

E 2285432 B 4317 P 939-959
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
07/03/2007 03:36 PM
FEE \$91.00 Pgs: 21
DEP RTT REC'D FOR FARMINGTON CITY

08-425-0001+1121
0042

DECLARATION OF COVENANTS, CONDITIONS, AGREEMENTS & RESTRICTIONS
FOR
CHESTNUT FARMS P.U.D. SUBDIVISION – Phase 1

D

A SUBDIVISION
IN
FARMINGTON CITY, DAVIS COUNTY, STATE OF UTAH

Chestnut Farms LLC
a Utah Limited Liability Company
DECLARANT

WHEN RECORDED RETURN TO:

Chestnut Farms LLC
Attn: Robert C. Miller
526 North 400 West
North Salt Lake, UT 84054

**DECLARATION OF COVENANTS, CONDITIONS, AGREEMENTS AND RESTRICTION
FOR**

CHESNUT FARMS P.U.D. SUBDIVIONS – PHASE 1

THIS DECLARATION OF COVENANTS, CONDITIONS, AGREEMENTS AND RESTRICTIONS (“DECLARATION”) is executed by Chestnut Farms LLC of 526 North 400 West, North Salt Lake, UT 84054 (the “Declarant”) with reference to the following:

RECITALS

A. Declarant is the owner of certain real property commonly known as Chestnut Farms subdivision and described more particularly as Lots 1 through 38, inclusive, common areas, and any other future phases as Chestnut Farms Subdivision, situated in the City of Farmington, in the County of Davis, in the State of Utah, according to the official plat thereof recorded as Entry No. 2285431, in Book 4317, in the office of the Davis County Recorder; hereinafter referred to as the “Property”

B. Declarant has subdivided the Property into 38 lots, common areas and facilities to be known as the CHESTNUT FARMS SUBDIVISION.

C. The Property is an area of unique natural beauty, featuring distinctive terrain.

D. Since the completion of the Project may be in phases, the completed subdivision will consist of the original phase and all subsequent phases.

E. By subjecting the Property to this Declaration, it is the desire and intention of the Declarant to provide a general plan for development of the land, create a community in which beauty shall be substantially preserved, which will enhance the desirability of living on that real estate subject to this Declaration, and which will increase and preserve the attractiveness, quality and value of the lands and improvements therein.

COVENANTS, CONDITIONS AND RESTRICTIONS

Now, therefore, for the reasons recited above, the Declarant hereby covenants, agrees and declares that the Property shall be subject to the following covenants, conditions and restrictions:

1. **Definitions.** The following definitions shall apply to this Declaration:

a. “Association” shall mean the Chestnut Farms Owners Association (“Association”) a non profit corporation created by Declarant.

b. “Builder” shall mean an Owner, Declarant or contractor who obtains a construction or occupancy permit for one of more Lots.

- c. "Board" or "Association Board" shall mean the Board of Directors of the Association.
- d. "Common Area and Facilities" shall mean all the real property and improvements owned by the Association and located within the Property (identified on the plat as Parcels A, B & C) other than the Lots and the improvements thereon, including without limitation, all entry signs, monuments and landscaped areas all of which shall be owned and managed by the Association for the common use and enjoyment of all Owners. The Common Area shall be owned by the Association. The Common Area is designated as such on the Plat Map of record with the Davis County Recorder.
- e. "Common Expense" shall mean and refer to all expenses incurred by the Association in maintaining, repairing, and replacing the Common Area and Facilities.
- f. "Declarant" shall mean and refer to Chestnut Farms LLC, a Utah limited liability company or its successor or assigns.
- g. "Design Guidelines" shall mean and refer to the then current Design Guidelines used by Symphony Homes.
- h. "Dwelling" shall mean the detached single family residence, or living unit constructed upon a Lot.
- i. "Entry" shall mean the entry way into the Subdivision.
- j. "Entry Monument" shall mean the monument identifying the subdivision and surrounding landscaping and planter area located at the Entry to the Subdivision.
- k. "Lot(s)" shall mean any area of separately defined real property within Chestnut Farms designated as an individual lot and numbered as Lots 1 through 38.
- l. "Management Committee" or "Committee" shall mean and refer to the Management Committee which shall administer this Declaration for and on behalf of the Declarant during the Period of Declarant Control and for the Association thereafter.
- m. "Member" shall mean any person(s) holding a membership in the Association.
- n. "Open Space" shall mean and refer to the commons, parks, grounds, and open landscaped areas within the Subdivision (identified on the plat as parcels A, B & C).
- o. "Owner" (when capitalized) shall mean the record holder(s) of legal title to the fee simple interest in any Lot but excluding those persons having such interest merely as security for the performance of an obligation.
- p. "Period of Declarant Control" shall mean and refer to a period of time commencing on the date this Declaration is recorded and terminating on the occurrence of the earlier of the following events: (1) four months after 100% of the Dwellings constructed upon Lots owned by the Declarant have been sold to third parties; (2) five (5) years from the recording date of this Declaration; or (3) when, in its sole discretion, the Declarant so determines to relinquish control by written notice to the Owners.

