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REC FOR: EVERGREEN HOLDINGS LLC

# DECLARATION

DB

OF

COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

**Upper DaySpring Subdivision**

08-585-0001 thru 0023 ✓ BK  
(08-028-0041)

February 2017

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**DECLARATION**  
OF  
**COVENANTS, CONDITIONS AND RESTRICTIONS**  
FOR  
**Upper DaySpring Subdivision Phase 1 and 2**

This Declaration of Covenants, Conditions and Restrictions for Upper DaySpring Subdivision ("Declaration") is made and executed by Evergreen Holding, LLC, a Utah limited company ("Declarant").

**RECITALS:**

**A. Name of Project and Description of Land.** The subdivision that is the subject of this Declaration shall be known as Upper DaySpring Subdivision ("Project"), and is situated in and upon that certain real property ("Subject Land") located in Weber County, State of Utah, as specifically described in Exhibit "A" attached hereto and incorporated herein by this reference. Declarant has prepared and has recorded or will record in the office of the County Recorder for Weber County, State of Utah, a plat map for Upper DaySpring Subdivision ("Plat"). There will be twenty three (23) Lots in Phase 1 of the Project, and approximately Twenty Eight (28) Lots in Phase 2 .

**B. Intent and Purpose.** Declarant, by recording this Declaration, does so for the purpose of imposing upon the Subject Land mutually beneficial restrictions under a general plan of improvement for the benefit of all Lots within the Project and the Owners thereof.

**ARTICLE I**  
**DEFINITIONS**

- 1.1 **Defined Terms.** Unless the context clearly indicates otherwise, certain terms as used in this Declaration shall have the meanings set forth in this Article I.
- 1.2 **Declarant** shall mean Evergreen Holding, LLC, a Utah limited company, its assigns or its successor in interest that develops or that purchases substantially all the Lots from Evergreen Holding, LLC
- 1.3 **Design Committee.** The Design Committee created pursuant to Article 5 of this Declaration.

- 1.4 **Dwelling** shall mean and refer to each physically constructed residential dwelling or building containing a single family residence located as an improvement on a Lot.
- 1.5 **Lot** shall mean each individual parcel of real property shown on the Plat(s) as a Lot, together with all improvements located thereon and all appurtenances thereunto appertaining.
- 1.6 **Mortgage** shall mean any mortgage, deed of trust, or other security instrument by which a Lot or any part thereof is encumbered.
- 1.7 **Mortgagee** shall mean (i) any person named as the mortgagee or beneficiary under any deed of trust, or (ii) any successor to the interest of such person under such Mortgage.
- 1.8 **Owner** shall mean any person or entity or combination thereof, including the Declarant, owning fee title to a Lot within the Project as shown on the records of Weber County, State of Utah. The term "Owner" shall not refer to any Mortgagee (unless such Mortgagee has acquired title for other than security purposes) or to any person or entity purchasing a Lot under contract until such contract is fully performed and legal title conveyed.
- 1.9 **Plat or Map** shall mean the Plats for Upper DaySpring Subdivision Phase 1 and Phase 2., as recorded in the office of the County Recorder for Weber County, State of Utah, on \_\_\_\_\_, as Entry No. \_\_\_\_\_, in Book \_\_\_\_\_, at Pages \_\_\_\_\_.
- 1.10 **Project** shall mean all Phases of the Upper DaySpring Subdivision and all Lots included therein.
- 1.11 **Subject Land** shall mean the land upon which the Project is situated, as more particularly described in Exhibit "A".

**ARTICLE II  
DIVISION OF PROJECT**

- 2.1 **Submission to Declaration.** All of the Subject Land is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, and improved as a residential subdivision to be known as Upper DaySpring Subdivision. All of said Subject Land is and shall be subject to the covenants, conditions, restrictions, easements, uses, limitations, and obligations set forth herein and in the Plat, each and all of which are declared and agreed to be for the benefit of the Project and in furtherance of a plan for improvement of said property and division thereof into Lots. Further, each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit to the Lot Owners, their successors and assigns, and any person acquiring, leasing, or owning an interest in any Lot, their lessees, heirs, executors, administrators, devisees, successors and assigns.
- 2.2 **Subdivision into Lots.** Pursuant to the Plat, the Subject Land is divided into Lots as more particularly described on the Plat.
- 2.3 **Not a Cooperative or Condominium.** The creation of the Upper DaySpring Subdivision shall not constitute the creation of a cooperative or a Home Owners

Association.

