

28

13123046
11/13/2019 02:16 PM \$40.00
Book - 10859 Pg - 4061-4088
RASHELLE HOBBS
RECORDER, SALT LAKE COUNTY, UTAH
FOX DEN AT MILLCREEK PUD
2779 S. CONNOR
MILLCREEK, UT 84109
BY: MGP, DEPUTY - WI 28.P

DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
FOX DEN AT MILLCREEK P.U.D.

**DECLARATION
OF
FOX DEN AT MILLCREEK P.U.D.
(A Community Association)**

THIS DECLARATION is made and executed this 27 day of April 2019 by Fox Den at Millcreek, LLC., a Utah Limited Liability Company (the "Declarant"), pursuant to the provisions of the Utah Community Association Act, Utah Code Ann. 57-8(a)-101 et seq. (the "Act").

RECITALS

A. The Declarant is the owner of real property located in Millcreek City, Salt Lake County, State of Utah (the "Property") more particularly described in EXHIBIT "A" attached hereto and entitled Real Property Description of Fox Den at Millcreek P.U.D.

B. The Declarant desires to provide for the preservation of the values and amenities of the Property and for maintenance of the Common Areas. Therefore, for the benefit of the Property and of the Owners, the Declarant desires to, by recording this Declaration, the Bylaws and the Plat in the office of the County Recorder for Salt Lake County, State of Utah, to subject the Property, including the Units and improvements contained within the entire tract, to these covenants, restrictions, and restrictions, and the Act.

C. The Declarant desires, for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the power to maintain and administer the Common Areas, to collect and disburse Assessments and Charges, and to otherwise administer and enforce the provisions of this Declaration, the By-Laws, and Rules and Regulation. For this purpose, the Declarant has, conjunction with this Declaration, caused or will caused to be incorporated under the laws of the State of Utah, Fox Den at Millcreek Community Association, Inc., a Utah nonprofit corporation.

NOW THEREFORE, for the forgoing purpose, the Property described in Exhibit "A" is and shall be held, transferred, sold, conveyed, and occupied subject to the covenants, restrictions, easements, charges, and liens hereinafter set forth.

**ARTICLE I
Definitions**

When used in this Declaration and in the Bylaws which are made a part of this Declaration and are attached hereto as EXHIBIT "B", the following terms shall have the meaning indicated. Any term used herein which is defined by the Act shall, when permitted by the context hereof, have the meaning ascribed to it by the Act.

1. 1 **Act** shall mean the Utah Community Association Act, Utah Code ann. 57-8(a)-101 et seq, as it be amended from time to time.

1. 2 **Association** shall mean and refer to Fox Den at Millcreek on Community Association, a Utah nonprofit corporation.

1. 3 **Board** shall mean the Board of Directors of the Association as duly elected in accordance with the terms and conditions of the Articles of Incorporation and Bylaws of the Association.

1. 4 **Bylaws** shall mean the Bylaws of the Association that are attached hereto as EXHIBIT “B”, as they may be amended from time to time.

1. 5 **City** shall mean Millcreek City, a municipal corporation of the State of Utah.

1. 6 **Common Areas** shall mean, refer to, and include: The real property and interest in real property, excluding the Units and interest in the Units, which this Declaration submits to the terms of the Act.

a. All Common Areas and Facilities designated as such in the Plat attached hereto as Exhibit “C.”

b. All access roads, driveways designated for the use of more than one unit, walkways, pedestrian sidewalks, landscape and planting areas, fences, outdoor or street lights and other common facilities.

c. All apparatus, installations, and facilities included within the Association and existing for common use.

d. All portions of the Project not specifically included within the individual Units.

e. All other parts of the Project normally in common use or necessary or convenient to its use, existence, maintenance, safety, or management.

f. All common areas as defined in the Act, whether or not enumerated herein.

1. 7 **Common Expenses** shall mean and refer to all sums which are expended on behalf of all the Owners and all sums which are required by the Management Committee to perform or exercise its functions, duties, or rights under the Act, this Declaration, and such Rules and Regulations as the Management Committee may from time to time make and adopt. By way of illustration but not limitation, Common Expenses shall include: (a) expenses of administration, maintenance, operation, repair, replacement of those elements of Common Areas that must be replaced on a periodic basis, and other reserves as may be from time to time established pursuant to the Declaration; (b) expenses agreed upon as Common Expenses by the Association and lawfully assessed against the Owners in accordance with the Declaration; (c) expenses declared Common Expenses by the provision of the Act or by this Declaration or by the Bylaws; and (d) any valid charges against the Association as a whole.

1. 8 **Declaration** shall mean this Declaration of Covenants, Conditions, and Restrictions, as amended from time to time.

1. 9 **Declarant**. Shall mean Fox Den at Millcreek, LLC., a Utah Limited Liability Company, and its successors and assigns.

1. 10 **Design Guidelines** shall mean and refer to those guidelines and regulations created by the Declarant for the design and construction of the Living Units and other improvements within the Development and corresponding landscaping of the Units.

1. 11 **Development** shall mean the subdivision and Improvements then in existence as shown on the Map.

1. 12 **Environmental Laws** shall mean any federal, state, or local statute, or common laws, related to pollution or protection of the environment, including, without limitation, any common laws of nuisance or trespass and any laws or regulations related to emissions, discharges, releases or threatened releases of Toxic Materials into the environment.

1. 13 **Family** shall mean and refer to a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, or up to two (2) unrelated persons, who maintain a common household in a Unit.

1. 14 **Governing Documents** means (a) this Declaration, (b) the Plat, (c) the Articles of Organization of the Association, (d) the Bylaws of the Association, (e) any Association Rules, (f) the Design Guidelines, and (g) any other covenants, restrictions, and agreements pertaining to any governing the Development or the Property, as the same may be amended from time to time.

1. 15 **Improvement** shall mean all existing structures and appurtenances to the Property of every kind and type, including but not limited to all buildings, walkways, sprinkler pipes, roads, driveways, sidewalks, parking areas, fences, walls, stairs, landscaping, trees and shrubs, and the like.

1. 16 **Insurer or Guarantor** shall mean an insurer or governmental guarantor of a mortgage which has requested notice in writing on certain matters from the Association, or as such notice may be required to be provided to such Insurer or Guarantor by the Act.

1. 17 **Lease** shall mean any agreement for the leasing or rental of a Unit.

1. 18 **Living Unit** shall mean any structure which is designated and intended for use and occupancy as a single family residence, together with all improvements located on or with respect to the Unit.

1. 19 **Limited Common Areas** shall mean and refer to those common areas designated herein and in the Map as reserved for the use of a certain Unit or Units to the exclusion of the other Units.

1. 20 **Unit** shall mean any one of the separately numbered and individually described Units shown on the Plat which is intended to be owned individually, rather than by an association of Owners or in common by Owners of different Units, intended to be used as the site of a single Living Unit, and its appurtenant undivided ownership interest in the Common Areas and Limited Common Areas associated with such Unit.

1. 21 **Manager** shall mean the person, firm, or company designated from time to time by the Association to manage, in whole or in part, the affairs of the Association.

1. 22 **Management Committee** shall mean the Management Committee of Fox Den at Millcreek on Community Association as governed by the Bylaws.

1. 23 **Member** shall mean and refer to every person who holds a membership interest in the Association.

1. 24 **Mortgage** shall mean any mortgage, deed of trust, or the act of encumbering any Unit or the Property by mortgage or deed of trust.

1. 25 **Mortgagee** shall mean any person named as mortgagee of a Mortgage or beneficiary under or holder of a deed of trust.

1. 26 **Owner** shall mean the person who is the Owner of record (in the office of the County Recorder of Salt Lake County, Utah) of a fee or an undivided interest in any Unit. Notwithstanding any applicable theory relating to a Mortgage, a deed of trust, or the like, the term "Owner" shall not mean or include a Mortgagee or a beneficiary or trustee under a deed of trust unless and until such a party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1. 27 **Plat** shall mean any subdivision plat, or any plat or map similar to any of the foregoing: (a) which covers the Property, (b) which describes or creates one or more Units, (c) on which or in an instrument recorded in conjunction therewith there is expressed the intent that the subdivision created by the Plat comprises the Development, and (d) that is recorded in the office of the Salt Lake County Recorder. Recorded prior to this declaration is a plat entitled FOX DEN AT MILLCREEK P.U.D., as executed and acknowledged by Declarant on the 5 day of NOV, 2019 and recorded the 31 day of FEB, 2019, as Entry Number 1211426 in Book 1016 at Page 542 creating separately numbered Units and Common Area.

1. 28 **Property** shall mean and refer to the Property which is subject to this Declaration.

1. 29 **Rules and Regulations** shall mean those rules and regulations adopted from time to time by the Management Committee that are deemed necessary for the protection and enjoyment of the project, provided however, such Rules and Regulations shall not conflict with the Bylaws, the Declaration, the Act, or law.

