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Ivory Development, LLC  
978 Woodoak Ln.  
Salt Lake City, UT 84117

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RICHARD T. MAUGHAN  
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# DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR *D*

# STONEBROOK FARMS

IN

FARMINGTON, UTAH

*07-338-0001-->0022*

**THIS DECLARATION INCLUDES IMPORTANT SPECIAL DECLARANT RIGHTS IN SECTION 20, AND IMPORTANT CONFLICT AND LITIGATION AVOIDANCE AND RESOLUTION PROVISIONS, MEDIATION AND ARBITRATION REQUIREMENTS, AND WARRANTY LIMITATIONS AND DISCLAIMERS IN SECTION 21.**

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR

STONEBROOK FARMS

RECITALS

- A. Ivory Development, LLC ("Ivory") is the owner and developer of certain real property located in Farmington City, Utah more particularly described on Exhibit A hereto (the "Property"). The Property has been or will be developed as a residential development.
- B. The development of the Property and construction of all improvements thereon has been or shall be performed in accordance with the requirements of Farmington City for the development of the Stonebrook Farms development project.
- C. Ivory, as developer and Declarant, hereby establishes and adopts this Declaration of Covenants, Conditions and Restrictions for Stonebrook Farms development project, effective as of the date this instrument is recorded with the Office of Recorder for Davis County, Utah, to establish standards and procedures for the development, expansion, administration, maintenance, and preservation of the Stonebrook Farms development project as a residential community.
- D. The Project shall include the formation of a community association, as a Utah nonprofit corporation, to operate and maintain common area and to administer and enforce the Governing Documents consistent with the Utah Community Association Act and the Utah Revised Nonprofit Corporation Act. The Terms and Conditions herein are established for the mutual benefit and burden of the Association, present and future Owners, Occupants, Lenders and others acquiring any interest in the Project.
- E. The Property is subject to the described easements and nonexclusive use rights and licenses established in this Declaration.
- F. This Declaration is intended to and shall run with the land and shall be binding upon the Declarant, the Owners and their respective successors and assigns, and any other Person that now, or hereafter, has any legal, equitable, or beneficial interest in any portion of the Project. By acceptance of a deed or other instrument of conveyance of an interest, an Owner joins in and accepts the intent, purpose, and objectives of the Declaration and agrees to be bound by it, and acknowledges the benefits received from its existence and from the Declarant's development of the Project and accepts the burdens and responsibilities that accompany these benefits.
- G. Capitalized terms in this Declaration are defined in Article 1 herein, or in other sections of this Declaration.

**NOW, THEREFORE**, for the reasons recited above and subject to the Terms and Conditions set forth below, the Declarant hereby adopts this Declaration.

## ARTICLE 1 DEFINITIONS

As used herein, unless the context otherwise requires:

- 1.1 "Act" shall mean and refer to the Community Association Act codified in the Utah Code beginning at § 57-8a-101.
- 1.2 "Allocated Interest" shall mean and refer to the voting interests in the Association and liability for the Common Expenses which are allocated equally among the Lots, subject to provisions herein. Each Lot is assigned one equal vote, subject to the limitations on voting set forth in this Declaration and other Governing Documents.
- 1.3 "Area of Common Responsibility" shall mean and refer to Common Area, the Wetland, and any other area which the Association is responsible to maintain, repair, replace, administer and regulate.
- 1.4 "Area of Personal Responsibility" shall mean and refer to the area which the Owner is responsible to maintain, repair, and replace, administer and regulate.
- 1.5 "Articles" shall mean and refer to the Articles of Incorporation or the chartering document of any other legal entity, if any shall be formed for the Association.
- 1.6 "Assessment" shall mean and refer to any monetary charge imposed or levied on an Owner by the Association as provided for in this Declaration.
- 1.7 "Association" shall mean and refer to the Stonebrook Farms Homeowners Association, the membership of which shall include and be comprised of each Owner in the Project. The Association shall be incorporated as a Utah nonprofit corporation. Notwithstanding the foregoing, if the Owners are ever organized as another type of entity or if the Owners act as a group without legal organization, "Association" as used in this Declaration shall refer to that entity or group.
- 1.8 "Bylaws" shall mean and refer to the Bylaws of the Association attached as Exhibit B, and all valid amendments and supplements thereto, provided, however, that no amendment to the Bylaws shall be effective until it is recorded.
- 1.9 "City" shall mean and refer to Farmington City, a political subdivision of the State of Utah, located in Davis County, Utah.
- 1.10 "Common Area" shall mean and refer to the real property identified on the Plat as "Parcels A" to be owned and administered by the Association.
- 1.11 "Common Expenses" shall mean and refer to the actual and estimated costs for: (a) administration, maintenance, management, repair and replacement of the Common Area and Areas of Common Responsibility; (b) management and administration of the Association, including, but not limited to, compensation paid by the Association to managers, accountants, attorneys, consultants, and employees; (c) insurance and bonds required or allowed by this Declaration; (d) the establishment of reserves; (e) other miscellaneous charges incurred by the Association as provided for or allowed in the Act or the Governing Documents; and (f) any other expenses of the Association arising from the operation of the Association and not otherwise defined or precluded by the Governing Documents or any applicable law.

- 1.12 "Community-Wide Standards" shall mean and refer to the standard of use, conduct, architecture, landscaping, and aesthetic matters generally prevailing in the Project or initially established by the Declarant consistent with the requirements of the City and/or standards described in this Declaration, the Rules and Design Guidelines. The Community-Wide Standards may or may not be set forth in writing.
- 1.13 "Declarant" shall mean and refer to Ivory Development, LLC and its affiliates, successors, and assigns.
- 1.14 "Declarant Control Period" shall mean and refer to the period of time during which the Declarant owns any Lot within the Project.
- 1.15 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions for Stonebrook Farms all attached exhibits other than any Bylaws, and all valid supplements and/or amendments to this Declaration.
- 1.16 "Declaration of Restrictions" shall mean and refer to the Declaration of Restrictions recorded by the Declarant as required by the United States Army Corps of Engineers for protection of the Wetland.
- 1.17 "Design Guidelines" shall mean and refer to the Stonebrook Farms Design Guide established for the Project by the City, the Declarant, or the Association, and any valid amendments thereto. Design Guidelines may be included in the Rules.
- 1.18 "Governing Documents" shall mean and refer to this Declaration, the Plat, the Declaration of Restrictions, the Articles, the Bylaws, the Rules and any other written instrument by which the Declarant or Association may exercise power or manage, maintain, or otherwise affect the Project.
- 1.19 "Home" shall mean and refer to any detached single-family dwelling constructed on a Lot. More than one Home is referred to herein as "Homes."
- 1.20 "Lender" shall mean and refer to a holder of a mortgage or deed of trust on a Lot.
- 1.21 "Lot" shall mean and refer to an individual lot created on the Plat and shall include the Home, if any, constructed thereon. The term "Lot" does not include any Common Area or land or improvements dedicated to the City or the public. More than one Lot is referred to herein as "Lots."
- 1.22 "Management Committee" shall mean and refer to the body with primary authority to manage the affairs of the Association and also commonly referred to as a "Board of Directors" or the "Board."
- 1.23 "Manager" shall mean and refer to the Person or Persons engaged by the Management Committee to manage the Project.
- 1.24 "Occupant" shall mean and refer to a Person or Persons, other than an Owner, in possession of, using, or living in a Home within the Project, including, without limitation, family members, tenants, and invitees of an Owner or an Occupant.
- 1.25 "Owner" shall mean and refer to the Person or Persons who are vested with record title to a Lot, and whose interest in the Lot is held (in whole or in part) in fee simple, according to the records of the Office of Recorder for Davis County, Utah. The term "Owner" shall not include a mortgagee or trustee or beneficiary under a deed of trust unless and until

such party acquires title to a Lot pursuant to foreclosure or any arrangement or proceeding in lieu thereof. The term "Owner" also shall not include the Declarant. More than one Owner is referred to herein as "Owners."

- 1.26 "Person" shall mean and refer to a natural person, corporation, estate, limited liability company, partnership, trustee, association, governmental subdivision or agency, or any other legal entity. More than one Person is referred to herein as "Persons."
- 1.27 "Plat" shall mean and refer to the record of survey map or maps for the Project and any portions thereof, recorded with the Office of Recorder for Davis County, Utah, and all recorded amendments and supplements thereto.
- 1.28 "Project" shall mean and refer to the Stonebrook Farms development project and all structures and improvements including the Homes and the Common Area.
- 1.29 "Property" as previously defined herein, shall include all easements and rights appurtenant thereto.
- 1.30 "Rules" shall mean and refer to the rules and regulations adopted by the Association.
- 1.31 "Single-Family" shall mean and refer to any *one* of the following: (a) a single person, (b) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, and any ward under legal guardianship, and up to two (2) additional individuals as a caretaker or as domestic help, or (c) a group of not more than three unrelated persons who maintain a common household to be distinguished from a group occupying a boarding house, club, fraternity or hotel.
- 1.32 "Street Tree Plan" shall mean and refer to the Street Tree Plan required by the City attached hereto as Exhibit C.
- 1.33 "Subdivision" shall mean and refer to the Project, including the Lots, Common Area, other property within the Project as shown on the Plat, covering the entire Property and any future phase and additional land developed as part of Stonebrook Farms.
- 1.34 "Subdivision Improvements" shall mean and refer to all improvements that have or will be constructed or installed within the Subdivision not part of any Lot that are necessary to provide public road access and/or utility service to the Lots and/or the Common Area, and includes such other and further construction or installations required to comply with any requirement of the City or to add value to the Project.
- 1.35 "Terms and Conditions" shall mean and refer to any one or all of the terms, covenants, rights, obligations, and restrictions set forth in the Governing Documents.
- 1.36 "Wetland" shall mean and refer to the approximately .52 acres of land within the Project identified by the United States Army Corps of Engineers as a protected area.

## ARTICLE 2 THE PROJECT

- 2.1 Nature of the Project. As reflected on the Plat, the Project includes twenty-one (21) Lots. The Project also includes Wetland subject to federal law. To preserve and protect the Wetland, the Project is subject to that certain Declaration of Restrictions recorded with the Office of Recorder for Davis County, Utah on \_\_\_\_\_, 2018 as Entry No. The land identified on the Plat as "Parcel A" has been or shall be conveyed to the Association as Common Area. The Project is not a cooperative and is not a condominium.
- 2.2 Project Name. The Project is named "Stonebrook Farms." Notwithstanding, the name commonly used by the Association or others for the Project may be different than the name identified in this Declaration and/or on the Plat.
- 2.3 Modifying or Changing the Name of the Project. The name of the Project may be modified or changed pursuant to a lawful amendment to this Declaration and in accordance with applicable land use management codes.
- 2.4 Registered Agent. The registered agent of the Association shall be as provided for in entity filings of the Association.
- 2.5 Binding Effect of Governing Documents. The Declarant hereby declares and Association hereby confirm that the Property is part of the Project and that the Project and the Lots shall be held, transferred, mortgaged, encumbered, occupied, used, and improved subject to the Terms and Conditions herein which shall constitute equitable servitudes, covenants, and conditions and shall be binding upon and inure to the benefit of the Association, the Declarant, and each Owner, including his/her/their heirs, executors, administrators, personal representatives, successors and assigns. By acquiring any interest in a Lot such Owner consents to, and agrees to be bound by, the Term and Condition in the Governing Documents.

## ARTICLE 3 DESCRIPTION OF THE LOTS AND ALLOCATED INTERESTS

- 3.1 The Lot.
  - (a) The distinct Lot number that identifies the Lot on the Plat may or may not be consistent with the mailing address of the Lot.
  - (b) Subject to further specification on the Plat, each Lot generally consists of all structures on or within the boundary of the Lot, including, but not limited to all parts of the Home.
  - (c) All pipes, conduits, wires, water or sewer lines, other private or public utility lines, and any other fixtures located within the designated vertical boundaries of a Lot or located beyond the vertical boundaries of the Lot but designated and designed to serve only that Lot and any Home thereon, shall be part of the Lot.
  - (d) Allocated Interest of Each Lot in the Votes of the Association. Each Lot shall have an equal Allocated Interest in the Association. Any difference in square footage, location, size, value, or other aspect of any Lot shall not be a reason to alter or change any Allocated Interest. Each Owner shall be entitled to vote

his/her/their/ Allocated Interest for all matters related to the Association that Owners are permitted or required to vote or approve, subject to the rights reserved to the Declarant during the Declarant Control Period as set forth in Article 20 herein.

- 3.2 Plat. The Plat and all dimensions, descriptions, and identification of boundaries therein shall be binding on the Project and the Association. Consistent with the Act, the Plat and the Declaration shall control equally and interpreted, where possible, to harmonize and give effect to both. Notwithstanding, in the event of a conflict between the Plat and this Declaration, the more specific provision shall control.

#### **ARTICLE 4 ORGANIZATION AND GOVERNANCE OF THE ASSOCIATION**

- 4.1 Legal Organization. The Association shall serve as the organizational body for all Owners. The Association shall be organized as a non-profit corporation. In the organization, reorganization, or amendment of any documents related to the legal organization of the Association, the terms in all such documents shall, to the extent possible under the applicable law, be consistent with the terms in the Declaration and the Bylaws attached hereto or any lawful amendment thereto. In any reorganization or reinstatement of the entity after termination and dissolution as provided herein, the Association shall adopt, to the extent possible and subject to any then-existing legal requirements, documents consistent with the terms of the Declaration and Bylaws.
- 4.2 Membership. Membership in the Association at all times shall be comprised exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner has an ownership interest in a Lot and such membership shall automatically terminate when the Owner ceases to have an ownership interest in a Lot. Upon the transfer of an ownership interest in a Lot, the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If title to a Lot is held by more than one Person, the membership appurtenant to that Lot shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Lot is held.
- 4.3 Availability of Documents.
- (a) Except as otherwise permitted by law, the Association shall make available to the Owners copies of the Governing Documents and the corporate records, meeting minutes, books, and financial statements related to the operations of the Association consistent with the requirements of the Act and §§ 16-6a-1601 through 1603, 16-6a-1605, and 16-6a-1606 of the Utah Revised Nonprofit Corporation Act.
    - (i) The term "available" as used in Section 4.4(a) above shall mean available for inspection or copying at the Association's principal place of business or the offices of the Manager not later than five (5) business days after receipt of a proper written request, during normal business hours and under other reasonable conditions, except that annual financial statements requested by an Owner may be provided to an Owner within fifteen (15) days of receipt of such request.

- (ii) Notwithstanding anything to the contrary in this Section 4.3, the Association may require that the Owner strictly comply with any and all statutory provisions or other legal requirements applicable to providing this information before providing it.
  - (iii) If an Owner elects to have the Association produce copies of requested documents or records, the Association may assess the Owner reasonable costs consistent with § 57-8a-227(4)(b)(ii) of the Act.
  - (iv) Notwithstanding anything to the contrary in this Section 4.3, documents and records accessible on or through any webpage or website maintained by or for the Association shall satisfy the Association's obligations to make such documents available.
- (b) Notwithstanding anything to the contrary in this Section 4.3, the Management Committee, in its discretion, may adopt a document retention policy not inconsistent with the provisions in Utah Revised Nonprofit Corporation Act, Utah Code 16-6a-101 *et seq.*
  - (c) Subject to any legal requirements otherwise, the Association shall make available to Lenders and insurers of any Lender, copies of the Governing Documents and copies of corporate records, meeting minutes, books, and financial statements related to the operations of the Association within thirty (30) days of receipt of a written request.
  - (d) Notwithstanding anything to the contrary in this Section 4.3, the Association may redact from any document produced for inspection or copying any information subject to attorney-client privilege and any other information that the Management Committee, in good faith, determines would reveal sensitive personal or financial information of an Owner or agent of the Association, including, without limitation, bank account numbers or social security numbers.
- 4.4 Management Committee. The governing body of the Association shall be the Management Committee selected pursuant to the Bylaws, subject to Article 20 herein. The Management Committee shall consist of three (3) members. Except as otherwise provided in this Declaration, the Articles, or the Bylaws, the Management Committee, in all instances, shall act on behalf of the Association. Any reference to an act, right, or obligation of the Association in the Governing Documents may only be exerted or complied with through an action of the Management Committee. Except as may be specifically provided in the Declaration, the Articles, or the Bylaws, or by applicable law, no Owner or group of Owners other than the Management Committee may direct the actions of the Association.
- 4.5 Management Committee Members.
- (a) Qualification. Except as provided in Section 20.2 herein, to serve on the Management Committee, a Person must be an Owner, current on payment of Assessments, and at least eighteen years old. If an Owner is an entity (e.g., a corporation, estate, limited liability company, partnership, or trust), an officer, principal, shareholder, partner, member, manager, trustee, or beneficiary of such entity, as the case may be, may be a member of the Management Committee.



