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**DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
WILCOX FARMS
RESIDENTIAL**

TINs: 12-065-0005, 12-065-0096, 12-065-0091, 12-391-0011, 12-391-0012, and 12-391-0025

**An Expandable Development
in
Davis County**

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This DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR WILCOX FARMS ("Declaration") is effective when recorded with the Davis County Recorder's Office and is executed as of the last date set forth in the notarized signatures below, by Destination Homes, Inc., its successors and assigns (the "Declarant") and Discovery Development, L.L.C. (owner of the Property).

RECITALS

- A. The real property situated in Davis County, Utah, described in Exhibit A, attached to and incorporated in this Declaration by reference, is hereby submitted, together with all buildings and improvements previously, now, or hereafter constructed, and all easements and rights appurtenant thereto, to a residential planned unit development consisting of Lots and related Common Areas pursuant to Utah Code § 57-8a-101 *et seq.* that shall be known as Wilcox Farms (the "Project").
- B. The Discovery Development, L.L.C. is the record owner of the Property. For any real property owned by Discovery Development, L.L.C. that is subject to this Declaration or becomes annexed into this Declaration or Subdivision, Discovery Development, L.L.C. has appointed Destination Homes, Inc. as the Declarant for the Subdivision, with all the corresponding rights and administrative functions. Declarant hereby desires to establish for the mutual benefit of all future Owners and Occupants of the Project, certain covenants, conditions, restrictions, easements, rights, privileges, assessments and liens as set forth herein, which shall run with and be a burden upon the Project.
- C. Declarant desires to create an association of homeowners, which entity shall possess the power to maintain and administer the Common Areas, collect and disburse assessments and charges hereinafter provided for, and administer and enforce the provisions of this Declaration. It is intended that this Declaration shall serve as a binding contract between the Association and each Owner; however, nothing herein is intended to create a contractual relationship between Declarant and the Association or Declarant and any Owner, or to inure to the benefit of any third-party. Additionally, it is not intended that this Declaration be read in conjunction with any deed or real estate purchase contract to create privity of contract between Declarant and the Association.
- D. The Association is governed by the terms of this Declaration, the Articles of Incorporation for Wilcox Farms Owners Association and the Bylaws for Wilcox Farms Owners Association, which Bylaws are attached hereto as **Exhibit "B"** and shall be recorded in Davis County Recorder's Office contemporaneously with the recording of this Declaration.
- E. Declarant intends that the Owners, Occupants, Mortgagees, and all other persons hereafter acquiring any interest in the Project shall at all times enjoy the benefits of, and shall hold their interest subject to this Declaration, which is recorded in furtherance of establishing a general plan of planned unit ownership for the Project, and for establishing rules for the use, occupancy, management, and enjoyment thereof.
- F. Notwithstanding the foregoing, no provision of this Declaration shall prevent the Declarant from doing any of the following, which shall be deemed to be among Declarant's reserved rights in addition to such rights as may be described elsewhere in this Declaration: (1) installation and completion of the Subdivision Improvements; (2) use of any Lot owned by the Declarant as a model home, or for the placement of a temporary construction or sales office; (3) installation and maintenance of signs incidental to sales or construction which are in compliance with applicable City or County ordinances; (4) expansion of the Project through

recordation of subsequent plats and phases; and (5) assignment of Declarant' rights under this Declaration in whole or part.

G. These Recitals are made a part of this Declaration.

ARTICLE I. DEFINITIONS

The capitalized terms used in this Declaration shall have the meanings set forth in this Article. Unless the context clearly requires otherwise, the masculine, feminine and neuter genders and the singular and the plural shall be deemed to include one another, as appropriate.

1.1. **Act** shall mean the Utah Community Association Act, codified at Utah Code § 57-8a-101, *et seq.*, as the same may be amended from time to time.

1.2. **Additional Land** shall mean, without limitation, any parcel of land that is annexed into the Project by the Declarant. Exhibit A contains a description of property that may be annexed into the Association through recordation of a plat subjecting the subsequent phase to the Project.

1.3. **Articles** shall mean and refer to the Articles of Incorporation for the Association, as amended and restated from time to time.

1.4. **Assessments** shall mean any monetary charge or fee imposed or levied by the Association against Owners as provided in this Declaration or other Governing Documents.

1.5. **Association** shall mean the Wilcox Farms Owners Association, a Utah non-profit corporation. Failure of the Association to maintain its corporate status will not result in the dissolution of the Association.

1.6. **Board** or **Board of Directors** shall mean and refer to the Board of Directors of the Association as duly elected in accordance with the terms and conditions of the Articles of Incorporation and Bylaws. The Board is the governing body of the Association.

1.7. **Board Member** shall mean a duly qualified and elected or appointed individual member of the Board of Directors of the Association.

1.8. **Bylaws** shall mean the Bylaws of the Association that are attached hereto as Exhibit B, as the same may be amended from time to time.