1. 30 **Trustee** means First American Title Insurance Agency, whose address is 7240 South Highland Drive | Suite 200, Cottonwood Heights, Utah 84121.

ARTICLE II Submission

2. 1 **Submission.** The Declarant, Owner of the Land described in Exhibit "A", which Exhibit is attached hereto and incorporated herein by this reference, (the Land), located in Salt Lake County, Utah, hereby submits the Property, the Buildings and all other improvements now or hereafter made in or upon the Property to the provisions of the Act, to be known as Fox Den at Millcreek P.U.D. All of said Property is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used and improved as in a manner not inconsistent with the Act. All of said Property is and shall be subject to the covenants, conditions, restrictions, uses, limitations and obligations set forth, herein each and all of which are declared and agreed to be for the benefit of said Property and in furtherance of a plan of improvement of said property and division thereof into the Units; further, each and all of the provisions hereof shall be deemed to run with the Property and shall be a burden and a benefit on the Property and shall be binding upon the Declarant, its successors and assigns, and to any person acquiring, leasing, or owning an interest in the Property and improvements comprising of the Project and to their respective personal representatives, heirs, successors, and assigns.

2. 2 **Not a Cooperative.** The Property is not a cooperative.

2. 3 **Not a Condominium.** The Property is not a condominium nor governed under the provisions of the Utah Condominium Ownership Act, Utah Code Annotated Title 57, Chapter 8. Provided however, that to the extent any portions of the Property contain condominiums such portions of the Property shall be governed by Utah Condominium Ownership Act, Utah Code Ann. Title 57, Chapter 8.

2. 4 **Appointment of Trustee.** The Trustee is hereby appointed pursuant to Utah Code Ann. 57-8(a)-212(j). The declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-302 to Trustee, with power of sale, the Unit and all improvements to the Unit for the purpose of securing payment of the assessments under the terms of the Declaration.” Nothing herein shall preclude the substitution of the Trustee, provided such substitution comports with the Act.

ARTICLE III Membership and Voting Rights

3. 1 **Membership.** Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Unit in which the Owner has the necessary interest, and shall not be severable from the Unit to which it appertains.

3. 2 **Voting Rights.** The Association shall have the following described classes of voting membership:

a. **Class A.** Class A Members shall be all Owners, other than the Declarant, until the Class B membership (defined below) ceases. Class A Members shall be entitled to **One Vote** for each Unit in which the interest required for membership in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any one Unit.

b. **Class B.** The Class B Member shall be the Declarant. The Class B Member shall be entitled to four (4) votes for each Unit in which it holds the interest required for Membership in the Association. The Class B Membership shall automatically cease and be converted to a Class A membership in the Units owned by the Declarant on the earlier of:

i. When the total number of votes held by all Class A Members equals the total number of Votes held by the Class B member; or

ii. The expiration of seven (7) years after the date on which this Declaration is filed or recorded in the office of the County Recorder of Salt Lake County, Utah. Provided, however, the Declarant reserves the right to extend this expiration period for one additional seven (7) year period by filing a notice of such extension in the office of the Salt Lake County Recorder, not more than one-hundred eighty days, but not after, the expiration of the initial seven (7) year period. If such notice for an extension is not filed timely, the Declarants right to extend shall expire.

c. **Multiple Ownership Interests.** In the event there is more than one owner of a particular Unit, the vote cast relating to such Unit shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another Owner in the same Unit. In the event of such an objection, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

ARTICLE IV Association Duties and Powers

4. 1 **Duties of the Association.** Subject to and together with those duties imposed by the Articles, the Bylaws, and the Act, the Association shall have the obligation and duty to perform the following actions for the benefit of the Owners and for the maintenance and improvement of the Property:

- a. **Members.** The Association shall accept all Owners as members of the Association in a manner not inconsistent with Article III above.
- b. **Title to Common Areas.** The Association shall accept title to all Common Areas conveyed to it by the Declarant.
- c. **Maintenance and Repair.** The Association shall maintain, repair, and replace all landscaping and related improvements located in the Common Areas, including but not limited to the maintenance of all exterior trees, shrubs, grasses, and other Common Area improvements. The Association shall maintain, repair, and replace all fixtures and improvements in the "Playground Area" and "Barbeque and Picnic Area" including but not limited to, swing sets, playground structures, pergolas, barbeque grills, pads and patios, and the like. The Association shall maintain, repair, and replace all private roadways, parking areas (including snow removal), and shall cause the private roadway and parking areas to be slurry sealed at least once every five years. The Association shall maintain, repair, and replace all main utility trunk lines from the boundary of the public right of way to the boundary of an individual Unit. Individual Unit utility line repair, replacement, and maintenance shall be that of the Unit owner, and any trunk line existing in the public right of way shall remain the duty and responsibility of the municipal servicing entity.
- d. **Damage by Owner.** In the event that the need for maintenance or repair of the Common Areas as specified above is caused through the negligent or willful acts of an Owner, or thorough the willful or negligent acts of the invitees or licensees of an Owner the Association may cause such repairs to be made and the cost of such maintenance or repair shall become a part of the Reimbursement Assessment to which such Unit Owner may be subject.
- e. **Property Taxes.** To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments levied upon any portion of the Common Areas, provided the Association shall maintain the right to contest any such taxes or assessments.
- f. **Insurance.** The Association shall obtain and maintain in force the policies of insurance required by the provisions of this Declaration.
- g. **Management Committee.** The Association may employ a responsible corporation, partnership, firm, person, or other entity as the Managing Committee to manage and control the Common Areas, subject at all times to the direction of the Board, with such administrative functions and powers as shall be delegated to the Management committee by the Board. The composition of the Management Committee shall be as specified by the Board. Any agreement appointing a Management Committee shall be terminable by either party, with or without cause and without payment of any termination fee, upon thirty (30) days written notice thereof; and the term of such agreement may not exceed one year, renewable by agreement of the parties for successive one-year periods. Any Management Committee may be an independent contractor and not an agent or employee of the Association.

4.2 **Powers of the Association.** The Association shall have all the powers set forth in its Articles of Incorporation and its Bylaws, together with its general powers as a nonprofit corporation, the power to do any and all things which may be authorized, required or permitted to be done by the Association under this Declaration, including the power to levy and collect assessments as hereinafter provided under Article V. Without in any way limiting the generality of the foregoing, the Association shall also have the following enumerated powers:

a. **Entry Upon a Unit.** The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Unit for the purpose of maintaining and repairing and accessing the Common Area, or any improvement for which the Association is responsible.

b. **Legal Enforcement.** The Association shall have the right to close all or any portion of a Common Area to such extent as may be legally sufficient to prevent a dedication thereof or the accrual of any right therein to any person or the public. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any Rules and Regulations promulgated by the Board, or to enforce by mandatory injunction or others all the provisions of this Declaration and such Rules and Regulations.

c. **Right to Contract.** In fulfilling any of its duties under this Declaration, but subject to the other enumerated limitations in this Declaration, the Association shall have the power and authority to (a) pay and discharge any and all liens placed upon any Common Areas and/or Units on account of any work done and performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation and/or administration, and (b) to obtain, contract, and pay for, or to otherwise provide for:

i. Construction, maintenance, repair and landscaping of the Common Areas on such terms as the Board may deem necessary and appropriate;

ii. Such insurance policies or bonds as the Board may deem appropriate for the protection and benefit of the Declarant, the Association, the members of the Board, and the Owners;

iii. Such utility services, including (without limitation) water, sewer, trash, snow removal, electrical, telephone, and gas services, and the Board may from time to time deem appropriate;

iv. The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable;

v. Fire, police, and other such protection services as the Board may deem desirable for the benefit of the Owners or any of the Property; and

vi. Such materials, supplies, furniture, equipment, services and labor as the board may deem necessary.

d. **Limitation on Delegation.** The Board may delegate by resolution or contract to the Management Committee any of its powers under this Declaration, provided however, the Board cannot delegate to the Management Committee the power to execute any contract binding on the Association for a sum in excess of five-thousand dollars (\$5,000.00), nor the power to sell, convey, mortgage, or encumber any Common Areas.

4.3 **Association Rules.** The Board, from time to time, subject to the provisions of this Declaration, may adopt, amend, repeal, and enforce Rules and Regulations governing, among other things: (a) the use of the Common Areas; (b) the use of any roads or utility facilities owned by the Association; (c) the collection and disposal of refuse; (d) the types of animals permitted and maintenance

of animals permitted on the Property; (e) the use of the Living Units for business, commercial, and rental purposes; and (f) other matters concerning the use and enjoyment of the Property and the conduct of the residents. The Board may also adopt additional Design Guidelines, in addition to those adopted by the Declarant, for the construction of Living Units; provided, however, until the earlier of the expiration of seven (7) years from the date on which this Declaration is filed (or fourteen (14) years in the event of an extension by Declarant pursuant to Article 3.2(b)(ii)), or all Units have been sold to third parties by Declarant, the Declarant shall have the unilateral right to amend or modify the Design Guidelines or reject any additional design Guidelines proposed by the Board.