Additional requirements may be set forth in the Bylaws.

- (b) Reasonable Ongoing Requirements for Management Committee Members. The Bylaws may place reasonable obligations and requirements on existing Management Committee members to retain their membership on the Management Committee, such as a requirement that a Management Committee member attend a specified number of meetings. The Bylaws may further provide for a procedure for removal of any Management Committee member who fails to comply with the reasonable requirements, which may include some action of the remaining Management Committee members. Any Bylaw requirements adopted pursuant to this section shall not be applicable retroactively.

4.6 Limitation on Authority of Owners, Management Committee Members, Officers, and the Management Committee.

- (a) Except as provided herein or in the Bylaws, neither any individual Management Committee member nor any individual Owner shall have authority to or is authorized to act on behalf of the Association to:
  - (i) amend or terminate any Governing Document;
  - (ii) elect or remove members of the Management Committee;
  - (iii) establish or change the qualifications, powers and duties, requirements, or terms of Management Committee members or the Management Committee; or
  - (iv) authorize or agree to any deviation or exception from the Terms and Conditions.

4.7 No Estoppel or Reliance on Actions or Authorizations Contrary to Governing Documents. No one may rely upon any authorization (from the Management Committee or anyone else) contrary to the terms of the Governing Documents regardless of the circumstances under which it is given, and no claim or defense of estoppel or waiver or similar equitable or legal claim or defense may be raised by anyone related to any alleged reliance. It is the responsibility of anyone interacting with, visiting, occupying, or purchasing a Lot in the Project to verify that anything that the Association does, does not do, or authorizes related to the Project or the Association is in compliance with the terms of the Governing Documents.

4.8 Registration with the State. In compliance with Utah Code Ann. § 57-8a-105, the Association shall be registered with the Utah Department of Commerce and shall update its registration to keep any required information current as required under the Act.

## ARTICLE 5

### GENERAL RIGHTS AND RESPONSIBILITIES OF THE ASSOCIATION

- 5.1 Rights and Responsibilities of the Association. The Association shall have the rights and responsibilities set forth in this Article 5 and elsewhere in the Declaration in addition to any others set forth in the Articles, the Bylaws, the Rules or provided by law.
- 5.2 Association Obligations for Area of Common Responsibility. The Association shall make provisions for completing all maintenance, repair, and replacement requirements

and obligations of the Association for the Area of Common Responsibility, including all of the following:

- (a) Maintenance of the park strip area within the Project along Lund Lane;
- (b) Snow removal for the sidewalk area within the Project along Lund Lane;
- (c) Snow removal for the portion of 200 East abutting the Project and the adjacent sidewalk area;
- (d) Maintenance of Project walls or fencing, if any, installed by the Declarant along Lund Lane and/or 200 East, excluding, however, any City monument and signage on Parcel B, which has been dedicated to City on the Plat;
- (e) Maintenance of Parcel A in accordance with the detailed long-term management plan required by the U.S. Army Corps of Engineers as outlined in the January 19, 2019 letter from Declarant, including the following:
  - (i) Inspection for and removal of trash and debris;
  - (ii) Inspection for and removal of noxious weeds;
  - (iii) Inspection for and trimming of overgrown brush;
  - (iv) Inspection for and removal of downed, diseased, or dead tree limbs;
  - (v) Inspection for and remediation of vandalism, trespass, and encroachment;
  - (vi) Maintenance of the detention basin constructed within the drainage easement as shown on Parcel A;
  - (vii) Maintenance of Wetland fencing and signage.
- (f) Maintain storm and surface water improvements constructed for the Project in accordance with the Long-Term Stormwater Management Agreement between the Association and the City dated December 18, 2018
- (g) Such other and further acts that the Management Committee deems necessary to preserve and protect the Common Area, the Wetland, and the Project and to maintain the Area of Common Responsibility, in accordance with the general purposes specified in this Declaration and the Community-Wide Standards.

5.3 Paying Expenses. The Association shall provide for the payment of all Association expenses.

5.4 Setting and Collecting Assessments. The Association shall establish, collect, and account for Assessments as necessary to operate the Project consistent with the requirements of the Governing Documents.

5.5 Adopting and Enforcing Rules. The Association may adopt Rules for the regulation and operation of the Project. If Rules are adopted, they shall be consistently and uniformly enforced. The Rules may address any issues including those addressed in any other Governing Documents. The Rules may supplement, clarify, and add detail to issues or items addressed in the other Governing Documents so long as the Rules do not contradict the same. The Management Committee's determination as to whether a particular activity being conducted or to be conducted violates or will violate the Rules shall be conclusive,

subject to a judicial determination, if any is timely sought. The standard for adoption of Rules is one of reasonableness. A Rule must be reasonable in light of the circumstances pertaining to the situation or issue addressed by the Rule.

- 5.6 Hiring Managers and Delegating Responsibilities. The Association may hire a Manager to assist the Management Committee in the management and operation of the Project and may delegate its powers and obligations in the Governing Documents to the manager, employees, or other agents as it deems appropriate; provided, however, that only the Management Committee shall have the right to approve Association budgets, and regular and special Assessments, and to provide a hearing requested to dispute a fine. Any powers and duties delegated to any Manager or other Person may be revoked by the Management Committee at any time, with or without cause. The Management Committee shall have no authority to enter into any management agreement or contract inconsistent with the terms of the Governing Documents or that provides for any termination fee or requires termination only for cause.
- 5.7 Enforcement Rights. In addition to any other remedies allowed or provided in the Governing Documents for any violation of the Governing Documents, the Association may: (a) impose fines; (b) collect rents directly from tenants if Owners fail to pay Assessments; (c) suspend voting rights; and (d) take any other action or seek any other remedy allowed by the Act or other applicable Utah law.
- 5.8 Discretion in Enforcement.
- (a) The Management Committee shall use its business judgment to determine whether to exercise the Association's powers and authority granted herein and/or under the Act, including whether to (i) impose sanctions, (ii) pursue legal action for a violation of the Governing Documents, (iii) compromise a claim made by or against the Management Committee or the Association; and (iv) pursue a claim for an unpaid Assessment.
  - (b) Consistent with Subsection (a) of this Section 5.8, the Association may not be required to take enforcement action if, after fair review and acting in good faith and without conflict of interest, the Committee determines that under the particular circumstances: (i) the Association's legal position does not justify taking any or further enforcement action; (ii) the covenant, restriction, or rule in the Governing Documents is likely to be construed as inconsistent with current law; (iii) a minor or technical violation has or may have occurred and the violation is not material as to a reasonable individual or does not justify expending the Association's resources; or (iv) it is otherwise not in the Association's best interests to pursue an enforcement action, based upon hardship, expense, or other reasonable criteria.
  - (c) Subject to Subsection (d) of this Section 5.8, if the Management Committee decides under Subsection (b) above to forego enforcement, the Association is not prevented from later taking enforcement action.
  - (d) The Management Committee shall not be arbitrary, capricious, or act against public policy in taking or not taking enforcement action.

- 5.9 Reserves. In the event that the expenses for administering and maintaining the Common Area and Area of Common Responsibility cannot reasonably be covered in the Association's annual budget, the Association may establish and maintain a reserve fund consistent with § 57-8a-211(2) of the Act.
- 5.10 Preventing Conflicts with Service Providers and Vendors. Subject to the exemptions in Section 20.13 herein, the Association shall not allow any paid services or materials reasonably valued at more than \$2,500 to be performed or provided for the Association by: (a) any Management Committee member; (b) any relative of any Management Committee member, Manager, or of any officer, employee, or owner of the Manager; or (c) any business or entity in which any Management Committee member, Manager, or employee, officer, or owner of any Manager or any relative of the same is employed or has more than a 10% ownership or beneficial interest without prior written disclosure of the relationship to the Management Committee and a written agreement executed by the parties. For the purpose of this Section 5.10, a relative is any natural individual known to be related by blood or marriage. The provision of services and materials for purpose of this section shall include, but is not limited to, managers, insurance brokers, investment or financial advisors, accountants, landscapers, and contractors.
- 5.11 Establishing Hearing Procedures. The Management Committee shall have the authority to create a reasonable hearing process applicable in case the Association shall take adverse action related to any particular Owner or group of Owners or in case a hearing process is required by law. The Management Committee shall not be under any obligation to offer a hearing process, except as required by law or by the Governing Documents, and in any such process, shall have the authority to designate the procedure related to any such hearing and to make any and all final determinations of issues subject to the hearing process. The Management Committee may establish the hearing process on an as-needed basis for particular matters as they arise or may set forth a process in the Rules applicable generally to such matters that it designates. Any such hearing process shall provide, at a minimum for: (a) at least two weeks' notice of the hearing to the Owners, and (b) a reasonable time period under the circumstances for the Owner(s) to present his/her/their own testimony, the testimony of others, argument, authority, evidence, and other information the Owner deems relevant to the disputed issue.
- 5.12 Annual Meeting. The Association shall arrange for and conduct an annual meeting of the Owners as provided for in the Bylaws and shall arrange for and conduct such other meetings of the Association as shall be properly requested pursuant to the Governing Documents or the law.
- 5.13 Payoff Information Fees. The Association is specifically authorized to establish a fee to provide payoff information related to the transfer, refinance, or closing of a Lot. The payoff fee shall be fifty dollars (\$50.00); however, the Management Committee may increase or decrease the fee amount if the new amount is identified in the Rules and is consistent with Utah law.
- 5.14 Reinvestment Fee Covenant upon Sale or Transfer of Lot. The Management Committee may require the transferor/seller or transferee/buyer to pay a fee related to the transfer of a Lot (a "Reinvestment Fee") as provided for in Utah Code Ann. § 57-1-46 in an amount to be determined by the Management Committee and allowed by law. For purposes of

this Section 5.14, a transfer is any change in the ownership of the Lot as reflected in the Office of Recorder for Davis County, Utah, regardless of whether it is pursuant to the a sale of the Lot or not but shall not include any transfer between the Declarant and any affiliated entity. The amount shall be set forth by the Management Committee in the recorded Notice of Reinvestment Fee Covenant. The value of the Lot for purposes of this Section 5.14 shall include the Home, if any, and any other improvements constructed on the Lot and shall be the higher of: (a) the value of the Lot as determined by the property tax assessor on the date of the transfer of title; (b) the purchase price paid for the Lot, related to the transfer; or (c) the value of the Lot on the date of the transfer of title as determined in an appraisal that may be obtained (in the discretion of the Management Committee) and paid for by the Association using an appraiser selected by the transferee of the property from a list of five appraisers selected by the Association. This reinvestment fee covenant may not be enforced against: (i) an involuntary transfer; (ii) a transfer that results from a court order; (iii) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity; (iv) a transfer or change of interest due to death, whether provided in a will, trust, or decree of distribution; or (v) the transfer of burdened property by a financial institution, except to the extent that the reinvestment fee covenant requires the payment of a common interest Association's costs directly related to the transfer of the burdened property, not to exceed \$250 or such other amount as may be established by law. The Association shall have authority to record any notice required by law to effectuate this provision. The Association shall have the authority to enact Rules that may include: (1) requirements for Owners to provide sales and transfer documents; (2) requirements for the timing of responses to requests such as the selection of the appraiser; (3) default provisions if no selection is made such as allowing the Association to select the appraiser; and (4) other procedural requirements and rules as the Management Committee deems appropriate to effectuate the terms of this provision in a prompt and reasonable manner.

## **ARTICLE 6 BUDGETS & ASSESSMENTS**

- 6.1 Purpose of Assessments. Money collected by the Association shall be used for the purposes of promoting the health, safety and welfare of the Owners; the management, maintenance, care, preservation, operation, and protection of the Project; enhancing the quality of life of the Owners in the Project; enhancing and preserving the value of the Project; and in the furtherance of carrying out or satisfying any other duty or power of the Association.
- 6.2 Budget and Regular Assessment.
- (a) The Management Committee is authorized and required to adopt a budget for the following fiscal year prior to the beginning of each fiscal year. The Management Committee may revise that budget from time to time as it deems appropriate.
  - (b) The budget shall cover the period of the next fiscal year. The budget shall estimate the total Common Expenses to be incurred for the next fiscal year (or that fiscal year for a revised budget), which shall be broken down into reasonably

detailed expense categories. The budget may include contingencies and other estimates as the Management Committee deems appropriate.

- (c) The Management Committee shall determine the amount of the regular Assessments to be paid by an Owner by dividing the total budgeted amount for the Common Expense by the Allocated Interest for each Lot, subject to the Declarant exemption in Article 20 herein.
  - (d) The Management Committee shall present the adopted budget to the Owners at an annual or special Association meeting.
  - (e) Except during the Declarant Control Period, a budget may be disapproved within forty-five (45) days after the date of the meeting at which the budget was presented if: (i) the holders of at least fifty-one percent (51) of the total Allocated Interests in the Association vote to disapprove the budget; and (ii) such vote is taken at a special meeting called for that purpose in accord with the requirements set forth in the Bylaws.
- 6.3 Payment of Assessments. Each Owner shall be responsible to pay all amounts assessed to the Lot and/or Owner annually or on such other installment basis as the Management Committee or the Manager may determine.
- 6.4 Adjustments to Regular Assessments. In the event the Management Committee determines that the estimate of total charges for the current year is, or will become, inadequate to meet all Common Expenses for any reason, it may revise the budget and each Owner's share of the new budget total based on the Owner's Allocated Interest. Upon notice of the adjustment, and unless modified by the Management Committee, each Owner, thereafter, shall pay to the Association the Owner's adjusted regular Assessment.
- 6.5 Personal Obligation for Assessment. Each Owner of a Lot, by acceptance of a deed or other instrument creating the ownership interest required to be an Owner as defined herein, hereby personally covenants and agrees with every other Owner and with the Association to pay to the Association the Assessments as provided for in the Governing Documents. Any and all Assessment, together with such interest, collection charges, and attorneys' fees and costs authorized by the Governing Documents, shall be the personal obligation of the Owner of such Lot.
- 6.6 Capital Improvements. Expenses for capital improvements may be included in the budget, paid for through special Assessments, or paid for in any other manner as determined by the Management Committee.
- 6.7 Percentage Assessments. Except as otherwise provided herein, and except for special Assessments to an individual Lot, Assessments shall be allocated to Owners based on the Allocated Interest of each Lot.
- 6.8 Rules Regarding Billing and Collection Procedures. The Management Committee shall have the right and responsibility to adopt Rules setting forth procedures applicable to Assessments provided for in this Declaration and for the billing and collection of all Assessments, provided that such procedures are not inconsistent with the provisions herein. Such procedures and policies may include, but are not limited to, the date when Assessment payments are due and late, establishing an automatic Assessment payment withdrawal system, establishing late fees and collection charges, and establishing interest