q. "Plans and Specifications" shall mean and refer to any and all documents designed to guide or control the construction of an Improvement, or alterations, modifications, changes, additions and the like thereto, including without limitation all documents indicating size, shape configuration and/or materials, to be incorporated; all site plans, excavation and grading plans, elevation drawings, floor plans, techniques, samples of exterior colors, plans for utility service, and all other documentation or information relevant to the improvement or proposal in question.

r. "Plat Map" shall mean and refer to the "Record of Survey Map" or Maps of Chestnut Farms, as it may be amended from time to time. The Plat Map will show the location on the Lots.

s. "Project" shall mean the Subdivision.

t. "Recreational, Oversized or Commercial Vehicle" shall mean and refer to any recreational, commercial or oversized vehicle, motor home, tractor, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, horse trailer, or any other recreational, oversized or commercial transportation device of any kind.

u. "Parking Pad" shall mean and refer to a cement or concrete, (or other construction material approved by the Management Committee) parking pad constructed or installed on a Lot for the purpose of parking or storing of a Recreational, Commercial, or Oversized Vehicle

v. "Subdivision" shall mean Chestnut Farms Subdivision(All Phases).

2. Application of Declaration. Declarant hereby declares that the Property shall be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied, sold, and improved, subject to this Declaration all of which are for the purpose of enhancing and protecting the value and attractiveness of the Property, and the Project, and every part thereof, in accordance with the plan for the improvement, sale, and operation of the Property. All of the limitations, covenants, conditions, restrictions, and easements shall constitute covenants and encumbrances which shall run with the land and shall be perpetually binding upon Declarant, each Lot, each Owner, and their respective successors-in-interest and assigns, and all parties having or acquiring any right, title, or interest in or to any part of the Property or the Project.

3. Right to Expand Application. Without any other additional approval required, the Declarant shall have the exclusive, unconditional, and irrevocable right to expand the application of this Declaration to the real property by written amendment to this Declaration duly recorded.

4. Association, Administration, Membership And Voting Rights

a. Organization of Association. The Association is or shall be incorporated under the name of CHESTNUT FARMS OWNERS ASSOCIATION, INC., in accordance with the requirements of the Utah Non-Profit Corporation and Co-operative Association Act, as amended

b. Duties and Powers. The duties and powers of the Association are those set forth in this Declaration, the Articles and Bylaws, together with the general and implied powers of a nonprofit corporation, generally to do any and all things that a corporation organized under the laws of the State of Utah may lawfully do and which are necessary or proper in operating for the peace, health, comfort, safety and general welfare of its Members, subject only to the limitations upon the exercise of such powers as are expressly set forth in this Declaration, the Articles and Bylaws. The Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Declaration including without limitation:

- i. Access. The power and authority to enter into or upon any Lot to make inspections, evaluations or repairs and to do other work necessary for the proper maintenance and operation of the Subdivision or to enforce this Declaration or the decisions of the Management Committee. Except in the case of an emergency, residents shall be given at least twenty-four (24) hours prior notice before the Management Committee may exercise this power.
- ii. Budgets, Assessments Common Expenses. The power and authority to adopt an annual budget, insure the Common Areas and Facilities, pay all Common Expenses, allocate the Common Expenses among the Owners, assess and bill the Owners for their portion of the Common Expenses, collect Assessments, lien delinquent Property for Assessments and take all other actions necessary or incident thereto.
- iii. Promulgate Rules. The authority to promulgate such reasonable rules and regulations as may be necessary or desirable to aid the Management Committee in carrying out any of its functions, including by way of illustration but not limitation of Pool and Park Rules.
- iv. All Other Acts. The power and authority to perform any and all other acts, and to enter any other transaction which may be reasonably necessary for the Association Committee to perform its functions and in behalf of the Owners.

c. Management of Association. The Association shall be managed by the Management Committee consisting of three (3) persons. Until the expiration of the Period of Declarant Control, the Declarant shall have the exclusive right to appoint the members of the Management Committee. After the Period of Declarant Control, the Owners shall have the right to appoint the members of the Management

Committee in accordance with the Articles and bylaws adopted by the Association. The Declarant, during the Period of Declarant Control, or the Management Committee thereafter, may hire a professional management company to administer the affairs of the Association.

d. Membership. The Owner of a Lot shall automatically, upon becoming the Owner of that Lot, become a Member of the Association, and shall remain a Member thereof until such time their ownership ceases for any reason, at which time their membership in the Association shall automatically cease. Membership shall be in accordance with the Articles and Bylaws of the Association.

e. Transferred Membership. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership of the Lot to which it is appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer is void. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the purchaser of their Lot, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

f. Class of Membership, Voting Requirements. Initially, the Association shall have two different classes of voting membership as follows:

- i. *Class A.* The Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all persons shall jointly be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.
- ii. *Class B.* The Class B member shall be the Declarant and shall be entitled to five (5) votes for each Lot owned; provided that the Class B membership shall terminate and be converted to Class A membership upon the expiration of the Period of Declarant Control, as defined herein.

g. Membership Meeting. Regular and special meetings of Members of the Association shall be held with the frequency, and time and place, as are accordance with the provisions of the Bylaws of the Association.

h. Grant of Proxy and Voting Rights Agreement. Each Owner, upon taking a deed for any Lot or Property in the Project, hereby and automatically grants to Declarant a full proxy to exercise any and all voting rights of Owner, as a Member of the Association, for an on behalf of Owner until termination of the Period of Declarant Control. Upon termination of Period of Declarant Control, the proxy shall automatically expire and Owner shall thereafter exercise its voting rights in the Association as provided in this Declaration, the Articles and Bylaws. In addition to the foregoing grant of proxy, until the expiration of the Period of Declarant Control, each Owner by accepting a deed to any Lot or Property

and becoming a Member of the Association, hereby enters into a voting agreement with Declarant, whereby Owner agrees that during the Period of Declarant Control, Owner shall cast its vote as Declarant casts its vote(s) with respect to any issue presented to the Association for which Owner has a right to vote. This voting agreement between Owner and Declarant shall be irrevocable during the Period of Developer Control. Upon termination of Period of Declarant Control, the voting agreement shall automatically expire and Owner shall exercise its voting rights in the Association as provided in this Declaration, the Articles and Bylaws.

5. **Common Profits, Expenses.** The common profits of the Property shall be credited to, and the Common Expenses shall be charged to the Owners equally.

6. **Assessments.**

a. **Initial Assessment/ Transfer Fee.** An initial assessment ("Initial Assessment") of \$750.00 will be levied each time a new Owner takes title to a Lot within the Project. The Initial Assessment will be used to defray administrative costs and to pay for any improvement repairs owed to the applicable municipality in connection with acceptance of improvements by the relevant municipality. Where applicable, the Association may use all or part of the initial assessment to reimburse Declarant for the costs of any bonds required to cover any damages to the dedicated improvements prior to their acceptance by the relevant municipality. Upon receiving a punch list of corrective items from the municipality, Declarant shall be entitled to reimbursement for all costs incurred by Declarant associated with corrective items on all applicable Lots where bond has been collected from the Initial Assessments collected.

A transfer fee in the amount of \$250.00 (adjusted for inflation from time to time by the Association) will be paid to the Association by the Owner for each transfer of title to a new Owner of a Lot or Dwelling.

b. **Regular Assessments.** Until the end of the Period of Declarant Control, the annual regular assessment ("Regular Assessment") per Lot shall be in such amount as is set forth in the project budget prepared by Declarant, payable in quarterly installments, or such other billing period as the Management Committee determines from time to time. After the expiration of the Period of Declarant Control, the Management Committee shall prepare, determine and fix the amount of the Regular Assessment against each Member at least sixty (60) days in advance of the start of each fiscal year; provided, however, that the Regular Assessment may not be increased by more than twenty percent (20%) above the Regular Assessment for the immediately preceding fiscal year, without the vote or written assent of a majority of the voting power of the Association. Notwithstanding the foregoing, the Regular Assessment for any

unimproved Lot (i.e. a Lot with no Dwelling) shall be 50% of the Regular Assessment for an improved Lot (i.e. a Lot with a Dwelling).

c. Extraordinary Assessments. In addition to the Regular Assessments authorized above, the Management Committee may levy, in any fiscal year, levy an extraordinary assessment ("Extraordinary Assessment") applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area and Facilities, provided, however, that the aggregate Extraordinary Assessment for any fiscal year shall not exceed ten percent (10%) of the budgeted gross expenses of the Association (excluding reserves) for that fiscal year, without the vote or written assent of over sixty percent (60%) of the voting power of the Association. Notwithstanding the foregoing, the Extraordinary Assessment for any unimproved Lot shall be 50% of the Extraordinary Assessment for an improved Lot.

d. Special Assessment. In addition to the Initial Assessment, Regular Assessment and Extraordinary Assessment authorized above, the Management Committee may levy a special assessment ("Special Assessment") (without limitation as to amount or frequency) against an individual Lot and its Owner to reimburse the Association for costs incurred in bringing that Owner and his Lot into compliance with the provisions of this Declaration and the Bylaws, including actual attorneys' fees and costs of the Association.

e. Commencement Of Assessment: Due Dates. The Initial Assessments, Regular Assessment and Extraordinary Assessment (if applicable) for each Lot shall be collected at closing of the sale to an Owner by Declarant. Regular Assessments shall be prorated through the end of the calendar year in which the Lot is acquired. Due dates of Assessment shall be the first day of each calendar quarter or such other billing period as the Management Committee may determine from time to time. No notice of such assessment shall be required other than an annual notice setting forth the amount and due date of the assessment.