1.9. **Common Areas** shall mean all land, and the improvements situated thereon, within the Project that the Association now or hereafter owns in fee for the benefit of Owners for as long as the Association is the owner of the fee, which may include without obligation or limitation: private roads, common sidewalks, Association signs or monuments, open space, landscaped areas, utility facilities, easements across private Lots, areas depicted as common areas on the Plat, and any real property or improvements within the Project that the Association has the obligation to maintain, repair, or replace for the common benefit of the Owners, as the Board shall determine in its sole and exclusive discretion, including, without limitation, all utility and service lines and similar improvements, whether public or private-company owned, intended to serve more than one Residence, whether located on a Lot or lying inside of the exterior boundaries of the Residence. Common Area shall not include (i) any roads and associated utilities dedicated to and accepted by a municipality or (ii) any open space and/or parks dedicated to and accepted by a municipality.

1.10. **Common Expenses** shall mean (a) all sums lawfully assessed against Owners; (b) expenses of administration, maintenance, management, operation, repair and replacement

of the Common Areas which are maintained by the Association (and Limited Common Areas that are the responsibility of the Association); (c) expenses allocated by the Association among the Owners; (d) expenses agreed upon as common expenses by the Association or its Board of Directors, including utility payments for services that have common or shared meters; (e) expenses declared common expenses by the Declaration; and (f) other miscellaneous charges incurred by the Association or the Board pursuant to the Act, this Declaration, the Bylaws, or the Rules.

1.11. **Declarant** shall mean Destination Homes, Inc., and its successors, assigns, or affiliates. Declarant shall have the sole discretion to determine if a person or entity is an affiliate and whether Declarant's rights and exemptions contained herein transfer to such person or entity.

A. **Affiliates or Declarant Related Entity** shall mean Declarant, parent companies, subsidiaries, assigns, successors, related or designated construction entities, or other entities established by Declarant or Declarant's members for the purpose of owning, developing, constructing and/or selling Lots or Units in the Subdivision.

1.12. **Declaration** shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for Wilcox Farms, as may be amended from time to time.

1.13. **Design Guidelines** shall mean the requirements governing the location, color, materials, and architectural design of dwellings, structures, and improvements within the Project as adopted by the Board as provided herein.

1.14. **Governing Documents** shall mean collectively, the Declaration, Articles of Incorporation, Bylaws, Plat, and any Rules adopted by the Board.

1.15. **Limited Common Areas** shall all property designated on the recorded Plat or as described in this Declaration as Limited Common Area, being intended ultimately to be owned by the Association but for the exclusive use and enjoyment of one or more appurtenant Lots but fewer than all of the Lots, which include: private alleys.

1.16. **Lot** shall mean each of the individual Lots within the Project, as shown on the Plat, with the exception of the Common Areas. A Lot shall include any Residence or other improvement constructed thereon.

1.17. **Manager** shall mean a person, persons, or entity, if any, selected by the Board to manage the affairs of the Association and Project.

1.18. **Member** shall mean and refer to a Lot Owner.

1.19. **Mortgage** shall mean any mortgage, deed of trust, or trust deed or the act of encumbering any Lot or any property by a mortgage, trust deed, or deed of trust.

1.20. **Mortgagee** shall mean and refer to any person or entity named as a mortgagee of a mortgage or beneficiary under or holder of a deed of trust.

1.21. **Occupant** shall mean any Person, living, dwelling, visiting, or staying in a Residence. This includes, but is not limited to, all lessees, tenants, and the family members, agents, and representatives living, dwelling, visiting, or staying in a Residence. Occupants shall be bound by the Restrictions in this Declaration and shall be liable for any fines that are assessed for violations of the Governing Documents.

1.22. **Owner** shall mean the record owner, whether one or more Persons of fee simple

title to any Lot which is a part of the Project, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

1.23. **Period of Declarant Control** shall mean the period of time during which the Declarant may act as the Board of Directors or appoint Board Members. Such period of time shall commence on the date this Declaration is recorded and terminate on the occurrence of the earliest of the following events: (i) six (6) months after the date on which all of the Lots and all of the Additional Land, have been conveyed to Persons other than Declarant or its successors, assigns, and affiliates, regardless of whether such Additional Land has been added hereto; or (ii) the Declarant executes and records a written waiver of its right to control the Association. The Special Declarant Rights contained within this Declaration may last beyond the Period of Declarant Control for the maximum length permitted by law. If the Declarant elects to waive one or more, but not all, of its Special Declarant Rights, then all Special Declarant Rights not waived shall remain in full force and effect.

1.24. **Person** shall mean and refer to a natural individual, corporation, business entity, estate, partnership, trustee, association, joint venture, government, governmental subdivision, or agency or other legal entity capable of holding title to real property.

1.25. **Plat** shall mean all of the official subdivision plats of the Wilcox Farms subdivision, filed and recorded in the official records of the Davis County Recorder. The term Plat shall specifically include any additional, amended, or supplemental plat(s) that may be recorded in the future. The Plat is hereby incorporated into and made an integral part of this Declaration, and all requirements and specifications set forth on the Plat and required by the Act are deemed included in this Declaration. If any conflict exists between the Plat and this Declaration, the Declaration shall control.