- (per annum or compounded) that may be charged on unpaid balances. The failure of the Association to send a statement to an Owner or an error in any such statement (other than a Certificate of Payment) shall not relieve any Owner of liability for any Assessment or charge under the Governing Documents.
- 6.9 Certificate of Payment. Consistent with Utah Code § 57-8a-206, the Association, within ten (10) business days after receipt of written demand, shall furnish to any Owner liable for Assessments or such other Person for whom an Owner has given written permission in a form acceptable to the Association, a written statement or certificate, signed by an officer or authorized agent of the Association, setting forth whether the Assessments relating to a specified Lot have been paid and the amount of delinquency, if any. Each such certificate shall be conclusive in favor of a Person who relies on the written statement in good faith. The Management Committee is authorized to charge a ten dollar (\$10.00) fee for issuance of a certificate; provided, however, the Management Committee may increase or decrease this fee amount if the new amount is identified in the Rules and is consistent with Utah law.
- 6.10 Special Assessments. The Association is expressly authorized to set and collect special Assessments, payable as may be determined by the Association (in lump sums or over a period of time), to pay for any Common Expenses exceeding the Association's fiscal year budget. Notwithstanding the wording or terms of any notice of special Assessment, a special Assessment shall be deemed assessed, for all purposes, on the date that the payment for the Assessment is due.
- 6.11 Special Assessments to a Particular Lot. A Special Assessment may be levied by the Association against a particular Lot and its Owner for:
- (a) Costs incurred in bringing an Owner or Lot into compliance with the provisions of the Governing Documents;
  - (b) Any other charge designated by the Management Committee or the Manager as pertaining to the individual Lot or Owner consistent with the Governing Documents;
  - (c) Fines, late fees, collection charges, and interest; and
  - (d) Attorneys' fees, costs and other expenses relating to any of the above.
- 6.12 Acceptance of Materials or Services. In the event the Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Project which benefits an individual Lot, and which can be accepted or not by the Owner of the Lot, such Owner, in accepting such materials or services, agrees that the costs thereof may be a special Assessment pertaining to that Lot, as may be determined by the Management Committee, in its discretion.
- 6.13 Application of Excess Assessments. In the event the amount budgeted to meet Common Expenses for a particular fiscal year proves to be excessive in light of the actual Common Expenses, the Management Committee, in its discretion, may apply the excess to reserves, credit the excess against future Assessments or refund the excess to the Owners in proportion to the Allocated Interests of each Lot in the Common Expenses of the Project, as the Management Committee deems appropriate. The decision of the Management Committee shall be binding and conclusive. In addition, the Association

shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

- 6.14 No Offsets. All Assessments shall be payable at the time and in the amount specified by the Association, and no offsets against such amount shall be permitted for any reason, including, without limitation, a claim that the Management Committee is not properly exercising its duties and power, a claim in the nature of offset or that the Association owes the Owner money, or that the Association is not complying with its obligations as provided for in the Governing Documents.
- 6.15 How Payments Are Applied. Unless otherwise provided for in the Rules, all payments for Assessments shall be applied to the earliest charges first. Owners shall have no right to direct the application of their payments on Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.

#### ARTICLE 7

#### NONPAYMENT OF ASSESSMENTS & JOINT AND SEVERAL LIABILITY OF OWNERS FOR ALL PAST UNPAID ASSESSMENTS

- 7.1 Delinquency. Any assessment not paid within the time required shall be delinquent. Whenever an Assessment is delinquent, the Management Committee may, at its option, invoke any or all of the remedies granted in this Article 7. The Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Each Owner, by acceptance of a deed or other instrument of conveyance, vests in the Association, or its assigns, the right and authority to bring actions at law or lien foreclosures against such Owner or Owners for the collection of delinquent Assessments.
- 7.2 Collection Charges and Interest. If the Association does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply: The Assessments shall be due within thirty (30) days of invoicing. Payments received after thirty (30) days from invoicing may be charged an initial late fee of thirty-five dollars (\$35.00). Thereafter, an additional late fee charge of thirty-five dollars (\$35.00) per month may be added for each month that an Owner's account has an unpaid balance. In addition to late fees, interest shall accrue on all unpaid balances, including on any unpaid prior attorney fees and late charges, at the rate of two percent (2%) per month or such other amount as may be set forth by the Association in the Rules and allowed by law. Delinquent accounts may be turned over by the Association to attorneys or to a collection company and additional collection charges and attorneys' fees and costs may be added to the amounts owed.
- 7.3 Joint and Several Liability of Owner and Future Owners for All Past and Presently Accruing Unpaid Assessments. To the extent permitted by law, the Owner and any future Owners of a Lot are jointly and severally liable for all Assessments related to that Lot accruing prior to and during the time that an Owner is an Owner. Owners are not liable for any Assessments accruing after they have lawfully transferred title to the Lot to another Owner; provided, however, that the recording of a deed to a Person that has not agreed to take ownership of the Lot shall not be considered a legal conveyance of title.



The obligation imposed by this Section 7.3 is separate and distinct from any lien rights associated with the Lot.

- 7.4 Lien. The Association shall have a lien on each Lot for all Assessments, which include, but are not limited to, late fees, interest, collection charges, attorneys' fees, court costs, and other costs of collection (which shall include all costs and not be limited by those costs that may be awarded under the Utah Rules of Civil Procedure). This lien shall arise and be perfected as of the date of the recording of this Declaration and shall have priority over all encumbrances recorded after this Declaration is recorded, except as otherwise required by law. If an Assessment is payable in installments, the lien is for the full amount of the Assessment from the time the first installment is due, unless the Association provides otherwise in the notice of Assessment. The Association also has a lien on each Lot for all fines imposed against an Owner by the Association. This lien shall arise and be perfected when (a) the time for appeal described in Utah Code § 57-8a-208(5) has expired and the Owner did not file an appeal; or (b) the Owner timely filed an appeal under Utah Code § 57-8a-208(5) and the district court issued a final order upholding the fine. The Association's lien shall have priority over each other lien and encumbrance on a Lot except only: (i) a lien or encumbrance recorded before this Declaration is recorded; (ii) a first or second security interest on the Lot secured by a mortgage or trust deed that is recorded before a recorded notice of lien by or on behalf of the Association; and (iii) a lien for real property taxes or governmental assessments or charges against the Lot. The Association may, but need not, record a notice of lien on a Lot.
- 7.5 Action at Law. The Association may bring an action to recover a delinquent Assessment personally against the Owner obligated to pay the same. Any attorneys' fees and costs incurred in such action shall be assessed against the delinquent Owner and the Owner's Lot and added to the amount in delinquency (plus judgment interest and collection charges, if appropriate).
- 7.6 Foreclosure Sale. The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. The Declarant appoints Melyssa D. Davidson, who qualifies under Utah Code § 57-1-21(1)(a)(i), as trustee. The Declarant hereby conveys and warrants pursuant to Utah Code Ann. § 57-1-20 and 57-8a-302 to Melyssa D. Davidson, with power of sale, the Lot and all improvements to the Lot for the purpose of securing payment of Assessments under the terms of the Declaration. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.
- 7.7 Homestead Waiver. Each Owner, to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration (whether such liens are now in existence or are created at any time in the future), the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.
- 7.8 Termination of Delinquent Owner's Rights. The Association shall have all rights provided for in the Act to terminate a delinquent Owner's right to vote, provided, however, that before termination of such rights the delinquent Owner be provided at least

fourteen (14) days prior notice, in accordance with the notice requirements in the Bylaws, of:

- (a) the impending termination of rights if payment is not received;
- (b) the amount(s) past due, including any interest and late charges; and
- (c) the right to request a hearing before the Management Committee.

7.9 Requiring Tenant to Pay Rent to Association. The Association shall have a right to demand and collect rent from any tenant occupying any Lot for which an Assessment is more than sixty (60) days late in accordance with the requirements of the Act.

7.10 Attorneys' Fees Incurred as a Result of a Default. In addition to any attorneys' fees and costs provided for herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner's failure to timely pay Assessments, including, but not limited to, attorneys' fees and costs incurred to: (a) obtain advice about a default; (b) collect unpaid Assessments; (c) file lawsuits or other legal proceedings related to a default in an effort to collect unpaid Assessments; (d) file pleadings, notices, objections, and proofs of claim in any bankruptcy proceeding; (e) examine the debtor or others related to collections; (f) monitor any bankruptcy proceedings including, but not limited to, regular monitoring of an Owner's progress in a chapter 13 plan for the duration of the plan; (g) file relief from stay motions, objections, or other adversary proceedings in bankruptcy; and (h) any other matters in the bankruptcy court. This provision is to be construed broadly to permit the Association to recover any reasonable fees and costs in any way related to an Owner's default in the payment of Assessments and the ultimate collection of those Assessments.

7.11 Association Responsibility after Foreclosure. If the Association takes title to a Lot pursuant to a foreclosure (judicial or non-judicial), the Association shall not be bound by any of the provisions related to the Lot that are otherwise applicable to any other Owner, including but not limited to the obligation to pay assessments or maintain the Lot.

## ARTICLE 8 ARCHITECTURAL STANDARDS AND REQUIREMENTS

8.1 Prior Written Approval Required for Construction and Landscaping. To protect the integrity of Declarant's design scheme for the Project, construction of a Home and other improvements, including landscape shall require the prior, written approval of the Management Committee. No Home exterior or building footprint may be modified or altered without Management Committee approval. Except for landscaping installed by Declarant, all landscaping on a Lot, including any adjacent park strip shall be pursuant to a Lot-landscape plan approved by the Management Committee and consistent with the Street Tree Plan.

8.2 Minimum Home Requirements. Each Home must meet the following minimum requirements for the Project:

- (a) The Home is a detached Single-Family Home.
- (b) The Home shall not exceed two (2) stories.
- (c) Basements and slab on grade Homes are permitted within the Project.

- (d) Minimum of thirteen hundred (1300) square feet on main level on the Home.
- (e) The Home's garage shall accommodate parking for at least two (2) vehicles.
- (f) Exterior materials for a Home shall consist of maintenance-free stucco, masonry, or hardi board. Except for soffit and fascia, aluminum and vinyl siding are prohibited within the Project.
- (g) Diversity in Home plans and exterior colors is required within the Project. An Owner shall not be permitted to construct a Home that is the same or is substantially the same as any Home on any immediately adjacent Lot or on the Lot directly across the street. Similarly, exterior colors that are the same or substantially similar to any Home on an immediately adjacent Lot or on the Lot directly across the street shall not be permitted.

8.3 Preliminary Plans. 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 Home.
- (d) One major section through Home.
- (e) A perspective.
- (f) Specifications of all outside materials to be used on the exterior of the Home.

8.4 Final Plans and Specifications and Working Drawings. The Management Committee may also require, as a minimum, the following:

- (a) Plot plans to scale showing the entire site, the Home, garages, walks, drives, fence, carriage lights, and retaining walls with elevations of the existing and finished grade and contours including those at the outside corners of the structures 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) Specifications of all front, side, and rear yard landscaping materials.

8.5 Prior-Approved Home Plans. Notwithstanding anything to the contrary in Sections 8.3 and 8.4 above, and subject to the minimum requirements in Section 8.2, the initial construction of a Home from plans in the Ivory Homes Catalogue that can comply with City set-back requirements on a Lot, minimum squarefootage requirements and height restrictions, with exterior materials selected from the Ivory Homes Design Center, shall not require prior written approval from the Management Committee; provided, however, that any deviation from an Ivory Homes Catalogue plan, including, without limitation,

design, square footage, or construction materials, shall require approval by the Management Committee. Approval by the builder's sales personnel, design staff, or construction personnel is insufficient for purposes of this Section 8.5.

- 8.6 Landscaping Requirements. Unless otherwise provided by written agreement between the Declarant and Owner, the Owner shall be responsible, at the Owner's expense, to landscape the Lot, pursuant to an approved Lot-landscape plan. Landscaping shall include, by way of illustration but not limitation, sod and other appropriate ground cover, planting beds, bushes, shrubs, trees, street trees, and an irrigation system sufficient to maintain the same. To protect and preserve the integrity of the footings and foundations for the Home and other structures constructed within the Project, no sod or other water-intensive plants shall be planted which directly abuts or is immediately around any foundation. The Lot landscape plan shall provide for and each Owner shall be responsible to maintain a minimum of five (5) feet between the exterior of the foundation and any sod or other water-intensive plants ("Restricted Landscape Zone"). If approved as part of the Owner's landscape plan, the Restricted Landscape Zone may be used as a planting bed, subject to restrictions in this Declaration regarding slope, grading, and drainage, and subject to the restrictions below regarding irrigation systems. Landscaping of front, side and rear yard shall be installed within nine (9) months of closing on the initial sale of the Lot.
- 8.7 Landscape Restrictions. Front yards (*i.e.*, the area on the Lot between the street and the front plane of the Home) comprised primarily or substantially of Hardscape are prohibited. Unless installed by the Declarant, Hardscape is prohibited in anywhere in the park strip. For purposes of this Section, "Hardscape" shall mean and refer to concrete, masonry products, pavers, brick, stone, cobblestone, tile, terrazzo, slabs, slate, rock, pebbles, gravel, wood, woodchips, bark, decking, and artificial wood-like product. Concrete parking pads and/or approaches may be installed with the prior written approval of the Management Committee. Gravel or other loose material in parking pads and approaches is prohibited. Any material changes or modification to previously approved landscape shall require prior written consent of the Management Committee.
- 8.8 Maintenance. Each Owner shall be responsible to maintain his/her/their Lot, the Home's exterior, landscaping, and all other improvements to the Owner's Lot in neat and tidy condition consistent with the Community-Wide Standards. Lawn, trees, shrubs and other plantings on a Lot shall be properly nurtured and maintained, at the Owner's sole expense. Diseased, dying, or dead trees, shrubs, or other plantings shall promptly be replaced by the Owner, at the Owner's sole expense. Yards must be kept free of weeds. Each Owner shall be responsible for snow removal for his/her/their Lot.
- 8.9 Slope and Drainage Control. No grading, construction, or landscaping, and no structure, plants, or other material shall be permitted or allowed to remain which may damage, interfere, or alter drainage channels or obstruct or retard the flow of water through such drainage channels or create erosion or sliding problems, or interfere with any utility easement or right of way or the Wetland. Each Owner shall be responsible to landscape and maintain his/her/their Lot in a manner consistent with existing land drain system and drainage pattern existing on the Lot at the time of the initial sale so as not to interfere with or impair the land drain system in the Project or the existing drainage pattern on any other Lot or the Wetland.

- 8.10 **Fencing.** Except for fencing constructed or installed by the Declarant in conjunction with development of the Project, all fencing shall require prior written Management Committee approval. Front yard fencing is prohibited. Back and side yard fences shall comport with applicable City code governing setback and height, provided, however, that side yard fencing shall not extend beyond the front plane of the Home. Fencing within Project walls or fencing is prohibited. Fences must be consistent with the Home with respect to architectural style, color and materials and must otherwise comport with Community-Wide Standards, as determined by the Management Committee, in its discretions. Unless installed by the Declarant, wood and chain link fencing are prohibited in the Project. If there is any dispute regarding fencing of any kind within the Project, the decision of the Management Committee shall be conclusive and binding.
- 8.11 **Accessory Structure.** No Accessory Structure shall be permitted without the prior written approval of the Management Committee. No Accessory Structure may occupy more than twenty-five percent (25%) of the rear yard. Accessory Structure Height must be less than the height of the Home and shall comply with all City setback requirements. The architectural style, colors and materials for an Accessory Structure must be substantially similar to the colors and materials of the Home. Tin or aluminum sheds are prohibited.
- 8.13 **Variance.** Notwithstanding anything to the contrary in this Article 8, the Management Committee may authorize variances from compliance with the minimum standards and requirements when topography, natural obstructions, environmental considerations, esthetics, or hardship require, but only with the prior approval of the City. For purposes of this Section 8.13, neither an inability to obtain City or other governmental approval or a building permit nor financing restrictions or limitations shall be considered as a hardship meriting a variance.
- 8.14 **Enforcement of Architectural Requirements and Standards.** Any construction, alteration, landscaping, or other improvements and any work done in violation of the Terms and Conditions in this Article 8 shall be deemed nonconforming. Upon written notice from the Management Committee, an Owner, at his/her/their sole cost and expense, shall remove such non-conforming construction, alteration, landscaping, improvement or other work and shall restore the Lot to substantially the same condition that existed prior to the conforming work. Should an Owner fail to remove and restore as required hereunder, the Declarant shall have the right to enter onto the Lot and remove the violation and restore the Lot to substantially the same condition as existed prior to the nonconforming construction, alteration, landscaping, improvement or other work without being deemed as a trespasser. With regard to any unauthorized modification or alteration of a Home affecting the Home's appearance or building footprint, the original construction shall be the controlling dimension. The original construction shall be the first installation of foundations, framing, wallboard, and the like. If the Management Committee, in its sole discretion, determines that the then-current unauthorized construction varies from the original as-built construction in contravention of the provisions of this Article 8 or any Design Guidelines or other Governing Documents, then the Association, at the expense of the Association or the Owner, in the Management Committee's discretion, may require that the current construction be made to comply with the original construction. In exercising its discretion to decide who pays to return an alteration/modification to the original construction, the Management Committee shall consider: (i) whether the Owner

caused the nonconforming construction; (ii) whether the Owner sought or obtained Management Committee approval for any nonconforming construction regardless of whether any such approval was valid or not; (iii) whether other Owners engaged in similar nonconforming construction; (iv) the overall culpability of the Owner as it relates to the nonconforming construction; and (v) the reason for the nonconforming construction.