4. 4 **Limitation of Liability.** No member of the Board acting in good faith shall be personally liable to any Owner, guest, lessee, or other person for any error or omission of the Association, its representatives and employees, the Board, any committee or the Management committee.

4. 5 **Insurance.** The Association shall at all times maintain the following insurance coverage:

a. **Property Insurance.** The Association shall maintain a multi-peril policy or policies for fire and other hazard insurance covering the entire Development, including all Units, Living Units and Common Areas (including improvements thereon), with extended coverage and all over coverages in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use, including a "Special Community Endorsement" or similar endorsement, the standard "All-Risk" endorsement, on a replacement cost basis in an amount not less than one-hundred percent (100%) of the insurable value (based on replacement cost) of the project, subject to reasonable deductibles and exclusive of land, excavations, foundations, and similar items normally excluded from property insurance policies, together with common personal property, equipment and supplies. The Association may include additional endorsements on this policy as should be determined necessary and property under the business judgment of the Board. The Association shall be required to maintain an amount in reserves, and allocated to the payment of the deductible, that is equal to the lesser of either (a) the amount of the Property Insurance deductible, or (b) if the deductible exceeds ten-thousand dollars (\$10,000.00) then at least ten-thousand dollars (\$10,000.00). This provision is intended to comport with the requirements under Utah Code Ann. 57-8(a)-405 et seq.

b. **Required Notice.** The Association shall provide each owner with notice, from time to time and as required by the Act, of each Owner's obligation to satisfy all or part of any policy deductible in the event of a loss covered by the policy of insurance required under 4.5(a), including the amount of the Associations deductible or any change thereof. Each Owner's share of the deductible shall be allocated according to the requirements of the Act. The Association shall provide each owner notice if the Association's policy for property insurance should become implacable to obtain or continue as required by the Act. The Association shall provide any other notice required by the Act.

c. **Liability Insurance.** The Association shall maintain an insurance policy or insurance policies insuring the Association (including its directors, officers, agents and employees), and the Owners against any liability incident to the ownership, use or operation of the Units, Living Units and Common Areas which may arise among themselves, to the public, and to any invitees, licensees, or tenants of the Property or of the Owners. Limits of liability under such insurance shall be determined in the business judgment of the Board.

d. **Additional Provisions.** The following additional provisions shall apply with respect to any insurance obtained by the Association:

i. In addition to the insurance described above, the Association shall maintain insurance against such risks customarily insured against in connection with developments similar to the Property in construction, nature, and use;

ii. All policies shall be written by a company licensed to do business in Salt Lake County, Utah and holding a rating of "AA" or better from Best's Insurance Reports;

iii. The association shall have the authority to adjust losses;

iv. Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by individual Owner's or their Mortgagees; and

v. Each policy of insurance obtained by the Association shall, if reasonably practicable, provide a waiver of the insurer's rights of subrogation with respect to the Association, the Owner(s), and their respective directors, officers, agents, employees, invitees, licensees, and tenants; that cannot be cancelled, suspended or invalidated due to the conduct of any particular Owner(s); that it cannot be cancelled, suspended, or invalidated due to the conduct of the Association or any director, officer, agent, or employee of the Association without a prior written demand that the defect be cured; and that any "no other insurance" clause therein shall not apply with respect to insurance held individually by the Owners.

4.6 **Quorum Requirements.** The quorum required for any action by the Members hereunder, unless otherwise specifically set forth in this Declaration shall, at the first meeting called, require the presence of Members or proxies entitled to cast forty percent (40%) of all outstanding votes. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than forty-five (45) days following the immediately preceding meeting.

ARTICLE V Assessments

5.1 **Personal Obligation and Lien.** Each owner shall, by acquiring or in any way becoming vested with interest in a Unit, be deemed to covenant and agree to pay the Association the monthly and special assessments (including the Reinvestment Fee) described in this Article, together with any interest and costs of collection. All such amounts shall be (a) a charge and continuing lien upon the Unit with respect to which such assessment is made, and (b) the personal obligation of the person who is the Owner of such Unit at the time the assessment becomes due. No Owner may exempt himself or his Unit from liability for payment of assessments by waiver of his rights concerning the Common Areas or by abandonment of his Unit. In a voluntary conveyance of a Unit, the grantee shall be jointly and severally liable with the grantor for all such unpaid assessments, late charges, interest and costs of collection, including reasonable attorney's fees, which shall be a charge on the Unit at the time of conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee.

5.2 **Purpose of Assessments.** Assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of the residents of the Property, including but not limited to the appearance and aesthetics of the Development. The use made by the Association of funds obtained from assessments may include, but is not limited to, payment of the cost of taxes and insurance on the Common Areas, maintenance, repair and improvement of the Common Areas,

establishing and funding a reserve to cover insurance deductibles, major repairs, the replacement of improvements upon the Common Areas, and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration or its Articles. Notwithstanding the foregoing, the Association shall act in good faith when using funds in furtherance of the above described purposes.

5. 3 **Maximum Annual Assessment.** Commencing upon the date established pursuant to Article 5.7, each Unit shall be subject to an annual assessment as determined by the Board or Declarant as may then be applicable, but not more than One-Hundred Dollars (\$100.00) between the date established under Article 5.4 and December 31, 2018. From and after January 1, 2019, the maximum annual assessment may be increased or decreased so long as the change is assented to by not less than a majority of the Members present in person or by proxy at a meeting duly called for such purposes. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

5. 4 **Annual Assessment Payable Monthly and Due Date.** The annual assessments provided for herein shall commence as to all Units on the earlier of (a) the date a deed is delivered to the purchaser of a Unit, (b) the date of occupancy or the date the Owner actually takes possession of a Unit, or (c) if either of the foregoing has occurred prior to the date recording of this Declaration, the first day of the month following the date of recording. Annual Assessments will be due and payable by Unit owners in twelve (12) equal monthly installments on the first day of each month throughout the calendar year for which the Annual Assessment is levied, without offset or demand, in the form of United States Dollars (USD) free from all claims and demands. An assessment not paid within ten (10) days of the due date thereof shall be deemed late and subject to a late fee of One-Hundred Dollars (\$100.00).

5. 5 **Special Assessments.** From and after the date set forth under Article 5.4 above, the Association may levy special assessments for the purpose of defraying in whole or in part (a) any expense or expenses not reasonably capable of being fully paid with funds generated by annual assessments and accounting for reserves, or (b) the cost of any construction, reconstruction or unexpected repair or replacement in connection with the Common Areas or their improvements. Any such special assessments and/or the cumulative total of all such special assessments during any calendar year which exceed the Special Assessment Ceiling (defined below) multiplied by the number of Units in the Project, must be assented to by not less than a majority of the Members at a meeting called for this purpose. As used herein the term "Special Assessment Ceiling" shall mean Three-Hundred Dollars (\$300.00) and increasing by three percent (3%) year over year.

5. 6 **Uniform Rate of Assessments.** Except as provided under Article 5.7 below, Annual and Special Assessments shall be fixed at a uniform rate for all Units. The Declarant, for each unsold Unit owned by it in the Development, shall pay assessments as herein provided.

5. 7 **Reimbursement Assessment on a Specific Unit.** In addition to the Annual Assessment and any Special Assessments, the Board may levy at any time assessments (a) on each Unit specifically benefitted by any improvement to adjacent roads, sidewalks, common areas, or other portions of the Common Areas made on the written request of the Owner of the Unit to be charged, (b) on each Unit the Owner or occupant of which shall cause any damage to the Common Areas necessitating repairs, (c) on each Unit as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken pursuant to this Declaration (each a "Reimbursement Assessment"). The aggregate amount of such Reimbursement Assessments shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs and attorney's fees.

5. 8 **Certificate Regarding Payment.** Upon the request of any Owner or prospective purchaser or encumbrancer of a Unit the Association shall issue a certificate stating whether or not all assessments respecting such Unit are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of those persons relying thereon.

5. 9 **Effect of Non-Payment and Remedies.** Any assessment not paid when due shall, together with the late fee set forth in Article 5.4, and any costs for collection and attorney's fees, constitute and remain a continuing lien affecting the Unit, provided however, such lien shall subordinate to the lien or equivalent security interest of any first and second priority Mortgage on the Unit recorded prior to the date any such notice of lien is filed by or on behalf of the Association. If the assessment is not paid within sixty (60) days after the date on which it becomes delinquent, the Association may record a notice of its lien in the official records of the office of the Salt Lake County Recorder, the amount thereof bearing interest from the date of delinquency at a rate of eighteen percent (18%) per annum, and the Association may bring an action either against the Owner who is personally liable, or foreclose the lien against the Unit. Any judgement obtained by the Association shall include a reasonable attorney's fee, court costs, and each and every expense incurred by the Association in enforcing its rights.