1.26. **Project** shall include the real property described in Exhibit A, together with the buildings, improvements, and permanent fixtures located thereon, and all easements and rights appurtenant thereto and shall at any point in time mean and refer to the entire Wilcox Farms development. The Project shall also include any Additional Land annexed into the Association and made subject to this Declaration.

1.27. **Residence** shall mean a structure intended for use and occupancy as a single-family Residence, together with all improvements located on or with respect to the Lot concerned which are used in connection with such Residence. The Residence shall include, without limitation, the roofs and all exterior surfaces, exterior trim, gutters, downspouts, structural members, and foundations. The Residence shall also include any mechanical equipment and appurtenances located within any one Residence or located without said Residence but designed to serve only that Residence, such as appliances, air conditioning compressors, sprinkler systems, antennas, fixtures and the like. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Residence or serving only the Residence shall be deemed to be a part of the Residence.

1.28. **Restrictions** shall mean the covenants, conditions, assessments, easements, liens, and restrictions set forth in this Declaration.

1.29. **Rules** shall mean and refer to the rules, resolutions, regulations, policies, architectural guidelines, etc. adopted by the Board.

1.30. **Supplemental Declaration** shall mean and refer to a written instrument recorded in the records of the Davis County Recorder, which refers to this Declaration and which amends, modifies, or supplements this Declaration in accordance with its terms.

ARTICLE II. PROJECT DESCRIPTION

2.1. **Submission**. The real property described with particularity on Exhibit A attached hereto and incorporated herein by this reference is hereby submitted to the Act. The Declarant declares that the Project and all of the Lots shall be held, conveyed, transferred, sold, mortgaged, encumbered, occupied, used, and improved subject to the Restrictions, which Restrictions shall constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Declarant, the Association, and each Owner, including their respective heirs, successors, and assigns.

2.2. **Name**. The Project, as submitted to the provisions of this Declaration, shall be known as the Wilcox Farms. The Project is not a cooperative.

2.3. **Description of Improvements**. The major improvements contained in the Project will include single-family Residences that are constructed on residential Lots. Other Lots or Common Area upon the Additional Land may be added as reserved by the Declarant. There are also Common Areas and Limited Common Areas as further provided herein, along with other improvements detailed on the Plat. All improvements have been and shall continue to be constructed in a style and of materials architecturally compatible with the other improvements in the Project. The Lots, their locations, and approximate dimensions are indicated on the respective Plats.

2.4. **Expansion of Project**. The Project may be expanded by the Declarant by the recording of a Supplemental Declaration in accordance with the provisions of Article XII.

ARTICLE III. MEMBERSHIP AND VOTING RIGHTS

3.1. **Membership**. Every Owner shall be a Member of the Association with one membership interest per Lot. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership of the Lot to which it is appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer is void. In the event an Owner fails or refuses to transfer the membership registered in his name to the purchaser of his Lot, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

3.2. **Voting Rights**. Except as otherwise disallowed in this Declaration or the Bylaws, or limited by the Special Declarant Rights, Owners shall be entitled to one vote per Lot owned.

3.3. **Multiple Ownership Interests**. If there is more than one Owner of a Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast by any of such Owners, whether in person or by proxy or by written ballot, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made or if there are conflicting votes from the same Lot, the vote involved shall not be counted for any purpose, except towards establishing a quorum.

3.4. **Record of Ownership**. Every Owner shall promptly notify the Association of any change in ownership of a Lot by providing the conveyance information to the Secretary of the

Association who shall maintain a record of ownership of the Lots. Any cost incurred by the Association in obtaining the information about an Owner as specified herein which is not furnished by such Owner shall nevertheless be at the expense of such Owner and shall be reimbursed to the Association as an Individual Assessment.

ARTICLE IV. EASEMENTS AND RIGHTS IN COMMON AREAS

4.1. **Easement of Enjoyment.** Each Member shall have a right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. An Owner may delegate his easement and right of use and enjoyment described herein to any permitted Occupants who reside in such Owner's Residence. The rights and privileges of such delegee or assignee shall be subject to suspension in the same manner and to the same degree as those of an Owner. This right of easement shall not extend to the privately owned Lots of other Owners.

4.2. **Title to Common Areas & Limited Common Areas.** The Declarant may convey title to the Association of various Common Areas and Limited Common Areas; however, neither this conveyance nor any other provision of the Declaration shall be construed to create a contractual relationship between the Association and Declarant.

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

1) The right of Davis County and any other governmental or quasi-governmental body having jurisdiction over the Project to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Project for purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service;

2) The right of the Association to suspend voting rights and right to use the Common Areas by an Owner for any period during which any Assessments against his Lot remain unpaid, and for a period not to exceed sixty (60) days for any infraction of the Rules;

3) The right of the Association to dedicate or transfer all or any part of the Common Areas, and any sewer, water and storm drain lines to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by sixty-seven percent (67%) of the Owners.

4) Easement for Limited Common Areas. The Association shall have a non-exclusive easement for any utility or any required maintenance in and through the Limited Common Area (alleys). With the exception of the rights and easements granted to the Association, the Owner(s) of a Lot shall have the exclusive use of all Limited Common Area appurtenant to their Lot.