- 8.15 Contractors. Any contractor, subcontractor, employee, agent or invitee of an Owner who fails to comply with the Terms and Conditions herein may be excluded from the Project by Declarant.

## ARTICLE 9 EASEMENTS, ACCESS AND USE RIGHT

- 9.1 Grant of Easement. Declarant hereby reserves itself and grants to the Association, a non-exclusive, perpetual right of way and easement over, under, across, and through the Property and the Project, together with the right to use, operate, maintain, repair and replace the Common Area and to do all things that are reasonably necessary to fulfill the Association's obligations for Area of Common Responsibility, subject to all of the terms, covenants, conditions and restrictions set forth herein.
- 9.2 Construction Easement. The Declarant hereby reserves for itself, its affiliates and assignees, a temporary construction easement over, under, across, and through the Property and the Project, including, without limitation, the Lots and the Common Area for the purpose of doing all things that are reasonably necessary as a part of constructing any Subdivision Improvement. This construction easement further includes the right to hook-up, tie-in, connect to and utilize the water, power, gas, or other utility lines, valves, pipes, equipment, meters and systems servicing a Lot for the purpose of providing water, power, gas, or other utilities to the Common Area or other parts of the Project in common use or necessary or convenient for the maintenance, operation, or management of common property by the Association; provided, however, that the Association shall pay the actual cost of any utility service(s) utilized by the Association pursuant to this Section 9.2.
- 9.3 Owner Acknowledgement of Easement Rights and Construction Activities. The Declarant's construction activities pursuant to the easement granted in this Article 8 shall not be considered a violation of any use restriction or Rules. Further, each Owner, by acceptance of a deed or other instrument of conveyance, acknowledges and agrees that there will be construction activities, traffic, noises, odors and vibrations which may temporarily disrupt the Owner's quiet enjoyment of Owner's Lot until all improvements are complete, and waives any right to object to such construction activity; provided, however, the Declarant shall endeavor to use reasonable efforts to minimize the adverse impact of such construction activities on the Owners.
- 9.4 Utility Easements. Easements and rights-of-way over, under, across, and through the Property and the Project for the installation, maintenance, repair and replacement of electrical, telephone, cable television, fiber optics, water, gas, sewer, or other utility lines, storm drain or other drainage systems, telecommunication fixtures and equipment, utility fixtures and equipment, and such other lines, fixtures, or equipment needed or determined

by the Declarant or the Management Committee to be helpful in serving the Project, the Lots, or the Owners are hereby reserved to the Declarant and the Association, together with the right to grant, alter, and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use and enjoyment of the Common Area and/or the Lots by the Owners or Occupants. Each Owner, by acceptance of a deed or other instrument of conveyance, expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Each Owner and those claiming by, through or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to effect the same at the request of the Association.

- 9.5 Encroachment Easements. If any part of the Common Area encroaches or shall hereafter encroach upon a Lot, a valid easement for such encroachment and for the inspection, maintenance, repair and replacement of the same shall and does exist. If any part of a Lot encroaches or shall hereafter encroach upon the Common Area, a valid easement for such encroachment and for the maintenance of the same shall and does exist. Such easement for encroachments shall extend for the duration of the encroachment. Such encroachments shall not be considered to be encumbrances either on the Common Area or Lots. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the manner of construction, error in the Plat, ground settling, rising or shifting, or changes in position caused by repair or reconstruction of the Project or any part thereof.
- 9.6 Right of Access. Each Owner shall have a right of ingress and egress over, across, and through the Common Area as necessary for access to the Owner's Lot and shall have the right to the horizontal, vertical and lateral support of the Owner's Lot and the Home thereon. Such right of access and right to support shall be appurtenant to and shall pass with title to the Lot and in no event shall such appurtenant right be separated therefrom.
- 9.7 Right of Access for Emergency Services. A right of access and right of ingress and egress over and across the Property is hereby granted to any governmental or quasi-governmental body having jurisdiction over the Project for purposes of providing police and fire protection, transporting school children, and providing emergency and other governmental or municipal services.
- 9.8 Nonexclusive Owner Right and License to Use Common Area. Subject to all other terms and conditions of the Governing Documents, each Owner shall have the nonexclusive right and license for use and enjoyment of the Common Area, subject to any use restrictions provided in this Declaration or in the Rules or other Governing Document. Such nonexclusive use right and license shall be appurtenant to and shall pass with title to the Lot and in no event shall such appurtenant right and license be separated therefrom. Authorized Occupants shall have the same right and license for the use and enjoyment of the Common Area as the Owner whose Lot the Occupant is occupying.
- 9.9 No View Easements. Views from a Lot or the Project are not assured or guaranteed in any way and no view easement shall be granted to any Owner. There is no warranty concerning the preservation of any view or view plane from the Project. Each Owner, by

acceptance of deed or other instrument of conveyance, expressly acknowledges and agrees that there is no view easement or view right appurtenant to the Lot or the Project.

## **ARTICLE 10 USE LIMITATIONS AND CONDITIONS**

- 10.1 **Nuisance.** No noxious or offensive activity shall be carried on upon the Project, nor shall any activity that might be or become an annoyance or nuisance to the Owners or Occupants be permitted to interfere with their rights of quiet enjoyment or increase the rate of any insurance or decrease the value of the Lots. No Owner or Occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule or regulation of any local, City, county, state or federal body.
- 10.2 **Temporary Structures.** Subject to the special Declarant rights in Article 20 herein, no structure or building of a temporary character, including, without limitation, a trailer or shack, shall be placed upon any Lot or anywhere within the Project unless it is approved by the Management Committee.
- 10.3 **Parking.** Unless otherwise permitted by the Association in the Rules, no automobiles or other vehicles of any type shall be parked, stored, or located within any portion of the Project except in the Lot's driveway or garage or an approved parking pad behind the front plane of the Home behind an approved parking-pad fence. Garages shall be used primarily for the parking and storage of vehicles. Overnight parking on the street is prohibited. Except for purposes of loading or unloading passengers or goods or supplies, for a period not to exceed twenty-four (24) hours, all recreational, commercial, and/or oversized vehicles (including, without limitation, campers, trailers, RVs, boats, snowmobiles and off-road vehicles) must be stored in the garage or on an approved parking pad behind an approved parking pad fence and must be properly registered and licensed. Eighteen-wheeled semi-trucks and/or or trailers may not be parked or stored anywhere within the Project. No temporary carport or canopy may be installed anywhere on a Lot.
- 10.4 **Aerials, Antennas and Satellite Dishes.** Except as otherwise permitted by law, no exterior aerials, antenna and satellite dishes (individually and collectively, "Antenna") may be placed on the front plane of the Home. Any Antenna shall be placed in an unobtrusive location on the Home.
- 10.5 **Animals.** Notwithstanding anything to the contrary in City code or ordinance and unless otherwise provided in the Rules, no more than a total of three (3) animals generally kept in households (e.g., dogs and cats) shall be allowed on any Lot. No livestock, poultry (including chickens, ducks, geese, and turkeys), or dangerous reptile may be kept on any Lot. Further, no animal may be kept on a Lot which: (a) is raised, bred, kept, or maintained for any commercial purposes; (b) causes a nuisance; or (c) in the good faith judgment of the Management Committee, results in an annoyance or threat of injury, or is obnoxious to or unreasonably causes anxiety to other Owners or Occupants within the Project. The Management Committee may exercise its judgment for specific animals even though others of the same breed or type are permitted to remain. All fecal matter shall be immediately cleaned up in the Project. Animals must be properly licensed. An Owner who keeps an animal within the Project shall be liable for any and all damage



caused by such animal, and shall indemnify and hold harmless the Association and any other Owner from any loss, claim or liability of any kind arising from, or related to, such animal.

10.6 Residential Occupancy.

- (a) No trade or business may be conducted in or from any Lot unless:
- (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell, from any other Lot, or the Common Area;
  - (ii) the business activity conforms to all zoning and legal requirements for the Project and the business activity;
  - (iii) the business activity does not involve solicitation of Occupants or Owners of the Project;
  - (iv) the business activity does not create parking issues or increased vehicle traffic in the Project from clients, customers, vendors, service providers or other individuals coming into the Project who do not reside in the Project, as determined by the Management Committee, in its sole discretion;
  - (v) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other Owners and Occupants of the Project;
  - (vi) the business activity is disclosed to the Management Committee before business is commenced along with a description of the business activity, a statement of the amount of space required in the Lot for such activity, and a description of any impact on the Project;
  - (vii) the business activity will not result in the increase of the cost of any of the Association's insurance;
  - (viii) the Owner of the Lot resides in the Home in which the business activity is proposed for the entire time any business activity is conducted; and
  - (ix) the Management Committee's ongoing requests for information related to the business as necessary to determine compliance with this paragraph are responded to fully and completely.
- (b) Except as allowed under Section 10.11(a) above and subject to the exemption for the Declarant in Article 20, no Lot may be used for any purpose other than for a Single-Family Home.

10.7 No Subdivision or Timeshare of Lot or Recording by Owners of Terms and Conditions.

No Lot shall be split, subdivided, separated or timeshared into two or more Lots or property interests (whether temporally or spatially), and no Owner of a Lot shall sell or lease part thereof. No subdivision plat or covenants, conditions, or restrictions shall be recorded by any Owner or other Person with respect to any one Lot. No subdivision plat or covenants, conditions, or restrictions related to any Lot or the Project shall be recorded on the Project unless the Management Committee and/or Owners (as required in this

Declaration) have first approved the plat or the proposed covenants, conditions, or restrictions. Any plat or covenants, conditions, or restrictions recorded in violation of this Section shall be null, void, and of no legal effect.

**10.8 Restrictions on Hazardous Substances.**

- (a) The Owners shall comply with applicable Environmental Laws (as defined below), and shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances (as defined below), on or within the Project, that are not properly controlled, safeguarded, and disposed of. The Owners shall not do, or allow anyone else to do, anything affecting the Project that is in violation of any Environmental Law. Notwithstanding, the presence, use, or storage on the Project of small quantities of Hazardous Substances that are generally recognized to be appropriate to the maintenance of a Lot or the Project shall not be deemed a violation of this Section.
- (b) Each Owner shall indemnify, defend and hold the Association and each and every other Owner harmless from and against any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment, or any other injury or damage resulting from or relating to any Hazardous Substances located under or upon or migrating into, under, from or through the Project, which the Association or the other Owners may incur due to the actions or omissions of an indemnifying Owner. The foregoing indemnity shall apply: (i) when the release of the Hazardous Substances was caused by an indemnifying Owner or an Occupant; and (ii) regardless of whether the alleged liability is attributable to the handling, storage, generation, transportation or disposal of Hazardous Substances on the Project. The obligations of each Owner under this Section shall survive any subsequent sale of the Lot by an indemnifying Owner.
- (c) As used in this Section, "Hazardous Substances" are those substances defined as a toxic or hazardous substance by Environmental Law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde and radioactive materials. As used in this Section, "Environmental Law" means any and all applicable federal laws and laws of any jurisdiction where the Project is located that relate to health, safety or environmental protection.

**ARTICLE 11  
INSURANCE**

- 11.1 **Insurance Requirement.** The Association shall obtain insurance as required in this Declaration and as required by applicable law. Consistent with § 57-8a-405(4), the Association is not required to obtain property insurance for any detached Home. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies.
- 11.2 **Director's and Officer's Insurance.** The Association shall obtain Directors and Officers liability insurance protecting the Management Committee, the officers of the Association, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). This policy shall: (a) include coverage for volunteers and employees; (b) include coverage for monetary and non-monetary claims; (c) provide for the coverage of claims made under any fair housing law or similar state or federal statute or that are based on any form of discrimination or civil rights claims; and (d) provide coverage for defamation. In the discretion of the Management Committee, the policy may also include coverage for any Manager and any employees of the Manager and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.
- 11.3 **Insurance Coverage for Theft and Embezzlement of Association Funds.** The Association may obtain insurance covering the theft or embezzlement of funds that shall: (a) provide coverage for an amount of not less than the sum of three months regular Assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds; and (b) provide coverage for theft or embezzlement of funds by: (i) Officers and Management Committee members of the Association; (ii) employees and volunteers of the Association; (iii) any Manager of the Association; and (iv) officers, directors, and employees of any Manager of the Association.

## **ARTICLE 12 EMINENT DOMAIN**

- 12.1 **Taking of a Lot.** If a Lot is taken by eminent domain, or sold under the threat thereof, or if a portion of a Lot is taken by eminent domain, or sold under the threat thereof, leaving the Owner with a remnant that may not practically or lawfully be used for any purpose permitted by this Declaration, the undivided interests in the Common Area and Allocated Interests in the Association shall be reallocated among the remaining Lots.
- 12.2 **Taking of the Common Area.** If the Common Area or a portion thereof, is taken by eminent domain, or sold under threat thereof, the Association, as the owner of the Common Area, shall be entitled to the entire award or purchase price.
- 12.3 **Taking of Entire Project.** In the event the Project, in its entirety, is taken by eminent domain, or sold under threat thereof, the Management Committee shall send notice to each Owner that the Project shall be terminated. The Management Committee shall wind down the Association in accordance with applicable law and the funds distributed to the Declarant and each Owner in proportion to their respective interests. Payment to Owners of Lots then subject to a recorded mortgage or trust deed shall be made jointly payable to

Owners and the interested Lender.

- 12.4 Priority and Power of Attorney. Nothing contained in this Article 12 shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Lot as to any portion of any condemnation award allocated to such Lot. Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area, or any part thereof.