5. 10 **Tax Collection by County Authorized.** It is recognized that under the Declaration the Association will own the Common Areas and that it will be obligated to pay property taxes to Salt Lake County. It is further recognized that each Owner of a Unit will be required to pay Salt Lake County for the tax levied on each Unit.

5. 11 **Reinvestment Fee Authorized.** Upon the purchase of any Unit located in the Development, simultaneously with such purchase, the buyer of such Unit shall pay the Association a Reinvestment Fee equal to the lesser of \$500.00, or one-half of one percent (0.5%) of the value of the Unit (including any improvements thereupon), or such other amount as the Association may determine from time to time but never a sum greater than one-half of one percent (0.5%) of the value of the Unit including improvements. Sums from the Reinvestment Fee(s) collected shall be used to benefit the Development, but specifically to satisfy the administrative costs associated with the transfer of the Unit and the balance for the administration, maintenance, improvement, repair and replacement of any Common Areas. Prior to collecting the Reinvestment Fee, the Association shall record in the office of the Salt Lake County Recorder, a separate notice of the Reinvestment Fee Covenant, consistent with the requirements of Utah Code Ann. 57-1-46, as the same may be amended from time to time. So long as the obligations contained in this Article 5.11 are in existence, the Association may not impose an additional reinvestment fee covenant on any Unit located in the Development.

ARTICLE VI Property Rights in Common Areas

6. 1 **Easement for Enjoyment.** Each Member shall have a right and easement of use and enjoyment in and to the Common Areas, and to the Limited Common area specifically associated with that Member's Unit, subject to and together the contents of this Declaration and the Rules and Regulations, as they may each be amended from time to time. Such right and easement shall be appurtenant to and shall pass with title to each Unit and in no event separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any family member, tenant, lessee or contract purchaser who resides on such Member's Unit.

6. 2 **Form of Conveyancing.** Any deed, lease, Mortgage, deed of trust, or other instrument conveying or encumbering title to a Unit shall describe the interest in the estate involved substantially as follows:

Unit Number ____, of Fox Den at Millcreek P.U.D., as the same is identified in the Plat recorded in Book ____, at Page ____, and in the "Declaration of Covenants, Conditions, and Restrictions of The Fox Den at Millcreek recorded in Book ____, at Page ____, of the official records in the office of the Salt Lake County Recorder.

TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas and Limited Common Areas associated with the Unit described and provided for in the Declaration of Covenants, Conditions and Restrictions, and in the Plat in the official record in the office of the Salt Lake County Recorder.

SUBJECT TO Easements, right, rights-of-way, reservations, conditions, restrictions, and covenants of record or apparent use or enforceable in law or equity.

Whether or not the description employed in any such instrument is in the above-specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires interest in a Unit.

6.3 **Transfer of Title.** Declarant agrees to convey title to the Association to the various Common Areas free and clear of all liens and encumbrances (other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasi-governmental authorities), as each such Common Area is substantially completed. In the event the Declarant fails to convey the Common Areas by deed or other instrument, the filing of the Plat shall nevertheless constitute a conveyance of the Common Areas to the Association.

6.4 **Limitation on Easement.** A Member's right and easement of use and enjoyment to the Common Areas shall be subject to the following limitations:

a. **Governmental Restrictions.** The right of the City, Salt Lake County, the State of Utah, the Federal Governmental, or any governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Property for the purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service; and

b. **Dedication.** The right of the Association to dedicate or transfer all or any part of the Common Areas, and any sewer, water, storm drain, or other service trunk lines to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication must first, however, be assented to by (1) two-thirds of the Mortgage Holders on securing the Units, and (2) a majority of the vote of each class of membership which Members present in person or by proxy are entitled to cast at a meeting duly called for that purposes subject to statutory notice requirements.

ARTICLE VII Use Restrictions

7.1 **Use of Common Areas.** The Common Areas shall be used only in a manner consistent with their community nature and subject to the Rules and Regulations, this Declaration, and the restrictions applicable to the Units.

7.2 **Use of Units and Living Units.** All Units are intended to be improved with Living Units are are restricted to such use. No gainful occupation, profession, trade or other non-residential use shall be conducted on any Unit or Living Unit; provided, however, nothing herein shall preclude the use of a home office. Each Living Unit shall be used only as a single-family residence. No Unit or Living Unit shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Living Unit, so as to create nuisance or interfere with the rights of any Owner, or in a way which would result in an increase in the cost of maintaining the Common Areas (including increasing insurance costs).

7.3 **Limited Common Areas.** Limited Common Areas, designated on the map, may include garages, balconies, decks and covered decks, patios, front yards, side yards, and rear yards, appurtenant to certain Units as contained in the Plat. The exclusive right to use and occupy each Limited Common Area, if any, shall be appurtenant to and shall pass with the title to the Unit with which it is associated. Each Owner of a Unit is hereby granted an irrevocable and exclusive license to use and occupy the Limited Common Areas and facilities reserved exclusively for the use of the Unit, subject to the residual rights of the Association therein. The Unit Owner shall be responsible for the care of, maintenance, and repair of the Limited Common Area(s) associated with their Unit.

7.4 **Building Features and Materials.** The location of all buildings, and each building's design, features and materials must be consistent and in accordance with the Design Guidelines. Reference must be made to the Design Guidelines for additional requirements and conditions for the design and construction of the Living Units.

a. **Building Location.** Each building (including Living Units) shall be located as required by the City or other applicable municipal building authority.

b. **Size Limitation and Height Requirements.** The Living Unit to be constructed on each Unit shall be constructed in a manner consistent with the requirements of the City or other governing municipality.

c. **Garages.** Garages must be fully enclosed and large enough to accommodate a minimum of two (2) cars and be equipped with an automatic garage door opener. Car ports are not permitted within the Subdivision.

d. **Exterior Building Wall Materials.** All exterior front, back, and side walls shall consist of the same approved building materials. Brick, stone, stucco, and hardy board are all permitted to be used on the exterior of the Living Units and any accessory buildings, or other materials as may be approved by the Design Review Committee from time to time. The color of all exterior surfaces shall consist of earth tones, or other subdued colors as may be approved by the Design Review committee from time to time.

e. **Roof, Soffit, and Facia.** Pitched roofs shall consist of multiple planes and not be one continuous surface. Roof, soffit, and facia materials shall be restricted to forty (40) year or greater architectural grade asphalt shingles or other materials as may be approved by the Design Review Committee from time to time. Subject to the approval of the Design Review Committee, a living unit may have a flat roof. The use and design of the roof, soffit, and facia materials (including colors) shall at all times be subject to the approval of the Design Review Committee.

f. **Windows.** All exterior windows shall be of a size and material approved by both the City and the Design Review Committee.

g. **Accessory Structures.** Patio structures, sun shades, gazebos, and other like type structures shall be located only in areas approved by the City and shall consist of materials and colors approved by the Design Review Committee.

h. **Mailboxes.** Each Living Unit shall have a mailbox installed at an approved location by the U.S. Postal Service. Provided, however, the Associated may maintain common mailboxes at a location in The Project approved by the U.S. Postal Service.

i. **Fences and Walls.** Fencing location, materials, and height requirements shall be dictated by the City and the Design Review Committee.

j. **Paving.** Driveways and other paved areas, including their location, are part of the design review process and are subject to the review and approval of the Design Review Committee. The composition of driveways and other paved areas may be composed of concrete, stamped concrete, or pavers, but asphalt and gravel driveways are not permitted.

k. **Solar Equipment.** Solar panels, if used, will be integrated into the roof design. Panels and frames must be compatible with roof colors and all equipment must be screened from view.

l. **Satellite Antennas.** Satellite dish and other antennas may be allowed provided they are screened from view, and their location is approved in advance by the Design Review Committee. Satellite dish antennas shall not be permitted on roofs if other locations are reasonably available to an owner.

m. **Spas, Fountains, and Game courts.** Spas, fountains, game courts, and other similar improvements must be approved in advance by the Design Review Committee, but, at all times, must be located in a manner to avoid impacting adjacent properties with light or sound.

n. **Sheet Metal, Flashing, and Vents.** All sheet metal, flashing, and vents must be colored to match the material to which they are attached.

o. **Mechanical Equipment.** All air conditioning, heating equipment, and the like must be screened from view and insulated for sound attenuation. Air conditioning units, including swamp coolers, are not permitted on roofs or through windows unless screened from view or approved in advance by the Design Review Committee.

p. **Exterior Lighting.** It is intended that the Property and Units be lighted adequately for safety and security. Bright, uncontrolled lighting that impacts adjacent residences is to be avoided.

q. **Landscape and Site Preparation Guidelines.** All demolition, clearing, rubbing, and stripping of soil, excavation, compaction, and grading must be performed within the confines of a Unit.

r. **Site Grading and Drainage.** The grade and drainage requirements for the development of each Unit shall be controlled by the City or other governing municipal entity,

but at all times shall be, to the extent possible, consistent with previously constructed living units and not otherwise inconsistent with the general design of the Development.

s. **City and Other Government Approvals.** Approval of any improvements by the Design Review Committee does not waive the Unit Owner's obligation to obtain any other required City or Municipal approvals. By approving any improvements, the Design Review Committee takes no responsibility other than confirming the approved plan meets the requirements of this declaration and any design guidelines.