4.4. **Association Easement.** The Association, its Board, employees, agents, and contractors shall have non-exclusive easements to use the Common Areas to perform their duties as assigned by the Governing Documents.

4.5. **Easement for Utility Services.** The Project is subject to a blanket easement over, across, above, and under it for ingress, egress, installation, maintenance, repair, and replacement of utilities. Utilities include, without limitation, water, sewer, gas, telephone, electricity, data, video, and cable. If any utility company or municipal authority requests that a more specific easement be granted in its favor in substitution for the easement hereby established

with respect to the Common Areas, the Board shall have the power and authority, without the need for any consent by the Owners to grant the more specific easement on such terms and conditions as the Board deems appropriate. It is intended that this utility easement be construed broadly, and such easement shall specifically include the areas directly underneath and across the Lots for the installation and maintenance of utility lines across and through each Lot.

4.6. **Easements for Encroachments.** If any portion of a Common Area structure or improvement encroaches upon any Lot, or if any structure or improvement of a Lot encroaches upon any other Lot, or the Common Area as a result of the manner in which the improvements were initially approved and constructed, or due to settling, shifting, alteration, replacement, repair, or restoration, a valid easement for encroachment, and maintenance of such encroachment, shall exist for the life of the improvement or structure.

4.7. **Easements for Construction and Development Activities.** Declarant reserves easements and rights of ingress and egress over, under, along, across and through the Property and the right to make such noise, dust and other disturbance as may be reasonably incident to or necessary for the (a) construction of Lots, (b) to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising signs on the Common Area with respect to the sales of Lots, or other property in the Project, (c) improvement of the Common Area, and construction, installation and maintenance thereon of roadways, walkways, buildings, structures, landscaping, and other facilities designed for the use and enjoyment of some or all of the Owners, and (d) construction, installation and maintenance on lands within, adjacent to, or serving the Property of roadways, walkways, and other facilities, planned for dedication to appropriate governmental authorities.

4.8. **Income generated from negotiation, installation or provision of certain utilities and amenities.** Declarant and/or Declarant Related Entities invest time, experience, infrastructure and/or capital in the negotiation, provision or installation of certain utilities and amenities (e.g., internet, cable, fiber, phone, solar power, etc.) that provide services and benefits to owner in the Project that would not otherwise be available or at a reduced cost. Any income gained by these parties from these efforts may be retained by the Declarant, Declarant Related Entities, or their assigns, even after the Declarant Control Period. The Association may enter into contracts with third parties related to the provisions of such utilities and amenities for the benefit of Owners in the Project, which utilities and amenities may be paid for through Assessments.

ARTICLE V. BUDGET AND ASSESSMENTS

5.1. **Annual Budget.** The Board shall prepare and adopt an annual budget for the Association. The annual budget shall provide, without limitation, for the maintenance of the Common Areas and for the administration, management, and operation of the Association. The Board may revise the budget from time to time as the Board deems appropriate. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect until a new annual budget is adopted. The budget shall be made available to requesting Owners within thirty (30) days after adoption. Owners may not disapprove a budget during the Period of Declarant Control.

5.2. **Covenant to Pay Assessments.** Each Owner of a Lot by the acceptance of a deed therefore, whether or not it be so expressed in the deed, hereby covenants and agrees with each other and with the Association to pay to the Association all Assessments, including without limitation, all Regular, Special, and Individual Assessments described below, and other fees, charges, levies, and fines as may be provided in the Governing Documents.

5.3. **Purpose of Assessments.** Assessments levied by the Association shall be

used for the purpose of promoting the health, safety, and welfare of residents of the Project, including but not limited to the appearance and aesthetics of the Project. The use made by the Association of funds obtained from Assessments may include but is not limited to: payment of the cost of taxes and insurance on the Common Areas; maintenance, repair, and improvement of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under the Governing Documents.

5.4. **Declarant Assessment Exemption.** Anything contained in the Governing Documents to the contrary notwithstanding, the Declarant shall not be obligated to pay Assessments on any Lot owned by it until such time as the Declarant elects in writing to pay Assessments, and only for so long as the Declarant elects to pay Assessments. In addition, the Declarant may exempt Lots owned by Declarant affiliates from the payment of Assessments During the Period of Declarant Control, in the Declarant's sole discretion.

5.5. **Regular Assessments.** Regular Assessments shall be made on a calendar year basis based on each Owner's equally allocated portion of the budget. The Board shall give written notice of each Regular Assessment not less than fifteen (15) days prior to the beginning of the next calendar year. Each Regular Assessment shall be due and payable in monthly or quarterly installments on dates established by the Board. At least fifteen (15) days prior to the effective date of any change in the amount of the Regular Assessment, the Association shall give each Owner written notice of the new amount.