### **ARTICLE 13 AMENDMENTS**

- 13.1 General Amendment Requirements. Except as otherwise provided herein and subject to the rights and authority reserved to the Declarant in Article 20 herein and elsewhere in this Declaration, this Declaration may be amended only by an instrument in writing. Owners holding Allocated Interests totaling not less than sixty-seven percent (67%) of the total Allocated Interest must vote in favor of approving the amendment in a meeting of the Owners held for that purpose or by written consents. The vote of approval of any one Owner of a Lot is sufficient if there are multiple owners of the Lot.
- 13.2 Scope of Amendments. Subject to Article 20 herein, this Declaration may be amended to add new rights, restrictions, and obligations, or to remove or modify existing rights, restrictions, and obligations. The right to amend shall be broadly construed to permit any change to the rights, restrictions, obligations, and other terms in this Declaration. This Declaration may be amended to make a particular section of the Act applicable to the Association, including a section that would not otherwise be applicable to the Association.
- 13.3 Execution and Effective Date of Amendments. An amendment that has been adopted shall be executed by the Chairperson and the Secretary of the Management Committee shall certify that the amendment has been approved and adopted and that the procedures and requirements necessary to amend the Declaration have been complied with. The amendment shall be effective when it is recorded in the Office of the Recorder for Davis County, Utah.
- 13.4 Changes to Plat or Boundaries of the Association. The Association may adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any boundary in or around the Project, including any boundary to any Lot or Lots upon the approval by vote of sixty-seven percent (67%) of Owners in the same manner as required to amend this Declaration; provided, however, that if any such amendment affects any boundary of a Lot, that Lot Owner must consent and if any such amendment affects the Wetland, the written consent of the Declarant and the United States Army Corps of Engineers shall be required. If the approval required herein is obtained, each and every other Owner, by acceptance of deed or other instrument of conveyance irrevocably grants the Association power of attorney to sign necessary documents on that Owner's behalf as necessary for the amendment.

### **ARTICLE 14 NOTICE**

- 14.1 **Notices.** Any notice to be given to an Owner, a Lender, or the Association under the provisions of the Governing Documents shall be in writing and shall be deemed valid if provided by any of the below methods:
- (a) Notice to an Owner from the Association:
    - (i) by a written notice delivered personally to the Owner, which shall be effective upon delivery;
    - (ii) by a written notice placed in the United States mail, first-class postage prepaid, to the most recent address furnished by such Owner in writing to the Association for the purpose of giving notice, or, if no such address shall have been furnished, to the street address of such Owner's Lot. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit;
    - (iii) by email correspondence to an Owner: (1) sent to an email address provided by the Owner for the purpose of Association communications, or (2) emailed to an email address from which the Owner has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered. Any notice sent by email shall be deemed delivered twenty-four (24) hours after it is sent; or
    - (iv) by any other method that is fair and reasonable given the circumstances and the subject matter of the notice or otherwise allowed by law.
    - (v) Notwithstanding anything to the contrary in this Section 14.1, the Association shall send all notices to an owner by U.S. Mail if such Owner, by written demand, demands to receive notices from the Association by mail. In the case of co-Owners, notice to one of the co-Owners is effective as notice to all such co-Owners. The Association shall not be required to give more than one notice per Lot. In case any two co-Owners send conflicting notice demands, notice shall be proper if mailed by first-class mail to the Lot address.
    - (vi) In case posting of a notice on the Lot is permitted, such posting is effective when posted conspicuously on the Lot or on the front or primary access door to the Home and any such posting may be removed by the Association the sooner of either: (1) two (2) days after the event or action for which notice was given, or (2) ten (10) days after the posting.
  - (b) Notice to a Lender. Notice to a Lender shall be delivered by United States mail, first-class postage prepaid, to the most recent address furnished by such Lender in writing to the Association for the purpose of notice or, if no such address shall have been furnished, to any office of the Lender. Any address for a Lender that is found on a document recorded on the title of a Lot shall be deemed an office of the Lender. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit.
  - (c) Notice to Association from an Owner. An Owner's notice to the Association shall be effective upon the satisfaction of any of the following delivery methods:

- (i) by a written notice delivered personally to the Manager or Chairperson, which shall be effective upon delivery;
- (ii) by a written notice placed in the United States mail, first-class postage prepaid, to the current registered business address of the Association. Any notice so deposited in the mail shall be deemed delivered seventy-two (72) hours after such deposit;
- (iii) by written email correspondence to the Association: (1) that is sent to an email address provided by the Association in the prior twelve (12) months for the purpose of Association communications, or (2) that is emailed to an email address from which the Manager or the Management Committee has communicated related to Association matters, and so long as no indication is received that the email may not have been delivered or received. Any notice sent by email shall be deemed delivered twenty-four (24) hours after it is sent; or

## **ARTICLE 15 ATTORNEYS' FEES AND COSTS**

### **15.1 Legal Costs Associated with Disputes with Owners.**

- (a) **Owners Liable for Fees Incurred in Dispute.** If the Association utilizes legal counsel to enforce any Term and Condition after notice to the Owner that the Association intends to enforce the Term and Condition or after the Owner communicates or demonstrates an intent not to comply with the Term and Condition, the Association may assess all reasonable attorneys' fees and costs associated with such enforcement to the Owner, regardless of whether a lawsuit is initiated or not.
- (b) **Costs.** The term "costs" as used in this section shall include all costs including copying costs, deposition costs, expert witness fees, investigative costs, service costs, and filing fees paid to courts. "Costs" is specifically defined in this Declaration to be broader and to include costs that are not included in costs, as the term is used in the Utah Rules of Civil Procedure.
- (c) **Exception to Owner's Liability for Fees and Costs.** If, related to (i) any dispute with an Owner, (ii) any challenge by an Owner to a position of the Association on a Term and Condition, or (iii) a request of an Owner for direction on the application of a Term and Condition, the Association incurs legal fees or costs related to the interpretation and application of a Term and Condition that the Association could not establish an initial position on without having incurred the fees and costs or that results in a substantial modification to a prior position taken by the Association, then those fees or costs shall not be assessed to any Owner and shall be paid by the Association. This provision shall not apply if a lawsuit is currently pending with regard to the Owner and the issues arise as part of the lawsuit.

## **ARTICLE 16 RESERVES**

- 16.1 No Requirement for Reserves. The Association's obligation for maintenance, repair and/or replacement of the Area of Common Responsibility shall be included in the Association's budget for the fiscal year. Consistent with § 211(1)(c) of the Act and consistent with the terms and conditions of the Lease Agreement, because the obligation for maintenance, repair, and replacement the Area of Common Responsibility can reasonably be funded from the Association's budget for the fiscal year, Association shall have no obligation to obtain a "reserve analysis" or to establish "reserve funds" (as defined in § 211(1) of the Act) unless otherwise required by law.

**ARTICLE 17**  
**LEASING AND NON-OWNER OCCUPANCY**

- 17.1 Declaration and Rules Govern Non-Owner Occupancy. The leasing and non-owner occupancy of Lots shall be governed by this Article 17 and the Rules.
- 17.2 Definitions. For the purpose of this Article 17, the following definitions shall apply:
- (a) "Non-Owner Occupancy" means:
    - (i) For a Lot owned in whole or in part by a natural person or persons, the Home is occupied by someone when no individual Owner occupies the Home as the individual Owner's primary residence;
    - (ii) For a Lot owned by an entity, including a corporation or limited liability company, the Home is occupied by someone when no individual owning at least twenty-five percent (25%) of the ownership or voting interests in the entity occupies the Home as a primary residence; or
    - (iii) For a Lot owned by a trust, the Home is occupied by someone when neither a beneficiary nor a trustor of the trust occupies the Home as a primary residence.
  - (b) "Family Member" means the parent, sibling, child, or grandchild of an Owner and the parent, sibling, child, or grandchild of an Owner's spouse.
- 17.3 Restriction on Leasing and Non-Owner Occupancy. Subject to the provisions in this Article 17, any Lot may be leased and made available for Non-Owner Occupancy provided, however, that the Owner comply with the following:
- (a) The lease or agreement for Non-Owner Occupancy shall be in writing, for an initial term of at six (6) months, and shall require that the Occupant shall comply with the Declaration, the Bylaws, and the Rules, and specify that any failure to comply shall be a default under the lease or agreement. If a lease or agreement for Non-Owner Occupancy (whether in writing or not) does not include these provisions, they shall nonetheless be deemed to be part of the lease or agreement and binding on the Owner and the Occupant;
  - (b) If required in the Rules or requested by the Management Committee, a copy of any lease or other agreement for Non-Owner Occupancy shall be delivered to the Association within the time period provided for in the Rules or required by the Management Committee;

- (c) An Occupant may not occupy any Home for transient, short-term (an initial term less than six (6) months), hotel, resort, vacation, or seasonal use (whether for pay or not) except as the guest of the Owner while the Owner is occupying the Home;
  - (d) Lease of less than all of the Lot is prohibited; and
  - (e) The Owner shall be jointly and severally liable with the tenant for any violation of the Governing Documents.
- 17.4 Exceptions Provided Under the Act. Notwithstanding anything in this Article 17 to the contrary, the restrictions on lease of a Lot/Home shall not apply to a Non-Owner Occupancy: (a) necessitated by the Lot Owner's military deployment for the period of the deployment; (b) necessitated by a transfer of employment by the Owner's employer for two (2) years or less; or (c) if the Home is occupied by the Owner's Family Member. An Owner claiming an exemption under this Section 17.4 from any restriction or requirement of this Article 17 shall furnish documentation establishing the applicability of the exemption as may be required by the Management Committee prior to the Non-Owner Occupancy of the Owner's Home.

## ARTICLE 18 GENERAL PROVISIONS

- 18.1 Enforcement by the Association. The Association shall have the right to enforce, by proceedings at law or in equity, all Terms and Conditions, including the right to prevent the violation of any such Terms and Conditions and the right to recover damages and other sums for such violation, including, but not limited to attorneys' fees and costs incurred in conjunction with such enforcement.
- (a) Each Owner, by acceptance of a deed or other instrument of conveyance, acknowledges and agrees that because a breach of the Governing Documents will result in immediate and irreparable injury to the Association and its other members for which they will not have an adequate remedy at law, the Association, if any such breach shall occur, be attempted, or be threatened, shall be entitled to an order of specific performance and to a temporary and permanent injunction enjoining such breach and to any and all other remedies to which the Association may be entitled pursuant to the Governing Documents or applicable law, without posting bond or furnishing other security and without proving special damages or irreparable injury, together with an award of attorneys' fees and costs.
- 18.2 No Liability of Officers. To the fullest extent permitted by applicable law, neither the Management Committee nor any officer of the Association shall be liable to any Owner or the Association for any damage, loss, or prejudice suffered or claimed on account of any decision, approval or disapproval, course of action, act, omission, error or negligence.
- 18.3 Use of Funds Collected by the Association. All funds collected by the Association, including, specifically, Assessments and contributions to the Association paid by the Owners, shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner other than as a member of the Association or other than as a result of expenditures made



for a permitted purpose as set forth in this Declaration.

- 18.4 Owner Liability and Indemnification. Each Owner shall be liable to every other Owner and to the Association for any damage to the Common Area or Area of Common Responsibility that may be sustained by reason of the negligent or intentional act that Owner or any intentional or negligent act of any Occupant of that Owner's Lot, to the extent such losses and damages are either under the insurance deductible of the Association or not covered by the Association's insurance. Each Owner, by acceptance of a deed or other instrument of conveyance, agrees to indemnify each and every other Owner and Occupant in such other Owner's Lot, and to hold such other Persons harmless from, and to defend against, any claim of any Person for personal injury or property damage occurring within that Owner's Lot, except to the extent that: (a) such injury, damage, or claim is covered and defended by the Association's or such other Owner's liability insurance carrier; or (b) the injury or damage occurred by reason of the intentional act of the Association.
- 18.5 Variations. The Management Committee, at its option and in extenuating circumstances, may grant variances from the Terms and Conditions set forth in Declaration if the Management Committee determines, in its discretion: (a) either that the Term and Condition would create an unreasonable hardship or burden on an Owner or Occupant, or that a change of circumstances since the recordation of this Declaration has rendered such Term and Condition obsolete and unreasonable to enforce; and (b) that the activity permitted under the variance will not have any negative financial effect or any other materially adverse effect on the Owners or Occupants of the Project and is consistent with the Community-Wide Standards and not prohibited by City code or ordinance. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then existing Management Committee. No variance may be granted that is inconsistent with City ordinance or the Act. No variance may be granted that relates to the payment of Assessments unless, after reasonable investigation under the circumstances, it clearly appears that the Owner is incapable of paying the Assessment and the Lot is being or has been transferred to a new Owner either voluntarily or involuntarily through foreclosure.
- 18.6 Consent, Power of Attorney, Waiver. By acceptance of a deed, lease, or other conveyance of an interest in a Lot, each Owner and Occupant consents to the rights reserved to the Declarant and the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process, and record necessary and appropriate documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and the Bylaws. By such acceptance, each Owner and Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same. Such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on such Owner's or Occupant's behalf. Such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

- 18.7 Security. Neither the Declarant nor the Association, in any way, shall be considered an insurer, guarantor, or provider of security from criminal conduct within or relating to the Project. Neither the Declarant nor the Association shall be liable for any loss or damage by reason of criminal conduct arising, for any reason, including any failure to provide security or any ineffectiveness of security any measures undertaken. Each and every Owner and Occupant in the Project acknowledges that neither the Declarant nor the Association has any duty to any Owner or Occupant related to security or to prevent criminal conduct. By acceptance of a deed, lease, or other conveyance of an interest in a Lot and/or by residing in the Project, each Owner and Occupant acknowledges and agrees that neither the Declarant nor the Association or its Management Committee are insurers of the safety or well-being of Owners or Occupants or any of their personal property as it relates to criminal conduct, and specifically waives any such claim and assumes all risks for loss or damage to Persons or property resulting from criminal conduct.
- 18.8 Reasonable Accommodations. Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its legal counsel that such action is required, may make or permit reasonable accommodations or modifications to the Project that are otherwise prohibited by the Governing Documents, as required under Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) as amended, and/or under the Utah Fair Housing Act, Utah Code 57-21-1 *et seq.* to accommodate an Owner or Occupant with a disability (as defined by applicable law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Lot, the Common Area, or deviations from provision of the Governing Documents. Any such modification and accommodation made under this section shall not act as a waiver of the provisions of the Governing Documents with regard to anyone else.
- 18.9 No Representations or Warranties. **EACH OWNER AND OCCUPANT UNDERSTANDS, AGREES, AND ACKNOWLEDGES THROUGH TAKING TITLE TO A LOT OR RESIDING IN THE PROJECT THAT NEITHER THE DECLARANT NOR THE ASSOCIATION HAS MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND RELATED TO THE PROJECT AND THAT THE OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE PROJECT.**

#### ARTICLE 19

#### INTERPRETATION, CONSTRUCTION, AND APPLICATION OF DECLARATION

- 19.1 Conflicting Provisions. In the case of any conflict between Utah law and any of the Governing Documents, the order of priority from the highest to the lowest shall be Utah law, the Plat and the Declaration equally, the Declaration of Restrictions, the Articles, the Bylaws, and then the Rules.
- 19.2 Interpretation of Declaration and Applicability of the Act. The Declarant intends that the Project shall be governed by the Act, except where (in compliance with the Act) the Declarant has included specific provisions in this Declaration that legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act shall govern the Project to the extent allowed by

the Act. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control and this Declaration shall be deemed modified accordingly, but only to the extent necessary to come into compliance with the Act.

- 19.3 Cumulative Remedies. All rights, options, and remedies of the Association and the Owners in the Governing Documents are cumulative, and none shall be exclusive of any other, and the Association and the Owners shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief that may be provided by law; simultaneously, consecutively, or alternatively.
- 19.4 Severability. Invalidation of any one or a portion of the Terms and Conditions by judgment or court order shall in no way affect any other Terms and Conditions, all of which shall remain in full force and effect.
- 19.5 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of a residential planned unit development and for the maintenance of the Project. References in this Declaration to article and section numbers herein, unless otherwise expressly provided, are to the article and section in this Declaration. To the extent permitted by law, the provisions of the Governing Documents shall not be interpreted for or against or strictly for or against the Association, any Owner, or any other Person subject to their terms.
- 19.6 Applicable Law. Except as otherwise expressly provided in this Declaration, this Association is specifically made subject to the Act and the law as it is constituted and exists at the time this Declaration is recorded. Amendments to the Act after the date of recording of this Declaration shall not be applicable to the Association or the Project unless they are applicable as a matter of law or unless the Association makes those amendments applicable by amendment to the Declaration.
- 19.7 Gender and Number. Whenever the context of the Governing Documents require, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.
- 19.8 Enforcement by Owners and Declarants. In addition to the enforcement rights granted to the Association in this Declaration, the Declarant and each Owner shall have the right, but not the obligation, to enforce, by proceedings at law or in equity, the Terms and Conditions herein, including the right to prevent the violation of any such Terms and Conditions and the right to recover damages and other sums for such violation. The prevailing party in any enforcement action shall be entitled to recover its reasonable attorneys' fees and costs.
- 19.9 Effect of Declaration. This Declaration is made for the purposes set forth in the Recitals herein, and the Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with applicable law. The Association shall have no liability whatsoever if any Term and Condition is determined to be unenforceable in whole or in part for any reason.