7. 5 **Landscaping and Common Area Improvements.** All trees, shrubs, and other vegetation to be installed on any Common Area shall be approved by the Design Review Committee prior to installation. All vegetation and landscaping on each Unit shall be made at the discretion of the Unit Owner but shall not materially impede or interfere with other Unit Owners' rights to use and enjoyment of their Unit and/or the Common Areas.

7. 6 **Recreational Vehicles.** No boats, trailers, snowmobiles, all-terrain vehicles, motor homes, or commercial vehicles (collectively "Recreational Vehicles") belonging to Owners or third parties shall be parked within the Development at any time. No motor vehicle of any kind shall be repaired or reconstructed on any Unit, street, or Common Area, other than in an enclosed garage.

7. 7 **Parking.** Parking in the Development shall be exclusively limited to the six (6) designated parking stalls in the Common Area along Zeke Way for guest parking, and in an Owner's garage for Owner's parking. Street parking of any kind is expressly prohibited within the development. The foregoing parking restrictions shall apply to all Owners and to any third party.

7. 8 **Common Areas.** The Common Areas of the Development shall be improved and used only for the following purposes:

- a. Pedestrian, vehicular, and bicycle access to and from, and movement within the development.
- b. Beautification of the Development.
- c. Privacy for the Owners and occupants of Living Units.
- d. Such other uses as shall be determined from time to time by the Board for the benefit of members of the Association, following consultation with the Design Review Committee.

7. 9 **Insurance.** No use shall be made of any Unit or Living Unit which shall cause the improvements within the Development to be uninsurable against loss by fire or other perils included in the insurance contracts, or cause such insurance to be cancelled or suspended, or cause any company issuing such insurance to refuse renewal thereof. Each Owner shall be responsible for securing insurance covering his or her Unit and Living Unit and any personal property thereon, and such insurance as may be necessary to cover the Owner's obligation for the Associations deductible on its insurance policies as may be applicable according to the terms of this Declaration.

7. 10 **Machinery and Equipment.** No machinery or equipment of any kind shall be placed, used, operated, or maintained in or adjacent to any Unit except such machinery or equipment as is usual and customary in connection with the maintenance or construction of a Living Unit or appurtenant structure.

7. 11 **Maintenance and Repair.** No Living Unit, building, structure, or landscaping upon any Unit shall be permitted to fall into disrepair and, subject to the requirements herein requiring the approval of the Design Review Committee, each such building, structure, or landscaping shall be kept in good condition and repair. Except as to the specifically enumerated provisions in Article 4.1 regarding the maintenance responsibilities of the Association, each Owner will have the complete responsibility to repair and maintain their Unit and Living Unit, including the roof, exterior, landscaping, mechanical, plumbing, and the like. In the event a Unit Owner or Owner's fail to maintain their Living Unit in a manner which will negatively impact the ability of the Association to maintain insurance on the Development, the Association may make such necessary repairs and charge the Owner or Owners in a manner consistent with Article 5.7.

7. 12 **Nuisances.** No rubbish or debris of any kind shall be placed or permitted by an Owner upon or adjacent to any Units, so as to render such Unit or any portion thereof unsanitary, unsightly, offensive, or detrimental to the other Unit Owners or the Association. No Living Unit or Unit shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other Living Units or Units.

7. 13 **Right of Entry.** During reasonable hours, and with reasonable notice, any member of the Design Review Committee, or any member of the Board, or authorized representative, shall have the right enter upon and inspect any Unit to ascertain whether the provisions of this Declaration are being adhered to.

7. 14 **Signs.** No signs shall be erected or maintained on any Unit, except:
- a. **Legal.** Such signs as may be required under judgment or court order;
 - b. **Contractor.** Such identification signs, placed and maintained during the construction of a living unit, but not more than four feet high and four feet wide;
 - c. **Offering.** For Sale or For Rent signs, to the extent permitted by the Board; and
 - d. **Political.** Political signs not exceeding 24" by 36" in size, further provided that such signs may only be displayed for a period of 45 days before a primary or general election, through the date of such election.

This provision shall not be construed as to limit a Unit Owner's right to display the flag in a manner consistent with the Act.

7. 15 **Trash Containers and Collection.** All garbage and trash shall be placed and kept in covered containers, a type and style of which shall be approved by the Design Review Committee and the City or trash collection company, as may be applicable. Such containers shall at all times, except when curbside for collection, be kept in the garage of each Living Unit.

7.16 **Toxic Materials.** No Owner shall store, use, manufacture, process, distribute, treat, transport, handle, emit, or dispose of, discharge, or release any Toxic Materials at or from the Development or any portion thereof in violation of Environmental Laws.

7.17 **Party Wall Provisions.**

a. **General Rules of Law Apply.** Each wall which comprises a portion of a Living Unit and which is built as a part of the original construction upon the Property and placed on the dividing line between any Units shall constitute a party wall, and, to the extent not inconsistent with this Article 7.17, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply.

b. **Limitations Regarding Use of Party Wall.** No Owner shall have the right to install "in-wall" speakers within a party wall, or otherwise make a penetration of any party wall to facilitate an audio or video system (wall mounts for televisions and surface mounted speakers excluded). Also, in no event will an Owner operate any entertainment system in such a manner as to create a nuisance or annoyance to their neighboring Owner.

c. **Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

d. **Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty, then, to the extent said destruction or damage is not covered by insurance and repair out of insurance proceeds, any Owner who has used the wall may restore it, and the other Owner's thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use. The foregoing shall not limit the right of any such Owners to call for a larger contribution from the other under any rule of law regarding liability or for negligent or willful acts or omissions.

e. **Weatherproofing.** Notwithstanding the provisions of this Article, an Owner who by his negligent or willful acts causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements to the extent that said protection is not covered by insurance and paid out of the proceeds of the same.

f. **Right of Contribution Appurtenant.** The right of any Owner to contribution from another Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successor in interest.

g. **Enforcement of Land Use Restrictions.** The following persons shall have the right to exercise any remedy at law or equity to enforce strict compliance of this Declaration:

- i. The Declarant, so long as it has any interest in the Property;
- ii. Any Owner; and/or
- iii. The Association.

The prevailing party in an action for the enforcement of any provisions of this Declaration shall be entitled to collection of costs and a reasonable attorney's fee.

7. 18 **Exception for the Declarant.** Notwithstanding the restrictions contained in this Article VII, for the seven (7) years following the date on which this Declaration is filed or recorded in the office of the Salt Lake County Recorder (and during any extensions periods thereafter), the Declarant shall have the right to use any Unit or Living Unit owned by it, and any part of the Common Areas reasonable necessary and appropriate, in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvement of the Common Areas and/or Unit's including the sale thereof.

ARTICLE VIII Design Control

8. 1 **Design Review Committee.** The Board shall appoint a three-member committee, the function of which shall be to insure that all improvements and landscaping within the property harmonize with existing surroundings and structures. The Committee need not be composed of Owners. If such a Committee is not appointed, the Board itself shall perform the duties required of the Committee.

8. 2 **Submission to Committee.** No Living Unit, accessory building or structure or addition to a Living Unit and no landscape additions and changes shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any Living Unit, nor of any court enclosure (except as herein otherwise mentioned), shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Committee and the Declarant or Committee has received notice of the identity of the Contractor. All such plans and specifications shall be consistent with the Design Guidelines and/or the Design Guidelines which shall be from time to time adopted by the Board.

8. 3 **Standard.** In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgement to insure that all improvements, construction, landscaping, and alterations on Units within the Property conform to and harmonize with the Design Guidelines, any Development Agreements, existing surroundings and structures, and that such proposed improvements enhance the value and aesthetics of the Project.

8. 4 **Approval Procedure.** Any plans and specifications submitted to the Committee shall be submitted on a form provided by the Committee and in duplicate. A preliminary review of design drawings will be required with final review to be made of working drawings. Upon completion of each review, one set of plans will be retained by the Association and the remaining set of plans will be returned to the property owner.

