- 8.4 **Waiver.** No restriction, condition, obligation, or provision of these Bylaws shall be deemed to have been abrogated or waived by reason of any failure or failures to enforce the same.

- 8.5 **Captions.** The captions contained in these Bylaws are for convenience only and are not part of these Bylaws and are not intended in any way to limit or enlarge the terms and provisions of these Bylaws.
- 8.6 **Construction.** Whenever in these Bylaws the context so requires, the singular number shall refer to the plural and the converse; the use of any gender shall be deemed to include both masculine and feminine, and the term "shall" is mandatory and "may" permissive.
- 8.7 **Effective.** These Bylaws shall be effective upon recording in the Office of the Davis County Recorder.

## Exhibit "D" MAINTENANCE CHART

The following chart defines the division of responsibility for maintenance and payment of repairs of various areas between the Wall Farm Homeowners Association and the Owners.

	<b>EXTERIOR</b>	<b>HOA</b>	<b>OWNER</b>
1	Maintenance of, repair, paint and replace roof and stucco		X
2	Maintenance of, replace and repair of exterior brickwork and chimneys		X
3	Maintenance of, replace and repair of front steps and sidewalk		X
4	Maintenance of, replace and repair of concrete foundations and entrees		X
5	Maintenance of, replace and repair of patio concrete		X
6	Maintenance of and replace and repair of any perimeter fences boarding the Project		X
7	Maintenance of and replace and repair non perimeter fences		X
8	Maintenance of, replace and repair of rain gutters and down spouts		X
9	Replacement, maintenance and repair of doors, hinges, frames, thresholds, locks, doorbells and chimes		X
10	Replacement, maintenance and repair of garage floors and doors		X
11	Replacement, maintenance and repair of windows, sliding glass doors, screens and frames		X
12	Replacement, maintenance and repair of all yard lights that use electricity from the Dwelling		X
13	Replacement, maintenance and repair of all lights attached to the exterior walls		X
14	Maintenance of gas lines and electric wiring connections from the meters to the Dwelling		X
15	Maintenance of water system from the outside entry through the foundation and throughout the Dwelling. This includes the outside faucets and hose bibs. Any damage caused by this portion of the water system is the liability of Lot Owner		X
16	Replacement and repairs to outside water spigots and bibs		X
17	Replacement, repair and maintenance of phone lines, TV cables, air conditioning, satellite dishes antennas		X
18	Lot Owner improvements: windows, attic vents and similar items		X
19	Maintenance, replacement and repair of sprinkler lines and heads on Lots		X
20	Lawn mowing on Lots		X
	[reserved for future use]		

	<b>INTERIOR</b>	<b>HOA</b>	<b>OWNER</b>
21	All interior painting, decorations and furnishings from the inside of the unfinished walls and ceilings. This includes all appliances such as dishwashers, garbage disposals, ranges, refrigerators, furnaces, exhaust fans, attic vents, air conditioners, water heaters, and intercom, telephone, and computer wiring and networks		X
22	Maintenance, cleaning and repair of venting, chimneys and fireplaces		X
23	Maintenance, repair and replacement of the electrical system from the city electric meter to the breaker panel and to all outlets including switches and light fixtures		X
24	Maintenance, repair and replacement of plumbing fixtures such as sinks, basins, toilets and all interior pipes and valves		X
25	Repair of cracks or other damage to interior walls, floors or ceilings caused by normal settling		X
26	Repairs of damage resulting from static water or seepage of water from any underground source except water and sprinkler system failures.		X
27	Repairs of damage resulting from surface water		X
28	Repairs of damage to interior of a Dwelling resulting from static water, rain, or seepage of ground water		X

	<b>GROUNDS</b>	<b>HOA</b>	<b>OWNER</b>
29	Snow Removal from Common Area Road	X	
30	Maintain, repair and replace the Common Area Road	X	
31	Snow removal on Lot		X
32	Maintenance, repair and replace driveways, steps and porch		X
	[reserved for future use]		

	<b>OTHER</b>	<b>HOA</b>	<b>OWNER</b>
33	Garbage collection		X
34	Maintenance and repair of water system from the city water meter to the entrance to the exterior wall of each Dwelling		X
35	Maintenance and repair of storm drain within Project	X	
36	Maintenance and repair of utilities lines located under the private road within the Project	X	