5.6. **Special Assessments.** The Board may levy a Special Assessment payable over such a period as the Board may determine for the purpose of defraying, in whole or in part any expense or expenses not reasonably capable of being fully paid with funds generated by Regular Assessments; the cost of any construction, reconstruction, or unexpected repair or replacement of the Common Areas; or for any other expense incurred or to be incurred as provided in this Declaration. Special Assessments over one thousand dollars (\$1,000) in a calendar year must be approved and assented to by a majority of the Members present in person or by proxy at a meeting duly called for such purpose. Notice in writing of the amount of any Special Assessments and the time for their payment shall be given as soon as is reasonably possible to the Owners. Payment shall be due on the dates and in the manner determined by the Board and provided in the notice. Notwithstanding the foregoing, Declarant may levy Special Assessments in any amount deemed necessary during the Period of Declarant Control without Owner approval.

5.7. **Individual Assessments.** In addition to Regular and Special Assessments authorized above, the Board may levy Individual Assessments against a Lot and its Owner for: (a) administrative costs and expenses incurred by the Board in enforcing the Governing Documents against the Owner or his/her Occupants; (b) costs associated with the maintenance, repair, or replacement of Common Areas caused by the neglect or actions of an Owner or his/her Occupants; (c) any other charge, fine, fee, expense, or cost designated as an Individual Assessment in the Governing Documents or by the Board, including, without limitation, action taken to bring a Residence and its Owner into compliance with the Governing Documents; (d) nonpayment of a Reinvestment Fee; (e) costs of providing services to the Lot upon request of the Owner; and (f) attorney fees, court or collection costs, fines, and other charges relating to any of the foregoing, regardless of whether a lawsuit is filed. In addition, Individual Assessments may be levied against a Lot and its Owner specifically benefited by any improvements to adjacent roads, sidewalks, planting areas or other portions of the

Common Areas made on the written request of the Owner of the Lot to be charged. The aggregate amount of any such Individual Assessments shall be determined by the cost of such improvements, repairs, maintenance, or enforcement action, including all overhead and administrative costs and attorney fees, and shall be allocated among the affected Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be. Individual Assessments may be levied in advance of the performance of the work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to an Individual Assessment against the Lot(s) benefited, unless such work was necessitated by the Owner's or his/her Occupants' negligence.

5.8. **Allocation of Assessments.** Regular and Special Assessments shall be fixed at an equal uniform rate for all Lots, unless otherwise provided in the Governing Documents. Individual Assessments shall be allocated separately to each Lot based on the costs incurred by the Association.

5.9. **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 Board in its discretion may apply the excess to reserves, credit the excess against future Assessments, or pay the excess to the Owners, as the Board deems appropriate. The decision of the Board 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.

5.10. **No Offsets.** All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount or withholding of any amount shall be permitted for any reason, including, without limitation, a claim that the Association owes the Owner money, or that the Association is not properly exercising its duties and powers as provided in this Declaration.

5.11. **Certificate Regarding Payment.** Upon the request of an Owner, prospective purchaser, mortgagee, or encumbrancer of a Lot, the Association shall issue a certificate stating whether or not all Assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon. The Association may charge the requesting Owner, prospective purchaser, mortgagee, or encumbrancer of a Lot a reasonable fee as permitted in the Act.

5.12. **Personal Obligation and Lien.** All Assessments, together with any interest, late fees, collection costs, and attorney fees shall constitute and remain: (a) a charge and continuing lien upon the Lot with respect to which such Assessment is made pursuant to Utah Code § 57-8a-301; and (b) the personal obligation of the person who is the Owner of such Lot at the time the Assessment falls due. No Owner may exempt himself or his Lot from liability for payment of Assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid Assessments, late payment fees, interest, and costs of collection, including reasonable attorneys' fees, which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore.

5.13. **Billing and Collection Procedures.** The Board shall have the right to adopt Rules setting forth procedures for the billing and collection of Assessments, provided that such procedures are not inconsistent with the provisions hereof. The failure of the Association to

send an invoice to an Owner shall not relieve any Owner of liability for any Assessment or charge under this Declaration, but the Assessment lien therefore shall not be foreclosed or otherwise enforced until the Owner has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement, at the address of the Owner on the records of the Association, of the Assessment or installment and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. A copy of such notice may also be provided to the Occupant(s) of the Residence if the Owner does not reside at the Project.

5.14. **Due Date and Delinquency.** Assessments shall be paid in a timely manner. Payments are due in advance on the first day of the month or the first day of such other period established for the payment of Assessments. Payments are delinquent if received more than ten (10) days from the date that they became due. Whenever an Assessment is delinquent, the Board may at its option invoke any one or more options or all of the sanctions granted in this Article or the Act.

5.15. **Collection Charge.** If the Association does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply. Delinquent accounts shall be charged a twenty-five dollar (\$25.00) late fee each month until the Owner's account (including all collection charges, costs, and attorneys' fees) is paid in full. Interest shall accrue on all unpaid balances at the rate of eighteen percent (18%) per annum. Collection charges, interest, and/or late fees shall constitute part of the Assessment lien provided above until paid.