## ARTICLE 20 DECLARANT RIGHTS

- 20.1 Special Declarant Rights. Notwithstanding any other provisions in the Governing Documents to the contrary, the Declarant shall have all rights and powers provided for in this Article 20. If any other article in this Declaration contains the words “notwithstanding anything to the contrary,” or words of similar import, the article shall all nonetheless be subject to the terms in this Article 20.
- 20.2 Right to Appoint the Management Committee During Declarant Control Period. The Declarant shall have the right to appoint and remove all Management Committee members during the Declarant Control Period. In the appointment of Management Committee members, the Declarant shall not be bound by any qualifications for Committee Members in the Governing Documents. The Declarant may elect to have a Management Committee of fewer than the required number of members until the Declarant Control Period ends. The Declarant may assume (and shall be presumed to have assumed unless Declarant notifies the Association otherwise) the powers of the Management Committee without appointing Management Committee members pursuant to the rights granted in the Articles of Incorporation to the Declarant.
- 20.3 Right to Amend Plat. Subject to necessary approvals from any applicable municipality or government agency, during the Declarant Control Period, the Declarant shall have the right to amend, change, or modify any Plat, subject only to the requirement that the Declarant gets approval from any Owner of a Lot that has any boundary affected by the Plat amendment or modification.
- 20.4 Assessment Exemption. The Declarant shall be exempt from any Assessments including special Assessment for any and all Lots owned by Declarant unless such Lots are made available for occupancy.
- 20.5 Right to Unilaterally Amend Declaration, Bylaws, Articles of Incorporation, and Rules. Until the expiration of the Declarant Control Period, the Declarant shall have the right to unilaterally amend, revise, and modify this Declaration, the Bylaws, the Articles of Incorporation, and the Rules in any way and at any time, including adding, removing, or changing substantive and material provisions, without any additional approvals from anyone including, but not limited to the Owners. Pursuant to § 57-8a-217(6) of the Act, promulgation or amendment of any Rules during the Declarant’ Control Period shall be exempted from the Act’s rule-making process. Any amendment to the Bylaws or this Declaration shall be effective upon the recordation of the amendment duly executed by an authorized officer of the Declarant. When recorded, any such amendment shall be binding upon the Project and all Persons having an interest therein including Owners. Without limiting the generality of the foregoing, the Declarant alone may amend or terminate this Declaration prior to the closing of a sale or transfer of any Lot.
- 20.6 Assignment of Declarant Rights. The Declarant, at any time, by recording a written notice, may assign or transfer all or some of its control, power, authority, or decision-making ability to the Association or any other Person prior to the end of the Declarant Control Period. In the case of the abandonment of the Project by the Declarant, the cessation of business by the Declarant, or the foreclosure of any undeveloped property that is subject to the provisions of this Declaration, the rights of the Declarant as provided for in this Declaration may be exercised by any owner of the undeveloped land within the project or to be expanded into the Project.

- 20.7 Exceptions from Use Restrictions. The Declarant shall not be bound by any use restriction in this Declaration as it relates to the Lots owned by the Declarant.
- 20.8 No Modification of Declarant Rights. Any Declarant Rights in the Governing Documents and, specifically, in this Article 20, may not be substantively or procedurally altered during the Declarant Control Period without the written consent of the Declarant. Any document or amendment purporting to do so without the proper consent shall be void *ab initio*.
- 20.9 Use of Lots and Common Area for Sales Activities. During the Declarant Control Period, the Declarant shall have the right to use any Lot owned by it, and any part of the Common Area in furtherance of any activities designed to accomplish or facilitate construction, improvement and sale of all Lots owned by the Declarant or to be added to the Project, and the construction and improvement of all Common Area as the Declarant, from time to time, may desire. The Declarant shall have the right to maintain one or more sales offices. Such offices may be located on any Lot with the permission of the Owner of that Lot, who may be the Declarant, or in one or more separate structures, trailers, or facilities placed in the Project for the purpose of aiding the Declarant's sales efforts, or any combination of the foregoing. The Declarant shall also have the right to maintain any number and size of promotional, advertising, or directional signs, banners, or similar structures or devices at any place or places in the Project. The Declarant shall also have the right to designate by signs or otherwise any street or other parking as parking for sales only or to otherwise restrict and use any Common Area parking. The Declarant shall have the right from time to time to relocate, move, remove, or add to any of its sales offices, parking restrictions, signs, banners or similar structures or devices.
- 20.10 Exemption from Service Provider and Vendor Conflict Provision. The restrictions set forth in Section 5.12 of this Declaration shall not apply to service providers or vendors engaged by the Association during the Declarant Control Period.
- 20.11 Declarant Rights Do Not Impose Obligations. The Declarant Rights provided for in this Article 20 shall not be construed to impose any obligation, legal or equitable, related to any matter or issue to which they might apply. The Association and each Owner and Occupant, by acceptance of a deed, lease or other conveyance of an interest in a Lot, waive and disclaim any such duty and affirmatively acknowledge that no such duty exists or should be imposed as a result of the Special Declarant Rights.
- 20.12 Exemption from Statutory Obligations During Declarant Control Period. Pursuant to § 57-8a-211(10) of the Act and Article 16 herein, § 57-8a-211(2)-(9) of the Act shall not apply or have any effect during the Declarant Control Period and, as allowed specifically by law, the Declarant shall have no duty whatsoever to obtain a Reserve Analysis or to fund any Reserve Fund during the Declarant Control Period.

## ARTICLE 21 CONFLICT AND LITIGATION AVOIDANCE

- 21.1 Statement of Intent. Every Owner is capable of obtaining an inspection and is permitted to perform any inspection on any Lot that Owner is purchasing or may otherwise be acquiring and on any aspect of the Project. Having had the ability to inspect prior to purchasing a Lot (and any Home thereon), it therefore is acknowledged that it is unfair

and improper thereafter to seek to have the Declarant or any subcontractor performing work in the Project change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, each Owner (by acceptance of a deed or other instrument of conveyance) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving certain conflicts in that it is slow, expensive, uncertain, and can often negatively impact the value, sale, and ability to obtain financing for the purchase of Lot for years, unfairly prejudicing those Owners who must sell or who want to sell their respective Lots during any period when litigation is pending. For this reason, each Owner, by acceptance of a deed or other instrument of conveyance, and the Declarant agree and acknowledge that certain disputes simply shall not be pursued, to the extent permitted by law, and that other disputes shall be pursued only through certain specific alternative dispute resolution mechanisms and only after full disclosure, right to cure periods, and knowing approval of the Owners. Consistent with this desire to avoid litigation but, nevertheless, to ensure a reasonable avenue for recovery against a Person responsible for faulty construction, the Declarant may obtain and provide warranties to the Association from subcontractors that the Association may enforce related to the development and construction of the Project. It is the intent of the parties hereto, as agreed to by each Owner by and upon taking title to a Lot, that these warranties (from subcontractors), if they are obtained, whatever they might cover and whomever they are from, are the sole remedy to the extent permitted by law, in case of any defects or damages of any kind arising from or related to construction or development of the Project. The intent of this Article 21 is to eliminate, to the extent possible, claims against or involving the Declarant and claims related to the construction of the Subdivision Improvements, the Common Area, and the Lots in the Project, and, when and if any such claim is permitted as a matter of law or pursuant to this Declaration, to ensure that every opportunity is made to resolve the claim outside of litigation. This effort shall include, but not be limited to, the right to cure and the requirements for mediation and arbitration. The provisions of this Article 21 are in addition to the provisions of § 57-8a-229 of the Act governing liability of the Declarant and/or the Management Committee related to the Declarant Control Period.

- 21.2 Association Warranties. The Declarant may, but is not obligated to, provide for certain warranties from subcontractors to the Association related to the construction of the Project. The Association shall have the right, as provided for in any such warranties, to directly enforce and seek performance of these warranties from the subcontractors who performed the work in the construction of the Project. There is no guarantee or warranty by the Declarant that any warranties will be provided or that the warranties will cover any particular component or aspect of the Project.
- 21.3 Waiver of Subrogation and Release. The Association and each Owner, by and upon taking title to a Lot, waives any right to subrogation against the Declarant in the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner or of the Association from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant (including principles, officers, managers, shareholders, members, employees, agents, and representatives). To the full extent permitted by law, the Association and Owners hereby release the Declarant (including principles, officers, managers, shareholders, members, employees, agents and representatives) from any and

all liability to the Association and all Owners, and anyone claiming through or under them by way of subrogation or otherwise, for any loss, injury, or damage to property, caused by fire or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of the Declarant or its principles, officers, managers, shareholders, members, employees, agents and representatives. The Association and each Owner agree that all policies of insurance shall contain a clause or endorsement to the effect that this release and waiver of subrogation shall not adversely affect or impair such policies or prejudice the right of the Association or any Owner to recover thereunder. The Association and all Owners shall indemnify and defend the Declarant (including its principles, officers, employees, owners, or representatives) from any claims barred or released by this provision, including but not limited to any claim brought under any right of subrogation.

21.4 Declarant Litigation.

- (a) An Owner may only make a claim against the Declarant, to the extent allowed herein and by law after the following efforts at dispute resolution have been completed: (i) Right to Cure: the Owner shall provide to the Declarant a Notice of Claim (defined below) and permit the Declarant one hundred eighty (180) days to cure or resolve the claim or defect or to try to get its contractor or the appropriate subcontractor to cure or resolve the claim or defect, prior to initiating any lawsuit, claim, or dispute resolution process; (ii) if the dispute is not resolved within the 180-day Right to Cure period, the parties agree to mediate the dispute prior to taking further action. If additional, different, or modified claims, causes of action or legal theories for recovery (including damages, damage calculations) are added or asserted against the Declarant that were not included in any previously submitted Notice of Claim, the Right to Cure period provided for in this section shall be triggered and any pending action, including any mediation or arbitration, shall be stayed for the 180-day period to facilitate the Declarant's right to cure such additional, different, or modified claims.
- (b) For any claim allowed by law or by this Declaration, the parties agree to binding arbitration of all claims asserted against the Declarant, its contractor or subcontractor by either the Association or any Owner, with the initiating party advancing all arbitration costs subject to assignment of those costs by the arbitrator in a final decision on the merits. In the event the parties are unable to agree regarding an arbitration service, the American Arbitration Association shall administer the proceedings and the rules applicable to construction disputes shall apply. The arbitration rules shall be subject to the requirements of this Declaration and shall be modified accordingly in case of any conflict between the Rules and this Declaration.
- (c) "Notice of Claim" shall mean and include the following information: (i) the nature of the claim; (ii) a specific breakdown and calculation of any alleged damages; (iii) a detailed description of the claim along with any supporting opinions, information, or other factual evidence upon which the claim is based; (iv) photographs of any alleged defect or condition, if applicable; (v) samples of any alleged defective materials; (vi) a recitation of all efforts taken to avoid, mitigate, or minimize the claim and alleged damages arising therefrom; and (vii)

the names, phone numbers, and addresses of every Person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim.

- (d) Notwithstanding any other provision in this Declaration, except as to an Owner Warranty, and to the fullest extent permitted by the law, an Owner shall not and agrees not to commence or maintain any litigation, arbitration, or other action against the Declarant (including principles, officers, managers, shareholders, members, employees, agents and representatives), for any reason, including, but not limited to, alleged construction defects or any damages arising therefrom.
- (e) Notwithstanding any other provision in this Declaration, and to the fullest extent permitted by the law, the Association shall not and cannot commence or maintain any litigation, arbitration, or other action against the Declarant or its principles, officers, managers, shareholders, members, employees, agents and representatives, for any reason, including but not limited to for alleged construction defects, any related claims, or any damages arising therefrom.
- (f) The Association shall indemnify and defend the Declarant (including its principles, officers, managers, shareholders, members, employees, agents and representatives) against any litigation, arbitration, or the assertion of any claim arising out of any alleged construction defect in or related to the Declarant's development and/or construction of the Project and/or any damages arising therefrom. Except only as may be limited by law, by and upon taking title to a Lot, each Owner specifically disclaims and releases the Declarant from any claim, known or unknown, related to any defect in the Project not specifically covered by either an Association Warranty or an Owner Warranty. The Association and each Owner acknowledge and agree that such warranties, if provided, and whatever coverage they might provide are the sole remedy of the Association related to any alleged or actual construction defects. In case of any claim or litigation asserted related to any construction defect arising in any Lot, the Owner agrees to defend the Declarant (which shall permit the Declarant to select counsel and require the Owner to advance all costs and fees related to any such claim) from any such claim and to indemnify the Declarant from and against any liability arising therefrom.
- (g) Subject only to any Association Warranties (if any), the Association and the Owners take ownership and possession of the Lots and Common Area "AS IS," with all faults and with no warranties of any kind except as otherwise required by law. **THE DECLARANT SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, OR OF HABITABILITY, TO THE FULL EXTENT ALLOWED BY LAW.**
- (h) If otherwise allowed by law notwithstanding the terms of this Article 21, prior to the Association making any demand or commencing any mediation, arbitration, or litigation (any "action") against a Declarant or any contractor or subcontractor involved in the original construction of the Project, other than a claim made solely upon an Association Warranty against a subcontractor, the Association must have



a properly-noticed meeting of the Owners, with all attorneys, experts, and other Persons expected to be involved in the claim present at the meeting. Those Persons present, including the Management Committee, must permit discussion among the Owners and questions from the Owners and must respond to all reasonable questions of the Owners related to the proposed claims. The notice for the aforesaid meeting must include the following information:

- (i) a statement must be made on the first page of such notice in bold, upper case, and not less than 12-point font: "The Association is contemplating serious and potentially time-consuming and expensive litigation against the Declarant of this project. This litigation could cost you money in the form of increased assessments and will likely impact the resale value of your Lot and your ability to sell your Lot while this litigation is pending. This litigation could take years to resolve. You should think seriously about this issue and attend the meeting on this issue;"
- (ii) a budget and detailed breakdown of all costs and legal fees reasonably estimated to be caused by the expected litigation including a breakdown of any costs and fees to be advanced by anyone including any attorney or other representative of the Association under any contingency arrangement, and all those costs and fees to be paid directly by the Association, all of which shall assume the litigation will last five years (unless it is reasonably expected to last longer in which case the longer period shall be used for this estimate) and require a trial on the merits;
- (iii) a detailed explanation of where any money to be paid by the Association will be obtained including a per Lot breakdown of all costs and fees per year, assuming the litigation will last five years;
- (iv) a written statement of each Management Committee member indicating that member's position on the litigation;
- (v) a legal opinion on the likelihood of success of any such litigation or arbitration from an attorney not associated with the attorney or law firm who is anticipated to bring any such action, analyzing the applicable law, Governing Documents, and all relevant and known factual information;
- (vi) all terms of the agreement between the Association and the attorney or law firm prosecuting the action including a copy of any engagement letter, contract, or agreement related to that representation; and
- (vii) a detailed description of the alleged claims against the Declarant and of all efforts by the Association to resolve those claims prior to commencing any action.