7. Architectural and Related Issues. Since aesthetics, the integrity and harmony of the original design, and the quality of construction and materials throughout the Subdivision is important, all architectural designs, plans, specification, construction materials, and construction must be (a) reviewed and approved by the Management Committee or its designee and (b) consistent with the restrictions set forth herein governing the Subdivision.

a. **Architectural Review and Approval.** Until the expiration of the Period of Declarant Control, the Management Committee has the sole right and exclusive authority to resolve all architectural issues and may, in its sole discretion, designate one or more persons from time to time to act on its behalf in reviewing applications hereunder as the Management Committee, which before the termination of the Period of Declarant Control shall consist of three individuals, appointed by Declarant, and after the Period of Declarant Control may consist of (a) a single individual, architect or engineer, or (b) a committee comprised of architect, engineers or other persons who may or may not be Owners, or (c) a combination thereof. Powers may be delegated by the Management Committee, provided any such delegation shall specify the scope of responsibilities delegated, and, prior to the termination of the Period of Declarant Control, shall be subject to the irrevocable right of Declarant to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and/or to any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable. The initial Management Committee will be made up of Bruce Robinson, Robert Miller and Tony Coombs, who shall serve until such time as their successors are qualified and appointed. Members serving on the Management Committee shall be appointed or elected to serve two (2) year terms. Any member of the Management Committee who fails on three (3) successive occasions to attend regularly scheduled meetings or who has failed to attend a least twenty-five percent (25%) of all regularly scheduled meetings held during any twelve (12) month period shall automatically forfeit his seat. Except for members of the Management Committee appointed by the Declarant prior to the termination of the Period of Declarant Control, members of the Management Committee may be removed at any time by the affirmative vote of a majority of the Owners. Unless he forfeits or otherwise loses his seat as herein provided, a member shall serve on the Management Committee until his successor qualifies and is properly appointed by the Declarant or, after the termination of the Period of Declarant Control, is elected by a majority vote of the Owners. Members of the Management Committee shall not be compensated for their services, although they may be reimbursed for costs advanced.

8. Common Utilities. The Declarant may elect to provide common water and power utility services through a meter or meters on an individual Lot or Lots. Each such Owner agrees, by accepting a deed or other document of conveyance to such Lot, to provide those common water and power utility services to the Common Area and Facilities not separately metered and billed to the Association by the provider; providing, however, in such circumstances the Owner of each such Lot shall be entitled to the following credits:

a. **Water.** A monthly credit an amount equal to the difference between the water bill for each such Lot and the average water bill for all of the other Lots in the Project; and

b. **Power.** A monthly credit in an amount equal to the greater of (1) \$5.00 or (2) a sum equal to the number of watts in a light bulb, multiplied by the Kilowatt rate of the local power company, multiplied by 4,000, divided by 1,000 and divided by 12.

9. **Insurance.** If deemed reasonably available, the Management Committee may elect to purchase adequate liability and directors and officers insurance, and a fidelity bond.

10. **Procedures for Approval of Plans and Specifications.** Architectural designs, plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the Management Committee for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, lighting, landscaping and other features of proposed construction shall be submitted as applicable. In reviewing each submission, the Management Committee may consider the proposed design, harmony of external design with existing structures and the common scheme, the location in relation to surrounding structures, topography, finish grade and elevation, among other things. Decisions of the Management Committee may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as Management Committee members change over time. In the event that the Management Committee fails to approve or to disapprove any application within thirty (30) days after submission of all information and materials reasonably requested, the application shall be deemed approved; provided, however, anything to the contrary notwithstanding, no Dwelling shall be constructed or altered unless it meets the following minimum requirements:

- a. Only single family residential Dwellings are allowed.
- b. The height of the Dwelling shall not exceed two stories above ground.
- c. No slab on grade Dwellings are permitted.
- d. With the prior written consent of the Management Committee, a basement is required for each Dwelling.
- e. Without the prior written consent of the Management Committee, each Dwelling shall have a private garage for not less than two motor vehicles.
- f. The Dwelling exteriors, in their entirety, must consist of either maintenance-free stucco and masonry, unless another construction material is approved by the Management Committee in writing. No aluminum or vinyl is permitted.
- g. Any detached accessory building must conform in design and materials with the primary residential Dwelling.

h. All front yards of Lots shall be fully landscaped within one (1) year of the closing on the transaction. Landscaping and all grading and drainage shall be designed in such a way to control water run-off so that any Lot within the Subdivision will not be adversely affected by another. Furthermore, the grades initially established by the Management Committee or Declarant may not be altered without the prior written consent of the Management Committee. All landscaping must conform to the Landscaping Guidelines as adopted by the Management Committee from time to time.