5.16. **Collection Action at Law.** The Association may exercise any or all of the following remedies to collect delinquent Assessments:

- 1) The Association may suspend such Owner's voting rights.
- 2) The Association shall have a lien against each Lot for any Assessment levied against the Lot and any fines or other charges imposed under the Governing Documents against the Owner of the Lot from the date on which the Assessment, fine, or charge is due. This lien shall arise and be perfected as of the date of the recording of this Declaration. At any time, any Assessment or installment thereof is delinquent, the Association, by and through its Board or any Manager, may file a notice of lien in the deed records of Davis County against the Lot with respect to which the delinquency pertains. Once filed, such lien shall accumulate all future Assessments or installments, interest, late fees, penalties, fines, attorney fees, and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. Said lien may be foreclosed at any time as allowed by law. The lien of the Association shall be superior to all other liens and encumbrances except: a lien or encumbrance recorded before the original Declaration was recorded; a first or second security interest on the Lot secured by a mortgage or trust deed that is recorded before the Association's notice of lien; or a lien for real estate taxes or other governmental assessments against the Lot. The Association through its duly authorized agents, may bid on the Lot at any foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Lot.
- 3) The Association may bring an action to recover a money judgment for unpaid Assessments, fines, and charges under this Declaration against an Owner without foreclosing or waiving the lien described above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.
- 4) If the delinquent Owner is leasing his Lot or any portion thereof, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant

of the Owner the rent due or becoming due and the payment of such rent to the Board shall discharge such tenant for rent due, and shall discharge the Owner for such Assessments to the extent of the amount so paid.

5) The Association may terminate utilities paid out of the Common Expense and the right to use the Common Areas.

6) Payments shall be credited first to collection costs (including attorney's fees), then to interest and late fees, then to the oldest assessments, then the most recent assessments.

7) The Association shall have any other remedy available to it whether provided in the Governing Documents, the Act, or other law or in equity.

5.17. **Power of Sale.** The Association shall have all rights of foreclosure granted by the Act, both judicially and non-judicially. Pursuant to Utah Code §§ 57-1-20 and 57-8a-302, an Owner's acceptance of an interest in a Lot constitutes a simultaneous conveyance of the Lot in trust, with power of sale, to the Association's attorney of record, as trustee, for the benefit of the Association, for the purpose of securing payment of Assessments under the terms of this Declaration and the Act. The Association may appoint a qualified successor trustee by executing and recording a substitution of trustee form.

5.18. **Reserve Account.** The Board shall establish a reserve account to fund long-term maintenance of Common Areas. The Board shall follow any statutory requirement to conduct a reserve analysis and utilize such reserve analysis in making decisions regarding the funding of a Reserve Account. The Board shall not be personally liable for failure to fund the reserve unless willful or intentional misconduct is proven in a court of law. Notwithstanding the foregoing, such reserve fund duties and obligations shall not apply to the Association and Board during the Period of Declarant Control.

5.19. **Reinvestment Fee Covenant.** A Reinvestment Fee Covenant is hereby established as permitted under Utah Code § 57-1-46. The Board shall have the right (but shall not be required) to establish a Reinvestment Fee assessment amount in accordance with this Section. The following terms and conditions shall govern Reinvestment Fees:

1) Upon the occurrence of any sale, transfer, or conveyance of any Lot as reflected in the office of the County recorder, regardless of whether it is pursuant to the sale of the Lot or not (as applicable, a "Transfer"), the party receiving title to the Lot (the "Transferee") shall pay to the Association a Reinvestment Fee in an amount to be established by the Board in the Rules or Board resolution, provided that in no event shall the Reinvestment Fee exceed the maximum rate permitted by law.

2) The Association shall not levy or collect a Reinvestment Fee for any Transfer exempted by Utah Code § 57-1-46.

3) The Reinvestment Fee shall be due and payable by the Transferee to the Association at the time of the Transfer giving rise to the payment of such Reinvestment Fee and shall be treated as an Individual Assessment for collection purposes.

4) All transfers of Lots from Declarant to a Declarant related entity shall be exempt from a Reinvestment Fee. The Declarant shall have the sole discretion to determine whether such Transferee is a related entity and if a Reinvestment Fee applies.

5) Declarant and Declarant Related Entities shall be exempt from the Reinvestment Fee.

5.20. **Account Payoff Fees.** The Association may charge a fee for providing

Association payoff information needed in connection with financing, refinancing, or closing of the sale of a Lot as provided for in Utah Code § 57-8a-106. The amount of such fee shall be fifty dollars (\$50.00) or as otherwise established in the Rules. Additional paperwork required in a private sale between an Owner and purchaser may be obtained from the Association but may incur additional fees.

5.21. **Association Responsibility after Foreclosure.** If the Association takes title to a Lot pursuant to a foreclosure (judicial or non-judicial), it 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 obligations to pay assessments, taxes, or insurance, or to maintain the Lot. By taking a security interest in any Lot governed by this Declaration, Mortgagees cannot make any claim against the Association for nonpayment of taxes, Assessments, or other costs and fees associated with any Lot if the Association takes title to a Lot related to a failure to pay Assessments.

5.22. **Homestead Waiver.** Pursuant to Utah Code § 57-8a-301, and to the extent any liens are created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, each Owner waives the benefit or priority of any homestead or exemption laws of the State of Utah now in effect, or in effect from time-to-time hereafter.