The following design review fees (made payable to the Association) are required with the submittal of plans and specifications: the lesser of (a) the cost to review such plans and specifications, or (b) One-Hundred Dollars (\$100.00), for each separate submittal of architectural, landscaping, fencing and/or lighting drawings; provided that if any of the foregoing plans are submitted together, all plans submitted at the same time shall be considered one submittal.

All plans and specifications shall be approved or disapproved by it in writing within 60 days after submission. In the event the Committee fails to take any action within such period, it shall be deemed to have approved the material submitted.

8.5 **Deposits.** The Design Review Committee shall require that an Owner post a bond, cash security deposit, or irrevocable letter of credit in a form satisfactory to the Design Review Committee in the amount of Two-Thousand Five-Hundred Dollars (\$2,500.00), in favor of the Association, as a condition to approving the construction of a Living Unit and any proposed work or improvement in relationship thereto. No person shall commence any work or improvement until any and all such bonds, security deposits, and letters of credit have been properly posted with the Association. The deposit made under this Section 8.5 is refundable and is intended to assure (a) the proper clean-up of dirt and debris and the repair of any damage to the landscaping, streets or other property within the Subdivision, caused by Owner or his agents in the installation of landscaping; and (b) the installation of landscaping according to the requirements of section 8.7 below.

8.6 **Address for Submittal.** Plans and specifications for the construction and installation of any and all improvements within 60 days shall be submitted and approved by the Design Review Committee (prior to submittal to any required governmental agency) at the following address:

2779 South Connor Street
Salt Lake City, Utah 84109

The Board of Trustees of the Owners Association has the authority to change the address for the submittal of plans and specifications.

8.7 **Construction.**

a. Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion:

i. The exterior construction of all structures on any Unit shall be completed within a period required by the governing municipal authority or such longer period if approved by the Board, following commencement of construction. Nothing herein shall preclude the Board from establishing shorter periods of construction for improvements to an existing Living Unit or other structure.

ii. The front and side yards of each Unit shall be landscaped within a period of 180 Days following completion or occupancy of the Living Unit; provided, however, that if completion of or occupancy of a Living Unit occurs during winter and such weather conditions preclude the installation of landscaping, such landscaping shall be completed no later than 180 Days following such winter.

b. Owners and builders shall clean up all trash and debris on the construction site at the end of each day. Trash and debris shall be placed in containers. Trash and debris shall be removed from each construction site at least once a week to a dumping location off-site of the development. Excess construction materials shall also be removed from each construction site at least once a week. Lightweight material, packaging, and other items shall be covered or weighted down to prevent wind from blowing such materials off the construction site. Owners and builders are prohibited from dumping, burying, or burning trash anywhere on the Unit. During the construction period,

each construction site shall be kept neat and debris shall be promptly removed from public or private roads, open spaces, and driveways.

Each property owner and builder shall be responsible for providing adequate sanitary facilities for his construction personnel. Portable toilets or similar temporary toilet facilities shall be located only on the site itself or in areas approved by the Design Review Committee.

Construction crews shall not park on, or otherwise use, other Units or any open space. All construction vehicles and machinery shall be parked only in areas designated by the Design Review Committee

8. 8 **Liability of Damages.** The Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article VIII.

ARTICLE IX Rights of First Mortgagee

Notwithstanding anything to the contrary contained herein, the following provisions shall apply:

9. 1 **Notice of Default.** In the event an Owner neglects for a period of 30 Days or more to cure any failure on his part to perform his obligations under this Declaration, the Association shall give written notice of such fact to the holder of any first mortgage covering such Owner's Unit.

9. 2 **Abandonment, Termination, Etc.** Unless all of the holders of first Mortgages on the individual Units holding the percent required by law of the first priority Mortgages on Units have given their prior written approval, neither the Association nor the Owners acting as a group shall be entitled by act, omission, or otherwise:

- a. To abandon or terminate the project or to abandon or terminate the arrangement which was established by the Declarant and the Plat of the Project;
- b. To partition or subdivide any Unit or the Common Areas;
- c. To abandon, partition, subdivide, encumber, sell, hypothecate, transfer or otherwise encumber all or any part of the common Areas except for the creating of easements and similar purposes consistent with the intended use of the Common Areas; or
- d. To use hazard insurance proceeds resulting from damage to any part of the development for any purposes other than the repair, replacement, or reconstruction of such improvements.

9. 3 **Notice of Substantial Damage or Destruction.** The Association shall notify all holders of any first Mortgage lien or equivalent security interest on a Unit in writing in the event that there occurs any substantial damage to or destruction of any Living Unit or any part of the Common Areas involving an amount in excess of, or reasonably estimated to be in excess of that amount required by law. Said notice shall be given within the time period required by law after the Association learns of such damage or destruction.

9. 4 **Condemnation or Eminent Domain Proceedings.** The association shall give written notice to all holders of any first Mortgage lien or equivalent security interest of any condemnation proceedings or proposed acquisition of a Living Unit or of any portion of the Common Areas within the time period required by law after the Association learns of the same.

9. 5 **Hazard Policy to Include Standard Mortgagee Clause.** Each hazard policy of the insurance shall include the standard mortgagee clause which either shall be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of mortgagees as their interests may appear, or shall be otherwise endorsed to fully protect the interest of mortgagees. In addition, the mortgagee clause shall provide that the insurance carrier shall notify each mortgagee at least the time period required by law in advance of the effective date of any reduction in or cancellation of the policy.

9. 6 **Rights Upon Foreclosure of Mortgage.** The lien of the assessments provided in Section 1, Article V shall be subordinate to the lien of any first priority Mortgage upon such Unit; and the holder of a first priority Mortgage (or deed of trust) on a Unit who comes into possession of the Unit by virtue of foreclosure of such first Mortgage, or in lieu of foreclosure obtains possession by deed or assignment, or any purchaser at a foreclosure sale, will take the Unit free of any claims for unpaid assessments and charges against the Unit which accrue prior to the time such holder comes into possession of the Unit, except for claims for a share of such assessments or charges resulting from a reallocation of such assessments or charges to all Units including the Mortgage Unit.

9. 7 **Mortgagees' Rights Concerning Amendments.** No Material amendment to this Declaration, the By-Laws or the Articles of Incorporation of the Association shall be accomplished or effective unless the minimum number of the mortgagees (based on one vote for each mortgagee) of the individual Units have given their prior written approval to such amendment as required by law.

9. 8 **Mortgagees' Rights to Inspect Association Records.** The holders of first Mortgages shall have the right upon reasonable notice and during business hours to inspect and copy at their own expense all books and financial records of the association.

ARTICLE X Miscellaneous

10. 1 **Governing Documents.** The Parties shall take all actions and pay all costs necessary to perform all of their respective obligations under the Governing Documents. None of the Governing Documents shall be amended without first observing the requirements for modification within the document or the Act.

10. 2 **Notices.** Any notice required or permitted to be given to any Owner or Member under the provisions of this Declaration shall be deemed to have been properly furnished if (a) emailed to the person who appears as a Member or Owner at the latest email address provided by such person and appearing in the records of the Association at the time of emailing, or (b) mailed, postage prepaid, to the person who appears as a Member or Owner, at the last address for such person appearing in the records of the Association at the time of mailing.

10. 3 **Amendment.** Subject to the specific enumerated provisions herein, any amendment this Declaration shall require (a) the affirmative vote of at least sixty-six percent (66%) of all Class A Members, and so long as the Class B membership exists written consent of

the Declarant. Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date. The quorum required for any such meeting shall be as follows: At the first meeting called, the presence of Members or proxies entitled to cast sixty percent (60%) of the votes of the Class A membership. If the quorum is not present at the first meeting or any subsequent meeting, another meeting may be called at which a quorum shall be one-half (1/2) of the quorum which was required at the immediately preceding meeting. No subsequent meeting shall be held less than 45 days following the preceding meeting. Any amendment authorized pursuant to this Article shall be accomplished through the recordation of an instrument executed by the Board, and by the Declarant if Class B membership exists, and shall be approved by the City if so required.

10.4 **Consent in Lieu of Voting.** In any case in which this Declaration requires the affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in connection with the Class of membership considered. The following specific provisions govern any application of this Article 10.4:

a. **Expiration.** All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Member.

b. **Vote Count.** The total number of votes required for authorization or approval under this Article 10.4 shall be determined as of the date the last consent is signed.

c. **Transfer During Vote.** Any change in Unit ownership which occurs after consent has been obtained from the Owner thereof shall not be considered or taken into account. However, a change in ownership which would have otherwise resulted in an increase in the total number of Class A votes outstanding shall be effective in that regard and shall entitle the new Class A Owner to give or withhold consent.

d. **Multiple Interests.** Unless the consent of all Members whose membership is appurtenant to the same Unit are secured, any consent obtained shall not be effective.