**ARTICLE III  
IMPROVEMENTS**

- 3.1 **Description of Improvements.** The Project shall initially be constructed in one phase containing twenty three (23) Lots, as shown on the Plat. Each of the Lots shall, when improved, contain one single family dwelling. A second phase is also planned consisting of approximately twenty eight (28) Lots. Both shall be incorporated as part of this Declaration.
- 3.2 **Description and Legal Status of Lots.** The Plat shows the number of each Lot. All Lots shall be capable of being independently owned, encumbered, and conveyed.

**ARTICLE IV  
NATURE AND INCIDENTS OF OWNERSHIP**

- 4.1 **Ownership and Maintenance of Lots.** The Lot Owners shall repair and maintain all portions of their Lot and the Dwelling thereon. The Lot Owners shall have the responsibility to maintain, repair, replace and keep in a clean and sanitary condition, at the Lot Owner's expense, all portions of the Owner's Lot and Dwelling.
- 4.2 **Landscape Installation.** Within one year of occupancy of each and every home built in the Project, the front and side yards, and within two years of occupancy, the back yard, shall be planted in lawn or other acceptable landscaping so as not to negatively impact the aesthetics of the subdivision. "Acceptable landscaping" and "lawn" shall be interpreted by the then existing Design Committee which will reflect the majority view of the then-existing homeowners in the subdivision. Trees, lawns, shrubs, or other plantings shall be properly nurtured and maintained or replaced at the property owner's expense upon request of the Design Committee.
- 4.3 **Title.** Title to a Lot within the Project may be held or owned by any person or entity or any combination thereof and in any manner in which title to any other real property may be held or owned in the State of Utah, including without limitation, joint tenancy or tenancy in common.
- 4.4 **Prohibition Against Subdivision of Lot.** No Owner, by deed, plat or otherwise, shall subdivide or in any manner cause his Lot to be subdivided, partitioned or separated into physical tracts or parcels smaller than the whole Lot as shown on the Plat.
- 4.5 **Exclusive Use of Lot.** All Lots are reserved for the exclusive use of the Owner of that Lot, and such Owner's invitees and guests and such areas shall be maintained and repaired at the expense of the Lot Owner.
- 4.6 **Architectural Control.** No building shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure have been approved by the Design Committee as to quality of workmanship and materials, harmony of exterior appearance with existing structures and as to location with respect to topography and finish grade elevation. No fence or wall shall be erected,

placed or altered on any lot nearer to any street than the front building setback line unless similarly approved. The approval process is set forth in Article 5.

4.7 **Building Size and Construction.** All Dwellings on the Property shall comply with the following requirements:

- (a) No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single family dwelling not to exceed 35 feet in height (as measured from the front street elevation) and a second car garage which may be detached. Any detached garage shall be compatible in design, architecture and materials to the Dwelling and must be approved by the Design Committee before construction begins.
- (b) All Dwellings shall have a concrete or asphalt paved driveway (or other hard surface approved by the Design Committee) from the garage to the street allowing safe ingress and egress.
- (c) No structure of any kind shall be moved upon any Lot, nor shall any incomplete building be permitted to remain incomplete for a period in excess of one year from the date the building was started unless approved by the Design Committee.
- (d) The ground floor square footage area of the main structure, exclusive of garage and any one-story open porches, with or without a basement, shall not be less than 1,400 square feet for a one-story dwelling.
- (e) In a two-story home, which is two stories above the curb level, with or without a basement, the combined area of the ground story level and the story above ground-story level, exclusive of garage and any one-story open porches, shall total not less than 2,100 square feet. The main floor of a two story home, exclusive of garages and any open porches, shall not be less than 900 square feet.
- (f) In a multi-level home (i.e. three or four level split), the top two levels of the main structure, exclusive of garage and any one story open porches, shall not be less than 1,800 square feet.
- (g) **Building Exteriors.**
  - (i) No building shall be erected or placed on any Lot having an exterior building surface of less than 25% brick or stone. The remaining exterior surface shall be of bordered stucco, Concrete Board, Hardie Board or the equivalent as approved by the Design Committee. Exterior wood siding may be used with special permission from the Design Committee.
  - (ii) All exterior materials must be approved by the Design Committee prior to commencement of construction.
  - (iii) Aluminum or vinyl shall be allowed in soffit and fascia areas, and in other areas as approved by the Design Committee.