ARTICLE VI. DUTIES AND POWERS OF THE ASSOCIATION

6.1. **Organization of Association.** The Association shall serve as the governing body for all Owners. The Association shall make provisions for the maintenance, repair, replacement, administration, and operation of the Common Area and Common Expenses, and other matters as provided in the Act, this Declaration, and the Bylaws. The Association shall have all rights and powers granted to it under the Act and in this Declaration, the Articles, and the Bylaws. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with this Declaration, the Articles, and the Bylaws. Except as specifically authorized in this Declaration, the Articles, or the Bylaws, no Owner or group of Owners shall have authority to take any action on behalf of the Owners, the Association, or the Board of Directors.

6.2. **Legal Organization.** The Association may be incorporated as a nonprofit corporation. In the event the nonprofit corporate status expires or is invalidated in any manner, the Board of Directors, in its sole discretion, may renew and/or reincorporate the Association. Any such expiration or invalidation shall not relieve any Owner from paying Assessments and abiding by all Restrictions contained in this Declaration.

6.3. **General Powers and Obligations.** The Association shall have, exercise and perform all of the following powers, duties, and obligations:

- 1) The powers, duties, and obligations granted to the Association by this Declaration, its Bylaws, and the Articles of Incorporation;
- 2) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah;
- 3) The powers, duties, and obligations of a homeowners association pursuant to the Utah Community Association Act, or any successor thereto;
- 4) The powers, duties, and obligations not reserved specifically to Owners; and

5) Any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Project.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged, or restricted by changes in this Declaration made in accordance with the provisions herein, accompanied by any necessary changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Utah.

6.4. **Specific Powers and Duties.** The powers and duties of the Association shall include, without limitation, the following:

1) **Maintenance and Services.** The Association shall provide maintenance and services for the Project as provided in Article VII and other provisions of this Declaration.

2) **Insurance.** The Association shall obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws of the Association. The Association shall have no obligation to obtain or maintain any insurance covering the personal and real property of any Owner(s), and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance.

3) **Rulemaking.** The Association, through its Board of Directors, shall make, establish, promulgate, amend, and repeal Rules governing the conduct of persons and the operation and use of the Project as it may deem necessary or appropriate in order to assure a clean, aesthetically pleasing, peaceful, and orderly use and enjoyment of the Project. Pursuant to Utah Code section 57-8a-218(15), the requirements of Utah Code §§ 57-8a-218(1) through (13), except subsection (1)(b)(ii), are hereby modified to not apply to the Association.

4) **Assessments.** The Association shall adopt budgets and impose and collect Assessments as provided in Article V of this Declaration.

5) **Enforcement.** The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of the Governing Documents of the Association. The Association may assess fines to Owners, Occupants, or their guests for violations of the Governing Documents in accordance with the provisions of the Governing Documents and the Act.

6) **Title to Common Areas.** The Association shall hold title to all Common Areas conveyed to it by its developer and pay all real property taxes and assessments levied upon any portion of the Common Areas, unless paid by the Owners, provided that the Association shall have the right to contest or compromise any such taxes or assessments.

7) **Employment of Agents, Advisers, and Contractors.** The Association may employ the services of any person or corporation as managers, hire employees to manage, conduct, and perform the business, obligations, and duties of the Association, employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, community association managers, landscape architects, accountants, recreational experts, architects, planners, lawyers, reserve study specialists, or what is convenient for the management, maintenance, and operation of the Project. Any agreement with a Manager shall not exceed a term of two (2) years, renewable by agreement of the parties for a successive two (2) year term and shall be terminable by the Association upon no more than sixty (60) days' advanced notice. The Board has no

authority to enter into a management agreement or contract inconsistent with the terms of the Governing Documents or that provides for a termination fee or requirement for termination for cause.

8) **Litigation.** The Board may instigate litigation to enforce the provisions of this Declaration or any other Common Law or statutory right which the Association is granted subject to the limitations set forth in Article XVI.

9) **Loans.** The Association shall have the authority to obtain loans for the efficient operation of the Association and may use Common Area and other assets of the Association as collateral for financing. A majority vote of the Board shall be required prior to obtaining any loan.

10) **Joint Use/Cost Sharing/Easement Agreements.** The Association shall have the right to enter agreements and/or easements for the use, maintenance, repair, and replacement of improvements or facilities which use may be shared with other homeowners associations or other property owners, or which may be located on land outside of the Project. The shared facilities and improvements appurtenant to the agreements may be located within or outside the Project.

6.5. **Liability.** Board Members and officers of the Association shall not be liable to the Association or any Member thereof for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for intentional or willful misconduct. If a Board Member or any officer of the Association is made a party to any proceeding because the individual is or was a Board Member or officer of the Association, the Association shall defend, indemnify, and hold harmless such individual against liability and expenses incurred to the maximum extent permitted by law, except where the Board member or officer is found by a court of law to have engaged in willful or intentional misconduct in carrying out his/her duties.