In addition to the requirements above and before commencing any action, the Association must obtain the approval of seventy-five percent (75%) of the total Allocated Interests in the Association (not 75% of those Owners present), by vote, at a lawfully called and properly noticed special meeting for that purpose only. Any such a special meeting must occur no sooner than thirty (30) days and not later than sixty (60) days after the meeting required above. The Association

cannot special assess, borrow money, or use any reserve funds to fund any such action or to pay for any costs associated with any such action, including but not limited to copying costs, deposition costs, expert witness costs, and filing fees.

- (i) The existence of procedures and/or requirements in this Article 21 applicable to claims against the Declarant or its contractors or subcontractors that are barred or limited in other provisions of this Declaration shall not be construed as permitting any such claims or as contradictory to a prohibition or limit on such claims in other provisions in this Declaration. The procedures and requirements to assert a claim (including, but not limited to, the right to cure requirements, the meeting and Owner approval requirements, the mediation requirement, and the arbitration requirements) that are prohibited by this Declaration are provided solely in case any such claim is permitted by law notwithstanding the terms of this Declaration.
- (j) The provisions of this Article 21 are in addition to the provisions governing liability of the Declarant and Management Committee members during the Declarant Control Period in the Act.

21.5 Land Owners. All Persons owning land that is initially or subsequently incorporated into the Project and who sign the Declaration or any amendment thereto subjecting that land to the Declaration and incorporating it into the Project, shall be afforded the same rights, protections, and litigation avoidance procedures that are provided for the Declarant in this Article 21.



**EXHIBIT A**

**LEGAL DESCRIPTION**

The Lots and other real property referred to in the foregoing Declaration of Covenants, Conditions and Restrictions for Stonebrook Farms are located in Davis County, Utah and are described more particularly as follows:

- Stonebrook Farms, Lots 1 through 21, inclusive, as shown on the official plat thereof on file and of record in the office of recorder for Davis County, Utah, as Entry No. 3167968 and Parcel A and \_\_\_\_\_ shown thereon.

PARCEL NOS. \_\_\_\_\_ through \_\_\_\_\_.

07-338-0001-0022

**EXHIBIT B**

**BYLAWS**  
**FOR**  
**STONEBROOK FARMS**  
**HOMEOWNERS ASSOCIATION**

## BYLAWS

These bylaws are hereby adopted and established as the Bylaws for the Stonebrook Farms Homeowners Association (the "Association").

### ARTICLE I DEFINITIONS

- 1.1 **Definitions.** Except as otherwise provided herein or as may be required by the context, all terms defined in the Declaration of Covenants, Conditions, Restrictions for Stonebrook Farms ("the Declaration") shall have the same defined meanings when used in these Bylaws.
- 1.2 **Notice.** Notice as required in these Bylaws shall be accomplished as provided for in the Declaration.

### ARTICLE II OWNERS

- 2.1 **Annual Meetings.**
- (a) **Requirement.** An annual meeting of the Owners shall be held no less than once each calendar year.
  - (b) **Date and Time.** The date and time of the annual meeting shall be determined by the Management Committee, in its discretion.
  - (c) **Purpose.** The Annual Meeting shall be held for the following purposes:
    - (i) electing members of the Management Committee;
    - (ii) distributing of the budget, if it was not distributed before the meeting;
    - (iii) announcing the current deductible for the Association's property insurance and the Owners' potential responsibility for this deductible, and permitting questions and discussion on insurance issues and coverage; and
    - (iv) transacting such other business as may properly come before the meeting.
  - (d) **Approval of Minutes.** The minutes of the annual meeting may be approved by the Owners at the next annual meeting, or, in the Management Committee's discretion, by the Management Committee at a subsequent meeting of the Management Committee.
  - (e) **Election of Management Committee Members.** If the election of the Management Committee members cannot be held on the day designated for the annual meeting of the Owners, or at any adjournment thereof, the Management Committee shall cause the election to be held at a special meeting of the Owners, to be convened as soon thereafter as may be convenient.

2.2 Special Meetings.

- (a) **Who May Call.** Special meetings of the Owners may be called by the Management Committee, the Chairperson, or upon the written request of Owners holding not less than twenty-five percent (25%) of the Allocated Interest of the Association.
- (b) **Requirements for Request of Owners.** Any written request for a special meeting by the Owners shall include the signature of each Owner affirmatively supporting such request along with a statement of the purpose of the meeting. The statement of affirmation and purpose must be on every document containing signatures. Such written request is to state the purpose or purposes of the meeting and shall be delivered to the Manager, or the Chairperson, who shall then call, provide notice of, and conduct a special meeting within sixty (60) days of receipt of the request that shall address the purpose identified on the request, but no other issues.

2.3 Place of Meetings. The Management Committee may designate the office of the Manager or any place within the City as the place of meeting for any annual or special meeting.

2.4 Notice of Meetings. The Management Committee shall cause written notice of the date, time and place of meeting, and in the case of a special meeting, the purpose, for all meetings of the Owners (whether annual or special) to be delivered, not more than thirty (30) nor less than ten (10) days prior to the meeting. Notice for any meeting utilizing telephone conferencing, video conferencing or other means of electronic communication shall include the applicable call-in/log-in number and passcode as the case may be.

2.5 Use of Telephonic and Video Conferencing. The Management Committee may utilize telephone conferencing, video conference and any other means of electronic communication reasonably available and convenient for regular and special meetings of the Association providing that the meeting participants can hear and communicate with the other meeting participants in real time.

2.6 Owners of Record. For the purpose of determining Owners entitled to notice of or to vote at any meeting of the Owners, or any adjournment thereof, the Management Committee may designate a record date, which shall not be more than thirty (30) or less than ten (10) days prior to the meeting. If no record date is designated prior to sending notice of the meeting, the first date on which a notice of the meeting is sent shall be deemed to be the record date for determining Owners entitled to notice of or to vote at the meeting. The Person appearing in the records of the Association on such record date as the Owners of record of Lots in the Property shall be deemed to be the Owners of record entitled to notice of and to vote at the meeting of the Owners.

2.7 Quorum. Those Owners and the holders of proxies entitled to cast votes present at an annual or special meeting shall constitute a quorum for the transaction of business. Owners participating in a meeting by electronic means shall be deemed present at the meeting.

2.8 Proxies. At each meeting of the Owners, each Owner entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist

only where the instrument authorizing such proxy to act shall have been executed by the Owner or by the Owner's attorney when duly authorized in writing. If a Lot is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Lot or that Owner's attorneys when duly authorized in writing. Such instrument authorizing a proxy to act shall set forth the specific matters or issues upon which the proxy is authorized to act, and may allow the proxy to vote on any issue arising at any particular meeting or meetings. Such instrument shall be delivered either prior to or at the meeting (but no later than any point after the start of the meeting and announced as the final time to deliver proxies) to the Secretary of the Association or to such other officer or individual who has been authorized by the Association to accept proxies at the meeting.

- 2.9 Votes. With respect to each matter submitted to a vote of the Owners, each Owner entitled to vote at the meeting shall have the right to cast, in person or by proxy, one vote for each Lot of such Owner. The affirmative vote of a majority of the votes entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Owners, unless a greater proportion is required by these Bylaws, the Declaration, the Act, or the Utah Revised Nonprofit Corporations Act. When more than one Owner holds an interest in a Lot, any Owner may exercise the vote for such Lot on behalf of all co-Owners of the Lot. In the event of two conflicting votes by co-Owners of one Lot, no vote shall be counted for that Lot but one Owner shall be counted for the purposes of establishing a quorum. In no event shall fractional votes be exercised in respect to any Lot.
- 2.10 Ballots and Written Consent. The Association may utilize written consents and/or ballots consistent with the requirements of the Revised Nonprofit Corporation Act. If a secure site is established and administered by the Association or Manager, online or electronic ballots are permitted.
- 2.11 Minutes of Meetings. The secretary shall take minutes of all meetings of the Owners. The minutes shall include, at a minimum, (a) the identification of the Persons present at the meeting in person and by proxy; (b) the date of the meeting; (c) the identification of any issue that is voted on or decided in the meeting; (d) the number of votes cast for and against any issue decided upon; and (e) the exact wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this section 2.10 does not invalidate any action taken at a meeting. Draft meeting minutes for each meeting of the Owners shall be made available upon request consistent with Section 4.4 of the Declaration.

### **ARTICLE III MANAGEMENT COMMITTEE**

- 3.1 Number, Tenure, Qualifications, and Election.
- (a) **Number of Members.** The Management Committee shall be composed of three (3) individuals meeting the qualifications stated in the Declaration and Section 3.1(b) below, subject to the Declarant Rights set forth in the Declaration.
  - (b) **Member Requirements.** After the end of the Declarant Control Period and turnover of the Project from the Declarant, at least two (2) of the Management Committee members must have as their primary residence a Lot in the Project.



For purposes of service on the Management Committee an "Owner" may include the spouse of an Owner. Any candidate whose election or appointment would contravene requirements of this Section 3.1(b) shall be ineligible for election or appointment. In determining which of multiple candidates elected shall serve if only one can serve and maintain the requirements of this provision, the highest vote getter shall prevail. If both have equal votes, then the issue shall be resolved by a coin toss. Candidates must also be current Assessments.

- (c) **Term.** Except during the Declarant Control Period, and except for the terms of one (1) of the initial member of the Management Committee elected upon turnover of management of the Association who shall serve a one (1) year term in order to create staggered terms, the term of each Management Committee member shall be two (2) years.
- (d) **Nominations.** At or before the annual meeting or any subsequent meeting at which the election is held, any Owner may submit his/her/their own name or the name of any other willing and otherwise qualified person to serve on the Management Committee. If the Association gives advance notice of any persons seeking election to the Management Committee, it shall include the names of every person from whom it has received the written affirmation. If the name of a person is submitted who is not in attendance at the meeting, it shall not be added to the final ballot for election of Management Committee members unless it is submitted with a written statement signed by the person indicating that the person is willing to serve.
- (e) **Disqualification.** If any Management Committee member is alleged to not meet the qualification requirements in the Declaration and any Management Committee member is notified of or discovers this alleged lack of qualification, the Management Committee shall promptly investigate and verify whether the Management Committee member is qualified or not, and during this period shall not make any further decisions. If the Management Committee member is not qualified, the Management Committee member's membership on the Management Committee shall terminate automatically retroactive to the date that written notice of an alleged lack of qualification was provided to the Association or, if no notice was provided, to the date that the Management Committee established that the Management Committee member was not qualified. If a Management Committee member becomes unqualified or was not qualified under the Governing Documents, but was nonetheless elected to or permitted to remain on the Management Committee, the decisions and actions of the Management Committee and that Management Committee member are not subject to challenge on this basis up to the time that the Association is notified in writing as provided for in this Section.
- (f) **Removal for Failure to Participate.** If any Management Committee member shall fail to appear at three (3) successive regular Management Committee meetings in a row or fifty percent (50%) or more of the regular Management Committee meetings within any calendar year, after having received proper notice of the meetings and after the Management Committee has attempted in good faith to schedule meetings consistent with all of the members' schedules, the other

Management Committee members may by unanimous vote remove that member and appoint a new member.

3.2 Meetings.

- (a) **Regular Meetings.** After the Declarant Control Period, the Management Committee shall hold regular meetings at least quarterly, and more often at its discretion.
- (b) **Who Is Entitled to Attend.** Consistent with Utah Code Ann. § 57-8a-226, Owners may attend meetings and may be present for all discussion, deliberation, and decisions except when the Management Committee is in executive session.
- (c) **Special Meetings.** Special meetings of the Management Committee may be called by or at the request of any two Management Committee members or the Chairperson. Notice of any special meeting shall be given at least 48 hours prior thereto to each Management Committee member. Except as provided by law, no notice of special meetings is required to be provided to Owners, although any Owner may attend a special meeting if the Owner appears at the physical location of the meeting in person.
- (d) **Quorum and Manner of Acting.** A majority of the Management Committee members shall constitute a quorum for the transaction of business at any meeting of the Management Committee. The act of a majority of the Management Committee members present at any meeting at which a quorum is present (in-person or via electronic communications) and for which proper notice was provided to the Management Committee members shall be the act of the Management Committee. The Management Committee members shall act only as a Management Committee, and individual Members shall have no powers as such.
- (e) **Place and Notice of Meetings.** The Management Committee may designate any place in the City as the place of meeting for any regular meeting called by the Management Committee but shall in good faith attempt to hold meetings at the office of the Manager or in as close a proximity to the Project as reasonably possible. All Management Committee members and Owners requesting notice, in writing, shall be given at least ten (10) days' notice of regular meetings, except that notice shall not be required for emergency meetings.
- (f) **The Management Committee may utilize telephone conferencing, video conference and/or any other means of electronic communication reasonably available and convenient for regular and special meetings of the Management Committee providing that the meeting participants can hear and communicate with the other meeting participants in real time.**
- (g) **Executive Session.**
  - (i) **The Management Committee or a Sub-Committee may, by motion and a vote, continue deliberations and discussions in executive session. A member of the Management Committee who is not a member of a Sub-Committee, shall not be entitled to attend executive sessions of the Sub-Committee or inspect attorney-client privileged minutes of the Sub-Committee, without approval of the Management Committee.**

- (ii) Executive sessions may be held to discuss and make decisions related to the following matters:
  - (1) Pending or prospective legal proceedings and issues related to the Association, its operations, or its governance, including but not limited to meetings with the Association's counsel;
  - (2) Contracts and purchases related to the Association, including but not limited to the negotiations, potential breaches, reviews of contracts, and the terms of any purchases;
  - (3) Association employee and personnel issues, including reviews, discipline issues, termination issues, salary issues, and the terms of employment; and
  - (4) Rule violations by owners, including but not limited to the discussion of complaints and whether to impose fines or utilize any particular remedy to address particular violations.
  - (5) The Management Committee or the Sub-Committee holding the executive session shall determine who outside of that committee shall be allowed to be present in executive session, and no one else is entitled to be present. All members of the Management Committee shall be entitled to be present at executive committee meetings of the Management Committee. All members of a Sub-Committee shall be entitled to be present in executive sessions of the Sub-Committee.
- (iii) The discussions in executive session shall be confidential and shall not be disclosed to anyone outside of the meeting except as authorized by the Management Committee or the Sub-Committee. Documents analyzed in executive session may be confidential for other reasons provided for by law or in the Governing Documents, but they are not confidential merely as a result of having been discussed or presented in executive session.

### 3.3 Action by Committee Members without a Meeting.

- (a) Any action that is required or permitted to be taken at a meeting of the Management Committee may be taken without a meeting if each and every Management Committee member, in writing, either:
  - (i) votes for the action; or
  - (ii) votes against or abstains from voting, and fails to exercise his/her/their right to demand that action not be taken without a meeting.
- (b) An action taken pursuant to this section shall not be effective unless the Association receives writings:
  - (i) reasonably describing the action taken;
  - (ii) signed by each Management Committee member; and

- (iii) not revoked pursuant to subsection 3.3(d).
  - (c) Action is taken under this section is effective only if the affirmative vote for the action equals or exceeds the minimum number of votes that would be necessary to take the action at a meeting at which all of the Management Committee members then in office were present and voted.
  - (d) A Management Committee member may revoke consent to any action given pursuant to this section by communicating, in writing, that the member has changed his/her/their vote, in writing, with a description of the action. To be effective, the revocation must be received before receipt of the final consent necessary for the action to be effective.
  - (e) An action approved of pursuant to this section is effective when the last writing necessary to satisfy this section is received by the Association.
  - (f) Action taken pursuant to this section has the same effect as action taken at a meeting of the Management Committee and may be described as an action taken at a meeting of the Management Committee members in any document.
  - (g) For purposes of this section:
    - (i) "Signed" or "signature" is any indication on the document (whether paper or electronic) that the document is from and consented to by the person who is purported to have sent it. For example, a signature block or typed name at the bottom of an email satisfies the requirement for a signature.
    - (ii) "Writing" shall refer to an email, letter, facsimile, or any other physical or electronic document.
    - (iii) Communications may be by email, facsimile, hand delivery, mail, or other electronic or physical means.
    - (iv) Any response to any electronic communication shall be sent to either the address of the sender using the same address and means of communication as was used to send the request for consent of an action (such as email, facsimile, or hand delivery) or to any address in regular use (electronic, telephonic, or physical) by the person sending the request.
    - (v) A communication shall satisfy the requirement to "describe the action taken" if it is in the form of an email and it includes with the email the content of prior emails in the email chain that reasonably describe or include the proposed action, or if the writing from the Management Committee member otherwise sufficiently references the proposed action.
- 3.4 Compensation. No Management Committee member shall receive compensation for any services that he/she may render to the Association as a Management Committee member; provided, however, that a Management Committee member may be reimbursed for expenses incurred in the performance of his/her/their duties as a to the extent such expenses are unanimously approved by the Management Committee.
- 3.5 Resignation and Removal. A Management Committee member may resign at any time by delivering a written resignation to any member of the Management Committee. Unless

otherwise specified therein, such resignation shall take effect upon delivery. An oral resignation attempt is not effective. Any Management Committee member may be removed and replaced at any time, with or without cause, by the affirmative vote of at least fifty percent (50%) of the Allocated Interest of the Association at a special meeting of the Owners duly called for such purpose.