10.5 **Leasing Provisions.** Any Owner may lease their Unit and Living Unit provided the lease agreement contain the following provisions:

a. **Incorporation of Governing Documents.** The terms of the lease shall in all respects be subject to the provisions of the Declaration, Articles of Incorporation, and By-Laws; and

b. **Default.** Any failure by the lessee to comply with the terms of the Governing Documents shall constitute a default under the lease.

c. **Term.** In no event shall a lease for a Living Unit be for a term of less than six (6) months.

Nothing in this Article 10.5 shall be construed as authorizing an Owner to lease a portion of the Living Unit to another while living in the balance of the Living Unit, or permitting a tenant of a Living Unit to sublease a portion of the Living Unit to another.

10. 6 **Declarant's Rights Assignable.** All or any portion of the rights of Declarant under this Declaration or in any way relating to the property may be assigned.

10. 7 **Dissolution.** Subject to the restrictions set forth in Article IX of this Declaration regarding mortgagee protection, the Association may be dissolved by the affirmative assent, in writing, of sixty-six percent (66%) of the votes of each class of membership. Upon dissolution of the Association, all of its assets (including Common Areas) may be dedicated or transferred to the appropriate public agency or authority to be used for purposes similar to those provided in the Governing Documents. The the event such dedication or transfer is not made or accepted, the Association's assets shall be transferred to a nonprofit corporation, trust, or other entity to be used for such similar purposes, and each Owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the Common Areas, common roadways, curbs, gutters, sidewalks, and the like, on a pro rata basis which conforms substantially with the assessment procedure contained in this Declaration.

10. 8 **Declarant's Covenant to Construct Common Areas.** Declarant hereby covenants to construct and complete all Common Areas improvements and amenities, if any, indicated on the Plat within seven (7) years, plus any applicable extensions, of the filing of the Declaration in the office of the Salt Lake County Recorder.

10. 9 **Enforcement by the City.** If the Association fails to maintain the Common Areas, common access roadways, curb and gutter, sidewalks, and the like, in good order and condition, the City shall have the right, but not obligation, upon providing the Association thirty (30) days' notice in writing, to step in and do the necessary maintenance and management with the same right to lien the Units and collect the costs thereof against the Owners as the Association has under this Declaration.

10. 10 **Interpretation.** The captions, headings, and subheadings are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever context requires, the singular shall include the plural, the plural shall include the singular, the whole shall include ay party thereof, and any gender shall include all other genders or identifications. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder. The Governing Documents, shall be construed in accordance with the laws in the state of Utah. Any dispute under the Governing Documents shall be heard in the courts in Salt Lake County, Utah without regard to choice of law doctrine.

10. 11 **Property Part of Development.** The Property shall comprise The Fox Den at Millcreek.

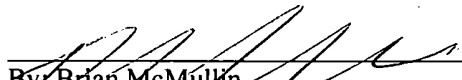
10. 12 **Covenants Run with Land.** This Declaration shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and inure to the benefit of the Declarant, and all parties who hereafter acquire any interest in a Unit or in the Common Areas shall be subject to the terms of this Declaration and the Rules and Regulations, or any other agreements, instruments, and determinations contemplated by this Declaration. A failure of a party to comply with any of the foregoing shall be grounds for an action by the Association or an aggrieved Owner of the recovery of damages, or for injunctive relief, or both. By acquiring an interest in any Unit or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

10.13 **Effective Date.** This Declaration and any amendment thereof shall take effect and upon it being filed in the office of the Salt Lake County Recorder.

10.14 **Lender Subordination.** By securing against any Unit or Unit(s) in the Project, including Common Areas, a Lender covenants and Declares that this Declaration shall be senior in priority to such lender's interest as a lien holder, and such lien shall be subordinate to and subject to this Declaration, notwithstanding the fact this Declaration may be recorded later in time than the date such lender acquired a lien.

IN WITNESS WHEREOF, the undersigned being the Declarant, has caused this instrument to be executed and its seal be affixed hereto on this day and year first above written.

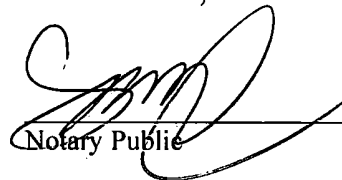
Declarant:
Fox Den at Millcreek, LLC


By: Brian McMullin
Its: Manager

State of Utah)
 :SS
County of Salt Lake)

On the 27th day of FEB, 2019, the foregoing instrument was acknowledged and verified before me Brian McMullin, who personally appeared before me, on behalf of Fox Den at Millcreek, LLC., a Utah Limited Liability Company and being duly sworn declare under penalty of perjury that he is a Manager of the company acting with authority on behalf of the company, and that he signed the foregoing and the statements contained herein.

In witness whereof, I set my hand and seal this 27th day of FEBRUARY, 2019.


Notary Public

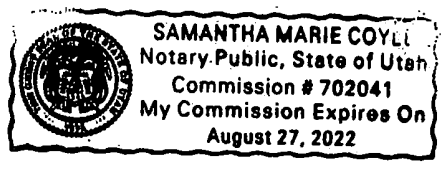


EXHIBIT "A"
Property Legal Description

AN ENTIRE TRACT OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 1 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN. SAID ENTIRE TRACT IS DESCRIBED IN THAT WARRANTY DEED, AT ENTRY #12456817, IN BOOK 10521, ON PAGE 7036, SAID ENTIRE TRACT IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WESTERLY RIGHT OF WAY LINE OF 800 EAST STREET, SAID POINT BEING SOUTH 00°11'06" WEST 330.00 FEET AND SOUTH 89°56'55" WEST 33.00 FEET FROM THE NORTHEAST CORNER UNIT 9, BLOCK 20, 10 ACRE PLAT "A" BIG FIELD SURVEY AND RUNNING THENCE SOUTH 00°11'06" WEST 76.96 FEET (DEED = NORTH 77.00 FEET) ALONG SAID WESTERLY RIGHT OF WAY LINE; THENCE NORTH 89°48'54" WEST 124.31 FEET (DEED = EAST 122.00 FEET); THENCE SOUTH 00°11'06" WEST 88.02 FEET (DEED = NORTH 88.00 FEET); THENCE NORTH 89°48'54" WEST 1.00 FEET (DEED = EAST); THENCE SOUTH 00°11'06" WEST 81.39 FEET (DEED = 79.2 FEET) TO A POINT ON THE NORTHERLY LINE OF SHADYBROOK CONDOMINIUM RECORDED JULY 29, 1982 AS ENTRY NO. 3697563 IN BOOK 82-7 AT PAGE 63 AT THE OFFICE OF THE SALT LAKE COUNTY RECORDER; THENCE SOUTH 89°53'44" WEST 109.00 FEET (DEED = EAST); THENCE NORTH 00°12'01" EAST 245.68 FEET (DEED = SOUTH 244.2 FEET); THENCE NORTH 89°53'02" EAST 234.25 FEET (DEED = WEST 231.00 FEET) TO THE POINT OF BEGINNING.

CONTAINS 36,462 SQUARE FEET OR 0.837 ACRES, MORE OR LESS

Print

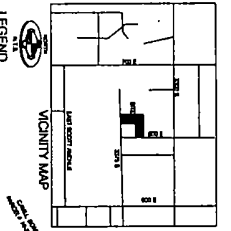
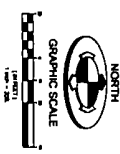


Parcel Number • **16-29-354-022-0000** 16293540220000

Legal Description

BEG S 330 FT & W 33 FT FR NE COR LOT 9, BLK 20, 10 AC PLAT A, BIG FIELD SUR; W 231 FT; S 244.2 FT; E 109 FT; N 79.2 FT; E 1 FT; N 88 FT E 121 FT; N 77 FT TO BEG. 0.83 AC. 4071-0236 6117-0345 6604-1361 6520-1144 7402-0289 7630-0845 8227-0711 9091-9252 9288-1496

FOX DEN AT MILLCREEK P.U.D.