i. No fence or similar structure shall be built in any front yard to a height in excess of four (4') feet, nor shall any fence or similar structure be built in any side or rear yard in excess of six (6') feet. Chain link fencing is not allowed. All allowed fences or walls shall be of brick, stone, wrought iron, or vinyl. Concrete block is only allowed if approved in writing by the Architectural Control Committee. If Vinyl is used, it must be "Sand" colored. Any fencing or similar structure using other construction materials requires the prior written approval of the Management Committee. If there is a dispute as to what constitutes the front, side or rear yards, the decision of the Management Committee shall be final, binding and conclusive.

j. Except for purposed of loading or unloading passengers or supplies (for a period not to exceed twenty-four (24 hours), all Recreational, Commercial or Oversized Vehicles must be parked in the side yard of a lot on a Parking Pad behind a Parking Pad Fence so as not to be visible from the street or any other Lot.

k. Designs submitted for approval shall be limited to those prepared by architects or by qualified residential designers of outstanding ability whose previous work may be reviewed as part of the process.

11. Preliminary Architectural Drawings, Plans and Specifications. The Management Committee may require, as a minimum, the following:

- a. Plot plan to scale of entire site with buildings located and elevation of floors shown above or below a designated point on the street.
- b. Floor plans of each floor level to scale.
- c. Elevations to scale of all sides of the Dwelling.
- d. One major section through Dwelling.
- e. A perspective (optional).
- f. Specifications of all outside materials on the exterior of the Dwelling.

12. Final Plans and Specifications and working Drawings. The Management Committee may require, as a minimum, the following:

- a. Plot plans to scale showing the entire site, building, garages, walks, drives, fence, carriage lights, retaining walls, with elevations of the existing and finished garage grade and contours including those at the outside corners of the buildings and at adjacent property lines and street fronts, and elevations of floors from a designated point on the street.
- b. Detailed floor plans.
- c. Detailed elevations, indicating all materials and showing existing and finished grades.
- d. Detailed sections, cross and longitudinal.
- e. Details of cornices, porches, windows, doors, garages, garden walls, steps, patios, fences, carriage lights, etc. Specifications shall give complete description of materials to be used with supplements, addenda or riders noting the colors of all materials to be used on the exterior of the Dwelling.

13. **No Waiver of Future Approvals.** The approval of the Management Committee of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

14. **Variance.** The Management Committee may authorize variances from compliance with any of the architectural guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations require, but only in accordance with its duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) stop the Management Committee from denying a variance in other circumstances. For purposes of this Section, the inability of obtain approval of any governmental agency, the issuance of any permit or the terms of financing shall not be considered a hardship warranting a variance.

15. **Limitation of Liability.** Neither the Declarant nor the Management Committee, or any of their employees, agents, representatives or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans and specifications. By accepting a deed or other document of conveyance to a Lot, each Owner agrees to and shall defend, indemnify, save and hold the Declarant and the Management Committee, and their employees, agents, representatives or consultants, harmless from any and all loss, damage or liability they

may suffer, including defense costs and attorney fees, as a result of any claims, demands, actions, costs, expenses, awards or judgments arising out of their review or approval of architectural designs, plans and specifications.

16. Enforcement of Architectural Guidelines. Any construction, alteration, or other work done in violation of this Declaration shall be considered to be non-conforming. Upon written request from the Management Committee an Owner shall at his own cost and expense remove such non-conforming construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the non-conforming construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the Management Committee shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration or other work, without being deemed to be a trespasser.

17. Contractors. Any contractor, subcontractor, agent, employees, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration may be excluded by the Management Committee from the Subdivision, subject to the notice and the opportunity to be heard. In the event of sanctions after notice and hearing, neither the Management Committee, the Declarant, nor their employees, agents, representatives or consultants shall be held liable to any person for exercising the rights granted by this Section.

18. Use Restrictions and Nature of the Project. The Lots are subject to the following use restrictions which shall govern both the architecture and the activities within the Subdivision:

a. **Private Residence.** No Lot shall be used except for residential purposes and all residents shall be obligated by the following requirements: no temporary structure including trailers, tents, shacks, garages, barns or other outbuildings shall be used on a Lot at anytime. No Dwelling shall be rented on a seasonal basis or for hotel or transient use. Individual rooms may not be rented to separate persons. The initial term of any lease shall be at least six (6) months. All leases shall be in writing.

b. **Business Use.** No commercial trade or business may be conducted in or from any Dwelling unless: (1) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Dwelling; (2) the business activity conforms to all zoning requirements for the Subdivision; (3) the business activity does not involve persons coming onto the Subdivision who do not reside in the Subdivision or door-to-door solicitation or residents of the Subdivision; and (4) the business activity is consistent with the residential character of the Subdivision and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Subdivision, as

may be determined in the sole discretion of the Management Committee. Notwithstanding the foregoing, the leasing of a Dwelling shall not be considered a trade or business within the meaning of the subsection.

c. Storage and Parking of Vehicles. The driving, parking, standing, and storing of motor vehicles in, on or about the Subdivision shall be subject to the following:

- i. The parking rules and regulations adopted by the Management Committee from time to time;
- ii. No motor vehicle or trailer, including but not limited to any car, truck, van, or any other transportation device of any kind may be parked or stationed in such a manner so as to block access to any driveway or Dwelling or to create an obstacle or potentially dangerous condition.
- iii. No Resident shall repair or restore any vehicle of any kind in, on or about any Lot, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.
- iv. No garage may be altered in such a manner that the number of motor vehicles which may reasonably be parked therein after the alteration is less than the number of motor vehicles that could have been reasonably parked in the garage as originally designed and constructed.
- v. All garages shall be used primarily for the parking and storage of vehicles.
- vi. Daytime parking on the street is allowed.
- vii. Overnight parking on the street is not allowed.
- viii. All motor vehicles parked so as to be visible from the street or another Lot must be undamaged (less than \$1,000.00) to repair, in good mechanical condition, registered, and licensed.
- ix. Except as otherwise expressly permitted, motor vehicles may not be “stored” so as to be visible from the street or another Dwelling.
- x. Recreational, Commercial, and Oversized Vehicles may be stored on a Parking Pad provided (a) it is located in a side yard behind the houseline or in the rear of the Lot, and (b) it is in running condition and properly licensed
- xi. Vehicles parked in violation of this Declaration may be immobilized, impounded, or towed by the Management Committee or its designee without further notice and at the owner’s sole risk and expense.

d. Maintenance. All Lots and Dwellings shall be kept by the Owner in good repair and maintenance and in a clean, safe, sanitary and attractive condition.

e. Garbage and Refuse Disposal. No Lot shall be used as a dumping ground. All trash, garbage, debris, rubbish or other waste shall be kept in a sealed, sanitary bag or container, and stored out of sight except for a twenty-four (24) hour period and on pick-up days.

f. Aerials, Antennas, and Satellite Systems. No aerials, antennas, satellite dishes or systems shall be erected, maintained or used in, on or about any Dwelling, outdoors and above ground, whether attached to or on top of any building, structure, Dwelling, outdoors, within the Subdivision without the prior written consent of the Declarant or Management Committee, which shall not be unreasonably withheld. In making its decision, the Declarant and/or Management Committee shall abide by and be subject to all relevant local, state and federal laws, including but not limited to all FCC guidelines, rules and regulations as they may be amended or supplemented from time to time. Insofar as is reasonably possible without impairing reception, satellite dishes, aerials and antennae shall be positioned so they are screened from view from the street.

g. Animals and Pets. The keeping of animals other than those ordinarily kept as family pets within the Subdivision is forbidden. No pets, animals, livestock or poultry of any kind shall be bred in, on or about the Project. Up to two domestic pets per Dwelling are allowed; provided, however, all pets must be properly licensed and registered (if required) with the appropriate governmental agencies and follow all applicable local ordinances. Pets may not create a nuisance. The following acts of an animal may constitute a nuisance: (1) it causes damage to the property of anyone other than its owner; (2) it causes unreasonable fouling of the air by odors; (3) it causes unsanitary conditions; (4) it defecates on any common area and the feces are not immediately cleaned up by the responsible party; (5) it barks, whines or howls, or makes other distributing noises in an excessive, continuous or untimely fashion; (6) it molests or harasses passersby by lunging at them or chasing passing vehicles; (7) it attacks people or other domestic animals; (8) it otherwise acts so as to bother, annoy or disturb other reasonable residents or interferes with their right to the peaceful and quiet enjoyment of their property; or (9) by virtue of the number of pets maintained, they are offensive or dangerous to the health, welfare or safety of other residents. Pets in the Subdivision at large must be behind a fence, in a cage or on a leash and under the control of a responsible person.

h. Laws. Nothing shall be done or kept in, on or about any Lot or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body.

i. Damage or Waste. Each Owner shall repair any damage he or any other residents, guests, or invitees of his Lot may cause to another Owner, Lot or Dwelling, and promptly restore the property to its original condition.

j. Signs. No signs, billboards or advertising structures or devices of any kind may be built, installed or displayed on the Property or any Lot except for a single sign with a maximum size of 2'x2' for specific purpose of advertising the sale or rental of a Dwelling; provided, however, this restriction does not apply to and is not binding upon the Declarant, who may use whatever signs it deems appropriate to market is Lots.

k. Zoning. All land use and building shall be in compliance with all zoning and land use ordinances as well as all regulations of the municipalities and agencies governing the Subdivision land use and buildings.

l. Landscaping. All landscaping, grading, and drainage of the land in each Lot shall be completed strictly in accordance with the Landscape Guidelines adopted by the Declarant or the Management Committee, and so as to comply with and not impair all Davis County Ordinances and flood control requirements.