- (iv) Roofing materials shall be cedar shake, tile, or architectural grade asphalt shingle (25-30-year type), or as approved by the Design Committee. Roof pitch shall be 6/12 or greater.
  - (v) All structures shall have a minimum of 6" facias.
  - (h) All dwellings shall be stick built on site. No prefabricated or manufactured homes shall be permitted.
  - (i) The purpose of these covenants is to assure that all dwellings shall be of a quality of workmanship and materials substantially the same as or better than that which can be produced at the date that these covenants are recorded. The minimum square footage cited in this paragraph can be waived if prior written approval of the Design Committee is obtained and the Lot size and topography justifies the waiver, and all other covenants contained in this declaration are met.
  - (j) The Design Committee reserves the right to be "subjective" in approving or disapproving the construction of any home to be built in the subdivision in order to enhance and protect the value, desirability, and attractiveness of the lots. It is contemplated by this declaration, and agreed to by all Lot owners, that there will be variations and adjustments made by the Design Committee in approving or disapproving building plans. The process of approval by the Design Committee will be subjective, but not arbitrary, in approving building plans in substantial conformity with these Protective Covenants.
- 4.8 **Garage Requirement.** Each Dwelling shall have, at a minimum, a two car attached garage.
- 4.9 **Building Location.**
- (a) Any dwelling or improvements erected or placed on the Lot shall be situated within the side yard, set back and rear Lot line as required by city ordinances. Detached garages or other permitted accessory buildings may not encroach upon any easements.
  - (b) For the purpose of this covenant, eaves, steps, and open porches shall not be considered as a part of a building, provided, however, that this shall not be construed to permit any portion of any building on a Lot to encroach upon another Lot.
- 4.10 **Fences and Walls.** All Fences except for those listed below shall be maintained, repaired and replaced by the Owner of the Lot on which the fence is located. If a fence divides multiple Lots, the fence shall be maintained, repaired and replaced as a shared expense between the Owners whose Lots are divided by the fence. Lot Owners may build a fence on their Lot.

**ARTICLE V  
DESIGN COMMITTEE**

- 5.1 **Organization of the Design Committee.** There shall be a Design Committee consisting of not fewer than two (2) members. The members of the Design Committee shall be selected by the Declarant or assignee. Declarant shall have the right to appoint, remove and increase the number of the Design Committee.
- 5.2 **Actions Requiring Approval.** No fence, wall, Dwelling, accessory or addition to a Dwelling, or landscaping or other improvement of a Lot shall be constructed or performed, nor shall any alteration of any structure on any Lot, including a change in exterior color, be made, unless complete plans and specifications showing the nature, color, kind, shape, height, materials and location of the same shall first be submitted to and approved by the Design Committee.
- 5.3 **Standard of Design Review.** Before granting any approval of plans and specifications, the Design Committee shall determine to its reasonable satisfaction that such plans and specifications conform to all architectural standards contained in this Declaration.
- 5.4 **Approval Procedure.** Any plans and specifications submitted to the Design Committee shall be approved or disapproved within thirty (30) days after receipt by the Design Committee. If the Design Committee fails to take action within such period, the plans and specifications shall be deemed to be approved as submitted.
- 5.5 **Variance Procedure.** If plans and specifications submitted to the Design Committee are disapproved because such plans and specifications are not in conformity with applicable architectural standards, the party or parties making such submission may submit a request for variance to the Design Committee, which shall make a written recommendation of approval or disapproval of the requested variance to the Declarant. The Declarant shall approve or disapprove the request for variance in writing. If the Declarant fails to approve or disapprove a request for variance within sixty (60) days after such request is submitted to the Design Committee, such request shall be deemed to be denied.
- 5.6 **Non-waiver.** The approval by the Design Committee of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the Design Committee to disapprove any similar plans and specifications.
- 5.7 **Completion of Construction.** Once begun, any improvements, construction, landscaping or alterations approved by the Design Committee shall be diligently prosecuted to completion in strict accordance with the plans and specifications approved by the Design Committee.
- 5.8 **Exemption of Declarant.** The provisions of this Article shall not apply to any improvement, construction, landscaping or alteration made or performed by Declarant on any Lot or portions or expanded portions of the Project at any time Declarant is the owner of a Lot. One of the purposes for exempting Declarant from the provisions of this Article is to permit Declarant the flexibility to adjust architectural styles and schemes in the event the Declarant determines that changes are needed to reflect changes in building standards and techniques and architectural styles.
- 5.9 **Disclaimer of Liability.** Neither the Declarant, the Design Committee, nor any member thereof acting in good faith shall be liable to any Owner for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or rejection of, or the failure



to approve or reject, any plans, drawings and specifications, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, (c) the development or manner of development of any of the Property, or (d) any engineering or other defect in approved plans and specifications.