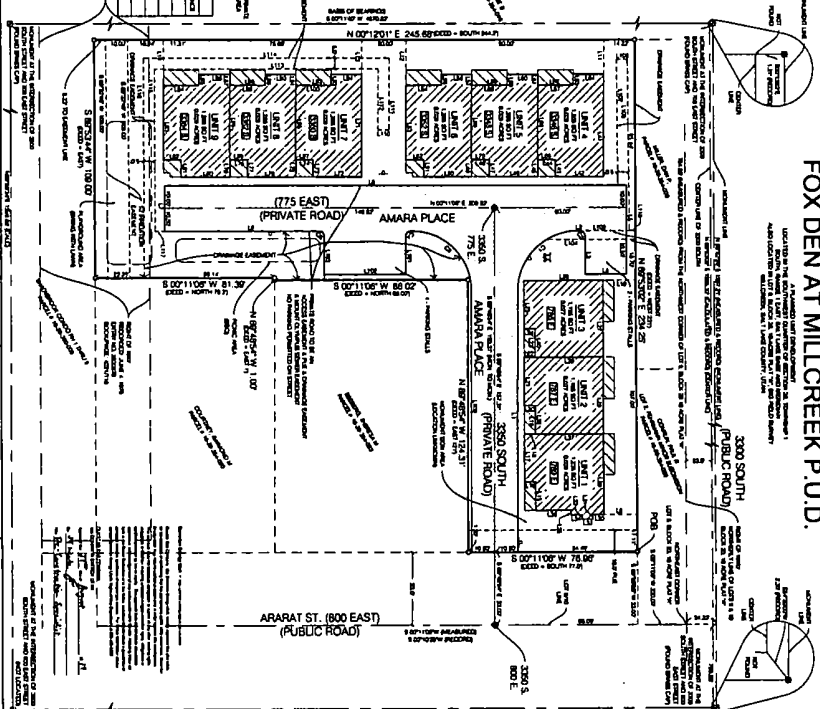


LEGEND

- RESERVED LOT
- EXISTING LOT
- NEW LOT
- EXISTING DRIVEWAY
- NEW DRIVEWAY
- EXISTING SIDEWALK
- NEW SIDEWALK
- EXISTING ASPHALT DRIVEWAY
- NEW ASPHALT DRIVEWAY
- EXISTING ASPHALT DRIVEWAY
- NEW ASPHALT DRIVEWAY
- EXISTING ASPHALT DRIVEWAY
- NEW ASPHALT DRIVEWAY
- EXISTING ASPHALT DRIVEWAY
- NEW ASPHALT DRIVEWAY
- EXISTING ASPHALT DRIVEWAY
- NEW ASPHALT DRIVEWAY

Table 1: LOTS

LOT	AREA (S.F.)	CONCRETE DRIVEWAY	CONCRETE SIDEWALK	ASPHALT DRIVEWAY	ASPHALT SIDEWALK
C1	1,536	1,872	1,872	1,872	1,872
C2	1,536	1,872	1,872	1,872	1,872
C3	1,536	1,872	1,872	1,872	1,872
C4	1,536	1,872	1,872	1,872	1,872
C5	1,536	1,872	1,872	1,872	1,872
C6	1,536	1,872	1,872	1,872	1,872
C7	1,536	1,872	1,872	1,872	1,872
C8	1,536	1,872	1,872	1,872	1,872
C9	1,536	1,872	1,872	1,872	1,872
C10	1,536	1,872	1,872	1,872	1,872
C11	1,536	1,872	1,872	1,872	1,872
C12	1,536	1,872	1,872	1,872	1,872
C13	1,536	1,872	1,872	1,872	1,872
C14	1,536	1,872	1,872	1,872	1,872
C15	1,536	1,872	1,872	1,872	1,872
C16	1,536	1,872	1,872	1,872	1,872
C17	1,536	1,872	1,872	1,872	1,872
C18	1,536	1,872	1,872	1,872	1,872
C19	1,536	1,872	1,872	1,872	1,872
C20	1,536	1,872	1,872	1,872	1,872
C21	1,536	1,872	1,872	1,872	1,872
C22	1,536	1,872	1,872	1,872	1,872
C23	1,536	1,872	1,872	1,872	1,872
C24	1,536	1,872	1,872	1,872	1,872
C25	1,536	1,872	1,872	1,872	1,872
C26	1,536	1,872	1,872	1,872	1,872
C27	1,536	1,872	1,872	1,872	1,872
C28	1,536	1,872	1,872	1,872	1,872
C29	1,536	1,872	1,872	1,872	1,872
C30	1,536	1,872	1,872	1,872	1,872
C31	1,536	1,872	1,872	1,872	1,872
C32	1,536	1,872	1,872	1,872	1,872
C33	1,536	1,872	1,872	1,872	1,872
C34	1,536	1,872	1,872	1,872	1,872
C35	1,536	1,872	1,872	1,872	1,872
C36	1,536	1,872	1,872	1,872	1,872
C37	1,536	1,872	1,872	1,872	1,872
C38	1,536	1,872	1,872	1,872	1,872
C39	1,536	1,872	1,872	1,872	1,872
C40	1,536	1,872	1,872	1,872	1,872
C41	1,536	1,872	1,872	1,872	1,872
C42	1,536	1,872	1,872	1,872	1,872
C43	1,536	1,872	1,872	1,872	1,872
C44	1,536	1,872	1,872	1,872	1,872
C45	1,536	1,872	1,872	1,872	1,872
C46	1,536	1,872	1,872	1,872	1,872
C47	1,536	1,872	1,872	1,872	1,872
C48	1,536	1,872	1,872	1,872	1,872
C49	1,536	1,872	1,872	1,872	1,872
C50	1,536	1,872	1,872	1,872	1,872



OWNER'S DECLARATION
I, the undersigned, owner of the above described land, do hereby certify that the information furnished herein is true and correct to the best of my knowledge and belief.

OWNER'S DECLARATION
I, the undersigned, owner of the above described land, do hereby certify that the information furnished herein is true and correct to the best of my knowledge and belief.

UNIFIED PRE-AUTHORITY APPROVAL
[Signature]

ADDRESSING APPROVAL
[Signature]

MILLCREEK ENGINEERING
[Signature]

RECORD OF SALES
[Signature]

BENCHMAK ENGINEERING & LAND SURVEYING
[Signature]

FOX DEN AT MILLCREEK P.U.D.
[Signature]

FOX DEN AT MILLCREEK P.U.D.
A PLANNED UNIT DEVELOPMENT

Table 2: LOTS

LOT	AREA (S.F.)	CONCRETE DRIVEWAY	CONCRETE SIDEWALK	ASPHALT DRIVEWAY	ASPHALT SIDEWALK
L1	1,536	1,872	1,872	1,872	1,872
L2	1,536	1,872	1,872	1,872	1,872
L3	1,536	1,872	1,872	1,872	1,872
L4	1,536	1,872	1,872	1,872	1,872
L5	1,536	1,872	1,872	1,872	1,872
L6	1,536	1,872	1,872	1,872	1,872
L7	1,536	1,872	1,872	1,872	1,872
L8	1,536	1,872	1,872	1,872	1,872
L9	1,536	1,872	1,872	1,872	1,872
L10	1,536	1,872	1,872	1,872	1,872
L11	1,536	1,872	1,872	1,872	1,872
L12	1,536	1,872	1,872	1,872	1,872
L13	1,536	1,872	1,872	1,872	1,872
L14	1,536	1,872	1,872	1,872	1,872
L15	1,536	1,872	1,872	1,872	1,872
L16	1,536	1,872	1,872	1,872	1,872
L17	1,536	1,872	1,872	1,872	1,872
L18	1,536	1,872	1,872	1,872	1,872
L19	1,536	1,872	1,872	1,872	1,872
L20	1,536	1,872	1,872	1,872	1,872
L21	1,536	1,872	1,872	1,872	1,872
L22	1,536	1,872	1,872	1,872	1,872
L23	1,536	1,872	1,872	1,872	1,872
L24	1,536	1,872	1,872	1,872	1,872
L25	1,536	1,872	1,872	1,872	1,872
L26	1,536	1,872	1,872	1,872	1,872
L27	1,536	1,872	1,872	1,872	1,872
L28	1,536	1,872	1,872	1,872	1,872
L29	1,536	1,872	1,872	1,872	1,872
L30	1,536	1,872	1,872	1,872	1,872
L31	1,536	1,872	1,872	1,872	1,872
L32	1,536	1,872	1,872	1,872	1,872
L33	1,536	1,872	1,872	1,872	1,872
L34	1,536	1,872	1,872	1,872	1,872
L35	1,536	1,872	1,872	1,872	1,872
L36	1,536	1,872	1,872	1,872	1,872
L37	1,536	1,872	1,872	1,872	1,872
L38	1,536	1,872	1,872	1,872	1,872
L39	1,536	1,872	1,872	1,872	1,872
L40	1,536	1,872	1,872	1,872	1,872
L41	1,536	1,872	1,872	1,872	1,872
L42	1,536	1,872	1,872	1,872	1,872
L43	1,536	1,872	1,872	1,872	1,872
L44	1,536	1,872	1,872	1,872	1,872
L45	1,536	1,872	1,872	1,872	1,872
L46	1,536	1,872	1,872	1,872	1,872
L47	1,536	1,872	1,872	1,872	1,872
L48	1,536	1,872	1,872	1,872	1,872
L49	1,536	1,872	1,872	1,872	1,872
L50	1,536	1,872	1,872	1,872	1,872

DEFUAL DESCRIPTION
This subdivision is being created for the purpose of subdividing the above described land into lots for residential use.

OWNERS DECLARATION
I, the undersigned, owner of the above described land, do hereby certify that the information furnished herein is true and correct to the best of my knowledge and belief.