m. Easements. Easements and rights of way for the installation and maintenance of utilities, drainage systems and facilities, and irrigation are reserved, as set forth herein and in the legal descriptions of the Property. Within these easements and rights of way, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in, on or about the easements and rights of way, or which may obstruct or retard the flow of water through the drainage channels in the easements and rights of way. The easement and right of way of each Lot and all improvements within said area shall be maintained continuously by their Owners, excepting those improvements for which a public authority or utility company is expressly responsible.

n. Slope and Drainage Control. No structure, plant, improvement or other material may be placed or permitted to remain, or other activities undertaken which may damage or interfere with established Lot ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels, or obstruct or retard the flow of water through the channels. The slope control area of each Lot and all improvements therein shall be maintained continuously by the Owner of the Lot, excepting those improvements for which a public authority or utility company is expressly responsible. It shall be the responsibility of the Owner to see that his Lot strictly conforms with the grading and drainage plan established by the Declarant and Davis County.

o. Nuisances. No noxious or offensive activity shall be carried on, in or about the Property, nor shall anything be done or permitted thereon which may be or may become an annoyance, disturbance, bother or nuisance to the neighborhood, or which might interfere with the right of other residents to the quiet and peaceful enjoyment of the property.

p. Temporary Structures. No structure of a temporary nature or character, including but not limited to any trailer, shack, shed, tent, garage, barn or other out-building shall be used on any Lot at any time as a residence.

q. Fines. After written notice of the violation and a hearing, the Management Committee may fine or otherwise sanction an Owner for his failure to comply with this Declaration or any rules and regulations adopted by the Management Committee from time to time.

r. Declarant's Sales Program. Notwithstanding anything to the contrary, until the termination of the Period of Declarant Control neither the Owners nor the Declarant shall interfere or attempt to interfere with the Declarant's completion of improvements and sale of all its remaining Lots and Dwellings, and Declarant shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Lots and Dwellings owned by it:

i. *Sales Office and Models.* Declarant shall have the right to maintain (1) or more sales offices and one (1) or more model Lots, Homes or Dwelling at any one time. Such office and/or models may be one or more of the Lots owned by it, or one or more of any separate structures or facilities placed on the Property for the purpose of aiding Declarant's sales effort, or any combination of the foregoing;

ii. *Promotional.* Declarant shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners or similar devices at any place or places on the Property.

iii. *Relocation and Removal.* Declarant shall have the right from time to time to locate or relocate any of its sales offices, models, or signs, banners or similar devices, but in connection with each such location or relocation shall observe the limitations imposed by the preceding portion of this Section. Within a reasonable period of time after the happening of the occurrence, Declarant shall have the right to remove from the Subdivision any signs, banners or similar devices and any separate structure or facility which was placed on the Property for the purpose of aiding Declarant's sales effort.

s. Limitation on Improvements by the Management Committee. Until the termination of the Period of Declarant Control, neither the Owners nor the Declarant shall, without the written consent of Declarant, make any improvement to the Subdivision or alteration to any improvement created or constructed by Declarant.

19. Debt Collection. An assessment, fine or other monetary obligation imposed upon an Owner under this Declaration is a debt of the Owner at the time it is made and is collectable as such. Suit to recover a personal judgment for unpaid fines is maintainable by the Association without foreclosing or

waiving the lien securing it. If any Owner fails or refuses to make any payment of a fine when due, that amount constitutes a lien on the interest of the Owner in the Property, and upon the recording of notice of lien, it is a lien on the interest of the Owner's interest in the Property prior to all other liens and encumbrances, recorded or unrecorded, except (a) tax and special assessments on the Lot in favor of any assessing unit or special improvement district; and (b) encumbrances on the interest of the Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances. The lien may be foreclosed in the same manner as a deed of trust under Utah law.

a. **Late Fees.** A late fee of \$20.00 may be charged on all payments due under this Declaration received more than ten (10) days after they were due.

b. **Finance Charge.** A finance charge of 1.5% per month may be assessed on the outstanding balance of all delinquent amounts owing under this Declaration. 6.7

20. Transfer Of Lot By Sale Or Foreclosure. The sale or transfer of any Lot shall not affect any Assessment lien, or relieve the Lot from any liability therefore, whether the lien pertains to payments becoming due prior or subsequent to such sale or transfer. Notwithstanding the foregoing, the sale or transfer of any Lot pursuant to foreclosure or by deed in lieu of foreclosure of a recorded first mortgage given in good faith and for value, without notice, shall extinguish the lien of all such Assessments as to payments which became due prior to such sale or transfer (except for Assessment liens arising prior to recording of the mortgage). Sale or transfer pursuant to mortgage foreclosure shall not, however, affect the personal liability of the prior record Owner(s) for unpaid Assessments. In a voluntary conveyance of a Lot, the grantee of the same shall be jointly and severally liable with the grantor for all unpaid Assessments by the Association against the grantor up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. However, any such grantee shall be entitled to a statement from the Board, setting forth the amount of the unpaid Assessments due the Association, and such grantee shall not be liable for, nor shall the Lot conveyed be subject to a lien for, any unpaid Assessments made by the Association against the grantor in excess of the amount set forth in the statement; provided, however, the grantee shall be liable for any such Assessment becoming due after the date of any statement.