**ARTICLE VI  
EASEMENTS**

- 6.1 **Utility Easement.** Easements for installation and maintenance of utilities and drainage facilities are reserved as shown on the recorded Plat. Within these easements, no structure, planting or other material 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 the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the lot, except for those improvements for which a public authority or utility company is responsible. No structure shall be constructed within twelve (12) feet vertically or horizontally of any major power conductor (this does not apply to service lines).

**ARTICLE VII  
RESTRICTIONS ON USE**

- 7.1 **Residential Uses Only.** Each Lot contained in the Project is intended to be used for single family residential housing and is restricted to such use. No Lot or Dwelling shall be used for business or commercial activity except that an Owner may operate an office or business out of their Dwelling provided that no business activity involving clients coming to the home on a regular basis (more than once a day) may take place nor shall the deliveries to the Dwelling more than twice per day.

Nothing herein shall be deemed to prevent (a) Declarant or its duly authorized agent from using any Lots owned by Declarant as a "sales" office, or (b) any Owner or his duly authorized agent from freely renting or leasing his Lot from time to time.

- 7.2 **No Noxious or Offensive Activity.** No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood. All roof mounted heating and cooling equipment must be set back to the back side of the roof out of view from the street. All TV antennas are to be placed in the attic out of view. Satellite dishes should be hidden from view from the street.
- 7.3 **Temporary Structures.** No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other out buildings shall be used on any lot at any time as a residence either temporarily or permanently.

- 7.4 **Signs.** No sign of any kind shall be displayed to the public view on any lot except signs used by a builder to advertise the property during the construction and sales period, or signs used by a property owner advertising the property for sale.
- 7.5 **Restriction on Recreational Vehicles.** No boats, trailers, recreational vehicles, or inoperable vehicles shall be parked or stored on the driveway or in any area in front of any Dwelling for more than 72 hours in any 30 day period. If such vehicles are stored on a Lot, they shall be stored in a garage or behind the front of the Dwelling. No automobile, recreation or commercial vehicle, other motorized vehicle, or any portion thereof shall be dismantled, rebuilt, serviced, repaired or repainted on or in the driveway of a Lot or in front of any Dwelling or Lot unless performed within a completely enclosed garage or other structure located on the Lot which screens the sight and sound of such activity from the public streets and neighboring Lots.
- 7.6 **Vehicles.** No vehicles of any kind, including, but not limited to, passenger automobiles, trucks, buses, tractors, trailers, camping vehicles, boats, boat trailers, snowmobiles, snowmobile trailers, mobile homes, two and three wheel motor vehicles (hereinafter collectively referred to as "vehicles"), are to be parked or stored in the front or side street of the Lots, with the exception that passenger automobiles and light duty trucks may be parked in the front or side street provided they are in running condition, properly licensed, being regularly used. All vehicles that are inoperable shall not be permitted to accumulate upon any street or Lot. No vehicle shall be dismantled, rebuilt, serviced, or repaired on or in front of any Lot unless performed within a completely enclosed garage or other structure located on the Lot which screens the site and sound of such activity from the public streets and neighboring Lots.
- 7.7 **Construction Period Exemption.** During the course of actual construction of any structures or improvements which are permitted to be located on the Project, the provisions, covenants, conditions, and restrictions contained in this Declaration shall be deemed waived to the extent necessary or convenient to permit such construction; provided, however, that during the course of such construction, nothing shall be done which would result in a violation of any of said provisions, covenants, conditions, or restrictions following completion of such construction.
- 7.8 **Garbage and Refuse Disposal.** No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. Each Lot and its abutting street are to be kept free of trash, weeds and other refuse by the Lot Owner. No unsightly materials or other objects are to be stored on any Lot in view of the general public.
- 7.9 **Sight Distance at Intersection.** No fence, wall, hedge, or shrub planting which obstructs sight lines at elevations between 2 and 6 feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points 25 feet from the intersection of the street lines or in case of a rounded property corner from the intersection of the street property lines extended. The same sight-line limitations shall apply on a driveway or alley pavement. No tree shall be permitted to remain within such distance of such intersections unless the foliage line is maintained at sufficient height to prevent obstruction of such sight lines.