- 3.6 Vacancies. If vacancies shall occur in the Management Committee by reason of the death, resignation, removal for failure to attend meetings, or disqualification of a Management Committee member, the Management Committee members then in office shall continue to act, and such vacancies shall be filled by a vote of the Management Committee members then in office, even though less than a quorum may be available. Any vacancy in the Management Committee occurring by reason of removal of a Management Committee member by the Owners may be filled by election by the Owners at the meeting at which such Management Committee member is removed. Any Management Committee member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his/her/their/their predecessor.

#### **ARTICLE IV OFFICERS**

- 4.1 Officers. The officers of the Association shall be the president or chairperson (the "Chairperson"), secretary (the "Secretary"), and treasurer (the "Treasurer").
- 4.2 Election, Tenure and Qualifications. The officers of the Association shall be chosen by the Management Committee annually at the first meeting of the Management Committee following the annual meeting. Each such officer shall hold such office until a successor has been elected or until such officer's death, resignation, disqualification, or removal, whichever first occurs. No person shall hold more than one office except during the Declarant Control Period. All officers must be members of the Management Committee during the entire term of their respective offices.
- 4.3 Subordinate Officers. The Management Committee may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Management Committee may from time to time determine. Subordinate officers need not be members of the Association.
- 4.4 Resignation and Removal. Any officer may resign at any time by delivering a written resignation to any Management Committee member or to any Manager. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced by the Management Committee at any time, with or without cause.
- 4.5 Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Management Committee at any regular or special meeting. During the time that any office is vacant and no other officer is available to perform the duties of that office as required below, the Management Committee shall ensure that the duties and responsibilities of the office are performed.

- 4.6 The Chairperson. The Chairperson shall preside at meetings of the Management Committee and at meetings of the Owners. At all meetings, the Chairperson shall have all authority typically granted to the person presiding over a meeting including but not limited to: (a) the right to control the order of the meeting; (b) the right to arrange for the removal of any disruptive persons who may include but not be limited to any person who (i) refuses to abide by rules or requests of the presiding person related to the order of the meeting and when speaking is permitted, or (ii) engages in vulgar, threatening, or otherwise inappropriate language or gestures; (c) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order" or "The Modern Rules of Order"; and (d) the right to designate the Manager or any other person to preside over any meeting at which the Chairperson is present. The Chairperson shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Management Committee. The Chairperson shall have the general authority to implement decisions of the Management Committee and shall oversee the operations of the Association. The Chairperson shall have authority in case of emergency to take action without Management Committee approval as is necessary and prudent to preserve and protect property. The Chairperson shall be responsible for the duties of any other office while that office is vacant.
- 4.7 The Secretary. The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, the law, or any resolution of the Management Committee may require such person to keep. The Secretary shall also act in the place and stead of the Chairperson in the event of the Chairperson's absence or inability or refusal to act. The Secretary shall perform such other duties as required by the Management Committee.
- 4.8 The Treasurer. The Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Management Committee, and when requested by the Chairperson, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Management Committee. The Treasurer shall have authority and obligation to generally implement the requirements of governing documents as it relates to the funds of the Association. The Treasurer shall also act in the place and stead of the Chairperson in the event of the Chairperson and Secretary's absence or inability or refusal to act. The Treasurer shall perform such other duties as required by the Management Committee.
- 4.9 Compensation. No officer shall receive compensation for any services rendered to the Association as an officer, provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer to the extent such expenses are approved by the Management Committee.

## ARTICLE V SUB-COMMITTEES

- 5.1 Designation of Sub-Committees. The Management Committee may from time to time by resolution designate such committees (each a "Sub-Committee") as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. The membership of each such Sub-Committee designated hereunder shall include at least one

- (1) Management Committee member. A Sub-Committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Management Committee in a written resolution. The Management Committee may terminate any Sub-Committee at any time.
- 5.2 Proceedings of Sub-Committees. Each Sub-Committee designated hereunder by the Management Committee may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such Sub-Committee may from time to time determine. Each such Sub-Committee shall keep a record of its proceedings and shall regularly report such proceedings to the Management Committee.
- 5.3 Quorum and Manner of Acting. At each meeting of any Sub-Committee designated hereunder by the Management Committee, the presence of members constituting at least a majority of the authorized membership of such Sub-Committee (but in no event less than two (2) members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such Sub-Committee. The members of any Sub-Committee designated by the Management Committee hereunder shall act only as a Sub-Committee, and the individual members thereof shall have no powers, as such. A Sub-Committee may exercise the authority granted by the Management Committee.
- 5.4 Resignation and Removal. Any member of any Sub-Committee designated hereunder by the Management Committee may resign at any time by delivering a written resignation to the Chairperson, the Management Committee, or the presiding officer of such Sub-Committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Management Committee may at any time, with or without cause, remove any member of any Sub-Committee designated by it thereunder.
- 5.5 Vacancies. If any vacancy shall occur in any Sub-Committee designated by the Management Committee due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy by the Management Committee, constitute the then total authorized membership of the Sub-Committee and, provided that two (2) or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Management Committee.

## ARTICLE VI INDEMNIFICATION

- 6.1 Indemnification. No Management Committee member, officer, or member of a Sub-Committee (including any member of the Design Review Board) shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct of said Management Committee member, officer, or Sub-Committee member performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a Management Committee member, officer of the Association, or a member of a duly formed Sub-Committee, as well as such person's heirs and administrators, from and against any and all claims, judgments, and liabilities to which such persons shall become subject, by reason of that person having heretofore or hereafter been a Management Committee member, officer of the Association, or member of a Sub-Committee or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have

been taken by him/her as such Management Committee member, officer, or Sub-Committee member, and shall advance and reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that the Association shall have the right, in its sole discretion, to defend such person from all suits or claims; provided further, however, that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's gross negligence or intentional misconduct. The rights accruing to any person under the foregoing provisions of this Section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to indemnify or reimburse such person in any proper case, even though not specifically provided for herein or otherwise permitted.

- 6.2 Other Indemnification. The indemnification herein provided shall not be deemed exclusive of any other right to indemnification to which any person seeking indemnification may be provided under any statute, agreement, vote of disinterested Management Committee members, or otherwise, both as to action taken in any official capacity and as to action taken in any other capacity while holding such office. The indemnification herein provided shall continue as to any person who has ceased to be a Management Committee member, officer, Sub-Committee member, or employee, and shall inure to the benefit of the heirs, executors, and administrators of any such person.
- 6.3 Settlement by Association. The right of any person to be indemnified shall be subject always to the right of the Association by the Management Committee, in lieu of such indemnity, to settle any such claim, action, suit, or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

## **ARTICLE VII AMENDMENTS**

- 7.1 Amendments. Except as permitted specifically herein or required by the Act, these Bylaws may be amended by the affirmative vote of Owners holding at least sixty-seven percent (67%) of the Allocated Interest in the Association at a meeting called for that purpose provided, however, that during the Declarant Control Period, any such amendment shall require the approval of Declarant. Nothing in this Section 7.1 shall be construed to limit the Declarant's unilateral right to amend these Bylaws (or the Declaration or Rules) during the Developer Control Period as set forth in Article 20 of the Declaration.
- 7.2 Execution of Amendments. Upon obtaining the required vote, an amendment shall be signed by the Chairperson and Secretary of the Association, who shall certify that the amendment has been properly adopted to as required by these Bylaws. An amendment complying with the requirements of these Bylaws and the Declaration shall be effective when the amendment has been recorded in the office of the County Recorder of Davis County, Utah.

## **ARTICLE VIII WAIVER OF IRREGULARITIES**

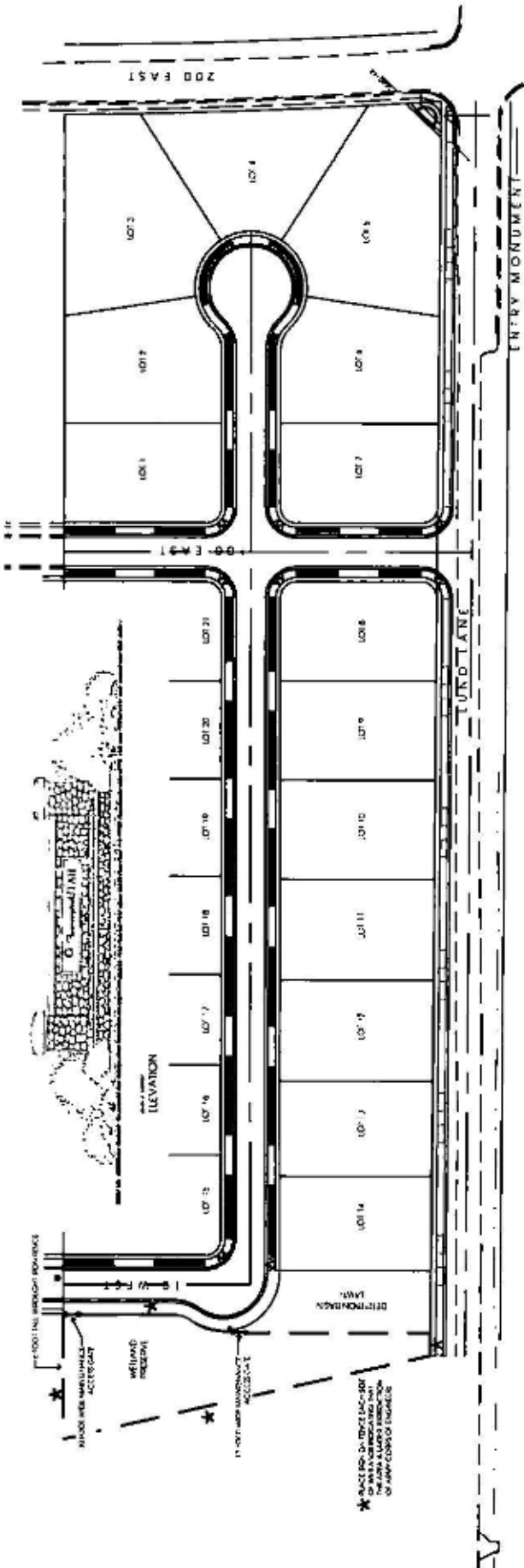


- 8.1 **Waiver of Procedural Irregularities.** All inaccuracies and irregularities in calls or notices of meetings, in the manner of voting, in the form of proxies, in the method of ascertaining persons present, in the method of making decisions, or in the method of accepting or counting votes shall be deemed waived under the following circumstances:
- (a) if the objecting person was in attendance at the meeting, they are waived if no objection to the particular procedural issue is made at the meeting;
  - (b) if the objecting person was not in attendance at the meeting but has proper notice of the meeting, they are waived if no objection to the particular procedural issue is made within sixty (60) days of the date the meeting is held;
  - (c) if the objecting person was not in attendance at a meeting, did not have proper notice of the meeting, but had actual notice of the meeting before it occurred, they are waived if no objection to the particular procedural issue is made within ninety (90) days of the date of the meeting;
  - (d) if the objecting person was not in attendance at the meeting and did not have actual and proper notice of the meeting before it occurred, within ninety (90) days of receiving actual notice of the occurrence of the meeting or of any decision that was made at the meeting;
  - (e) for any action, vote, or decision that occurred without a meeting, within one hundred and twenty (120) days of receiving actual notice of the occurrence of the action, vote, or decision.
- 8.2 **Requirements for Objections.** All objections except those made at a meeting shall be in writing. Whenever made, objections must be specific, shall include identification of the specific provision of the Governing Document or other law that has been violated, and shall include a brief statement of the facts supporting the claimed violation.
- 8.3 **Irregularities that Cannot Be Waived.** The following irregularities cannot be waived under the prior subsection:
- (a) Any failure to comply with the provisions of the Declaration.
  - (b) Any failure to obtain the proper number of votes required to pass a particular measure.

**EXHIBIT C**

**STREET TREE**

**(See attached page for street tree plan)**

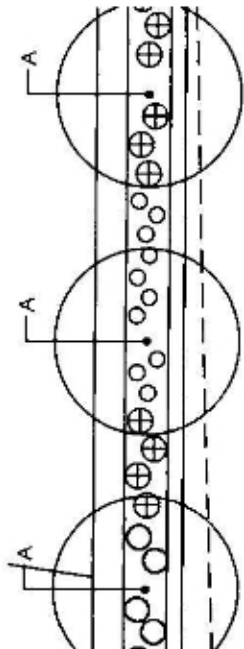


### Planting Notes - Street Trees

1. Street trees are to be located or approximately 40 feet on center.
2. Street trees are to be installed by the Home Buyer.
3. Locate trees a minimum of ten (10) feet from driveway or utilities; and a minimum of twenty (20) feet from street lights.
4. Street trees shall be centered in the park strip between the sidewalk and curb.
5. All park strips are to be planted with lawn—either sod or sod is acceptable. Planting is the responsibility of the homeowner and is to be maintained by the homeowner.
6. The street trees along Lund Lane will be installed by the developer and maintained by the homeowner association.
7. The monument at the corner of Lund Lane and 100 East Street will be owned and maintained by the city.

### Plant List - Stonebrook Farms - Farmington, Utah - Ivory Homes

SYL	PLANT TYPE	SCIENTIFIC NAME	COMMON NAME	SIZE
—	Street Tree	Acer t. x Acer p. 'Keithsform'	Norwegian Sunset	1 - 1 1/2" cal.
○	Plantings at Lund Lane:			
A	Street Tree	Platanus acerifolia 'Bloodgood'	London Plane Tree	1 - 1 1/2" cal.
⊕	Ornamental Grass	Calamagrostis a. 'Karl Foerster'	Karl Foerster Grass	1 gal.
○	Perennial Flowers	Perovskia atriplicifolia	Russian Sage	1 gal.
○		Rudbeckia fulgiva 'Goldsturm'	Black eyed Susan	1 gal.



### TYPICAL PLANTING

AT LUND LANE  
1" = 30 Feet

This is a conceptual plan showing approximate tree and shrub spacings. Exact locations of plant material must be determined on site. Locate trees a minimum of ten (10) feet from driveway or utilities; and a minimum of twenty (20) feet from street lights. Shrubs must not interfere with any utilities such as water meters, electrical transformers, telephone, cable, or fiber optic equipment. When encountering such utilities, plants may be eliminated to avoid conflicts.

  
 10001-100th  
 SUITE 200  
 PARKING FROM STREET TOWARDS  
**STONEBROOK FARMS**  
 LAND LANE AND 100 EAST LANE, FARMINGTON, UTAH  
 PROPERTY DEVELOPMENT - 978 WOOD OAK LANE, SALT LAKE CITY, UTAH  
 R. MICHAEL KELLY  
 LANDSCAPE ARCHITECT  
 10000-100th  
 SUITE 200  
 PARKING FROM STREET TOWARDS