21. Declarant's Rights Assignable. All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any Mortgage covering all Lots or Dwellings in the Subdivision title to which is vested in Declarant shall, at any given point in time and whether or not such Mortgage does so by its terms,

automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protection and controls which are accorded to Declarant (in its capacity as Builder) herein.

22. Interpretation. To the extent Utah law is consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the term "shall" is mandatory and the term "may" is permissive, the whole shall include any part thereof, and any gender shall include both genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

23. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Declarant and all parties who hereafter acquire any interest in a Lot, the Subdivision or the Property, and their respective grantees, transferees, heirs, devisees, personal representative, successors, and assigns. Each Owner or resident of a Lot shall comply with, and all interest in all Lots shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot, the party acquiring such interest consents to, and agrees to be bound by, each and every provision on this Declaration.

24. Phases of Development/ Expansion of Project. The Declarant reserves the unilateral and exclusive right to develop the Project in one or more phases. Declarant further reserves the unilateral and exclusive right to add contiguous or geographically related properties to the Project and Subdivision by expansion. Declarant shall have the exclusive and unilateral right to develop such additional phases and/or add such additional property to the Project by amendment to the Plat or expansion of the Subdivision without notice to, or consent of the Owners. Declarant's rights shall include the exclusive and unilateral right to add and designate Common Areas and Common Facilities and Lots as Declarant may determine in its sole discretion. Declarant shall have the unilateral right to reallocate the Assessments among the Lots and Owners, based on the total number of Lots in the Project, as modified or expanded by Declarant. Any such expansion shall be deemed to have occurred at the time of the recordation of a revised plat, together with an amendment to the Declaration, duly executed and

acknowledged by the Declarant. The amendment shall contain a legal description of the land added to the Project and shall reallocate Assessments and undivided interests in Common Areas and Common Facilities as appropriate.

25. Enforcement and Right to Recover Attorney's Fees. Should the Management Committee or an aggrieved Owner be required to take action to enforce or construe the Declaration or any rules and regulations adopted from time to time, or to pursue any remedy provided hereunder or by applicable law, including a claim for injunctive relief or damages, whether such remedy is pursued by filing suit or otherwise, the prevailing party shall be entitled to recover his reasonable attorneys fees, costs and expenses which may arise or accrue.

26. Limitation of Liability. The protective covenants, conditions and restrictions set forth in this Declaration, together with any rules and regulations adopted by the Management Committee, are established for the benefit of the Property and the Owners. Any damage, loss, claim or liability which might arise due to any decision, act, or failure to act of Declarant of the Committee or any of its members shall be exempt from any civil claim or action, including negligence, brought by any person owning or having an interest in any Lot. The Committee and its members shall be indemnified, saved and held harmless from any such action of failure to act, and exempt from any civil claim or action resulting from an act of failure to act (whether intended or implied) while functioning as a member of the Management Committee, or for decisions that may render during the course of their service, unless said party is guilty of gross negligence.

27. Mortgagee Protection. Nothing herein contained, and no violation of these covenants, conditions and restrictions, shall invalidate or impair the lien of any mortgage or deed of trust, given in good faith and for value.

28. Amendments. This Declaration may be amended upon the affirmative written approval of a least a majority of the Owners of the Lots and shall be valid immediately upon recording the document amending the Declaration in the office of the County Recorder of Davis County, Utah; provided, however, (a) so long as Declarant shall own at least one (1) Lot in the Subdivision, no amendment shall be valid or enforceable without express prior written consent of Declarant, and (b) any amendments affecting fencing, grading, or any municipal ordinance shall require the prior written consent of [county] County. Provided, however, the foregoing Mortgagee Protection section cannot be amended without the consent of all first mortgagees.

29. **Duration.** The covenants and restrictions of this Declaration shall endure for a term of twenty (20) years from the date of this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless after such initial twenty (20) year period, a majority of Owners vote to terminate this Declaration.

Dated the 3rd day of July, 2007.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, have hereunto set their hand this 3rd day of July, 2007.

DECLARANT:

**Chestnut Farms LLC, A Utah Limited Liability Company
its Member Manager**

Robert C. Miller
by Robert C. Miller
Its Authorized Agent.

On the 3rd day of July, 2007, personally appeared before me Robert C Miller, who being by me duly sworn did say that he is the MEMBER MANAGER of Chestnut Farms LLC, that he signed the foregoing instrument by proper authority, both in its capacity as a Limited Liability Company and in its capacity as a manager member of the said Limited Liability Company, and said Robert C Miller, duly acknowledged to me that said Limited Liability Company executed the same.

Signed: *[Signature]*
NOTARY PUBLIC
Residing at 1165 N 2325 W Layton, ut
84041
My commission expires January 24th 2009