- 7.10 **Oil and Mining Operations.** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or gas shall be erected, maintained, or permitted upon any lot.
- 7.11 **Slope and Drainage Control.** No structure, planting or other material shall be placed or permitted to remain or other activities undertaken which may damage or interfere with established slope 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 drainage channels. The slope control areas of each Lot and all improvements in them shall be maintained continuously by the owner of the Lot, except for those improvements for which a public authority or utility company is responsible.
- 7.12 **Damage.** Any damage inflicted on existing improvements such as curbs, gutters, streets, concrete sidewalks and such, by the purchaser or owner and/or their agents or builder of any particular lot in this subdivision must be repaired as soon as possible after such damage is discovered, and the expense of such repair shall be borne by the purchaser or owner.

#### ARTICLE VIII DECLARANT'S SALES PROGRAM

- 8.1 **Declarant's Right to Promote and Sell the Project.** Notwithstanding any other provisions of this Declaration, until Declarant ceases to be an Owner ("Occurrence"), Declarant, its successor or assigns shall have the following rights in furtherance of any sales, promotional or other activities designed to accomplish or facilitate the sale of Lots owned by Declarant:
- (a) **Sales Offices and Model Lots.** Declarant, its successors and assigns, shall have the right to maintain sales offices, including a trailer, and model homes on Lots. Sales offices may be located on any Lot (at any location) owned by Declarant. Declarant shall have the right to maintain any number of model homes it may desire using the Lots Declarant owns.
  - (b) **Promotional Devices.** Declarant, its successors and assigns, shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners and similar devices at any place or Lots owned by Declarant, but any such devices shall be of sizes and in locations as are reasonable and customary and according to municipal code.

#### ARTICLE IX PROJECT EXPANSION

- 9.1 **Reservation of Option to Expand.** Declarant hereby reserves the option to expand the Project to add Additional Land to the Project, or to add a New Development (as hereinafter defined). This option to expand may be exercised from time to time, at different times and in any order, without limitation, provided however, the option shall expire thirty (30) years from the effective date of the Declaration unless sooner terminated by Declarant's recorded waiver of such option, there being no other circumstances which will cause the option to expire prior to said thirty (30) years. Such right may be exercised without first obtaining the consent or vote of any Lot Owners and shall be limited only as herein specifically provided. Lots may be created from the Additional Land or from any of real property adjacent to the Project. The total number of Lots in the Project, as expanded, or in a New Development, shall not exceed the number permitted by local ordinance, although no representation is made as to the total number of Lots or units that may be part of the Project in the future. It is not known if any buildings, homes or dwellings constructed on the Additional Land shall be consistent with and conform in size and design to those of the initial phase of the Project, so no representation is made that this will be the case.
- 9.2 **Expansion of Definitions.** In the event of such expansion of the Project the definitions used in this Declaration automatically shall be expanded to encompass and refer to the Project as expanded. (Example: "Property" shall mean the real property initially submitted under the Declaration, plus any additional property added to the Project by a supplemental declaration or by supplemental declarations, and reference to this Declaration shall mean this Declaration as so supplemented.

**ARTICLE X  
GENERAL PROVISIONS**

- 10.1 **Intent and Purpose.** The provisions of this Declaration and any supplemental or amended Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a residential project. Failure to enforce any provision, restriction, covenant, or condition in this Declaration, or in any supplemental or amended Declaration, shall not operate as a waiver of any such provision, restriction, covenant, or condition or of any other provisions, restrictions, covenants, or conditions.
- 10.2 **Effective Date.** This Declaration and any amendments thereto shall take effect upon recording.
- 10.3 **West Haven City as Third Party Beneficiary.** West Haven City is a third party beneficiary to all provisions of this Declaration and shall have the right, but not the obligation, to enforce all provisions of this Declaration at its discretion.

EXECUTED BY DECLARANT on the date of notarization appearing below:

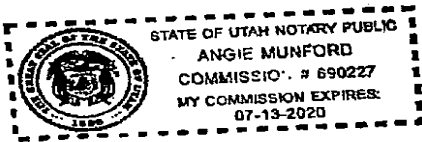
Evergreen Holding, LLC

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*Tyler Wall*  
By \_\_\_\_\_  
Its: Manager

STATE OF UTAH            )  
                                      :SS.  
COUNTY OF DAVIS        )

On this 16 day of March, 2017 personally appeared before me tyler wall who being by me duly sworn, did say that he is manager of Evergreen Holding, LLC, and that the within and foregoing instrument was signed in behalf of said limited liability company and he duly acknowledged to me he executed the same.



*Angie Munford*  
Notary Public

# EXHIBIT "A"

## LEGAL DESCRIPTION

All of lots 101 through 123 of  
UPPER Dayspring Subdivision Phase I.  
Parcel #s : 08-585-0001 through 0023