6.6. **Board of Directors.** The governing body of the Association shall be the Board of Directors. Except where a matter or vote is specifically reserved to the Owners, the Board shall act in all instances on behalf of the Association. Board Members shall be elected pursuant to the provisions set forth in the Bylaws. The Bylaws may set forth requirements for serving on the Board.

Notwithstanding the foregoing, during the Period of Declarant Control, the Declarant shall have the sole authority to act as the Board of Directors, or to appoint Board Members. Declarant appointed Board Members shall not be bound by the qualification requirements in the Bylaws.

6.7. **Board Indemnification.** Each past and present Board Member (including the Declarant and its appointees) shall be entitled to defense and indemnification to the fullest extent permitted by the Utah Revised Nonprofit Corporation Act. The right of any Person to be indemnified shall be subject always to the right of the Association by the Board, in lieu of such indemnity, to settle any 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.

6.8. **Registration with the State.** In compliance with Utah Code § 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 by law.

6.9. **Registered Agent.** The Registered Agent of the Association shall be as provided in the entity filings with the Utah State Department of Commerce, Division of Corporations and Commercial Code. The Board may change the Registered Agent without Owner vote or approval.

6.10. **Records.** Owners shall have the right to inspect Association Records within a reasonable time following an Owner's request. "Association Records" are limited to the following documents and information: (a) Declaration, (b) Bylaws, (c) Articles of Incorporation, (d) minutes of Owner meetings and Board meetings, (e) most recent approved budget, (f) a record of all actions taken by Owners or the Board without a meeting, (g) a record of all actions taken by a committee of the Board in place of the Board, (h) a record of all waivers of notices for Owner meetings and Board meetings, (i) a list of all Owners in alphabetical order showing their address and the number of votes each Owner is entitled, (j) all resolutions adopted by the Board currently in effect, (k) all written communications to Owners generally as Members for a period of three years, (l) a list of Board member names and addresses, (m) a copy of the most recent annual report delivered to the State, (n) all annual financial statements (balance sheet and profit and loss statement) of the Association for the past three years, and (o) the most recent reserve analysis. Association Records shall specifically exclude emails, texts, phone calls, writings, and personal communications between Board Members or Owners. The Board shall have the power and discretion to determine what documents or information are considered Association Records if there is a dispute over the definitions or language provided in this Section. The Association shall have no duty to keep, maintain, produce, or permit inspection of any documents, draft documents, electronic files, or other information not explicitly identified in Utah Code §§ 57-8a-227(1)(a)(ii) and 16-6a-1601. The Board shall have the sole discretion to determine the format in which documents and records are kept. The Association may redact any private, privileged, or sensitive information from Association Records produced herein, in the Board's discretion. The Association may provide additional information or documents to Owners not identified as Association Records herein, in the Board's discretion. The Association may make Association Records available via a website, and if so provided, then the Association shall have met its record inspection obligations set forth in this Section or other applicable law for all such documents posted thereon.

6.11. **Management.** The Project may be managed by a professional manager, selected by the Declarant, or upon the termination of the Period of Declarant Control, shall be selected by the Board to assist in the management and operation of the Project. The Board may delegate such of its powers and duties to the Manager as it deems appropriate; reserving the right, however, to control and oversee the administration thereof. Any powers and duties delegated to any Manager may be revoked by the Board at any time, with or without cause. Following the Period of Declarant Control, the Board shall have the option to either renew the contract with the Declarant selected Manager or hire a different Manager.

ARTICLE VII. MAINTENANCE

7.1. **Association Maintenance.** The Association shall maintain, repair, and replace the Common Areas and Limited Common Areas together with all improvements thereon and all easements appurtenant thereto including: (i) all landscaping and related improvements on Common Areas; (ii) the storm water system, detention ponds, and all related facilities for the Project; (iii) all fences, walls, park strip improvements, and street trees; (iv) private streets and alleys; (v) private utility lines owned or controlled by the Association; and (vi) personal property owned by the Association. The Association shall have no responsibility to maintain or repair the public streets within the Project or any utility lines controlled by a municipality or utility service provider. The Board, in its sole discretion, shall determine the maintenance standard of the Common Areas. The Association shall have no obligation to perform any maintenance and/or repair of any part of a Lot, Residence, or any other landscaping installed by an Owner without the Association's express agreement for such maintenance.

- (a) **Landscaping.** The Association shall contract with a third party to perform general landscaping maintenance the Common Areas. The Association may adopt Rules to add further detail with regard specific landscape maintenance services provided by the Association.
- (b) **Snow Removal.** The Association may adopt Rules governing snow removal in the Project.

7.2. **Owner Maintenance.** Each Owner shall have the obligation to provide interior and exterior maintenance of their Lot and Residence, including but not limited to the maintenance, repair, and replacement of driveways, structural elements of the Residence, foundations, roofs, walls, windows, doors, landscaping, and utility lines that service the Lot or Residence. Each Owner shall paint, repair, and otherwise maintain the exterior of its Residence in compliance with Association standards and shall maintain, repair, and replace all appurtenant mechanical devices, including but not limited to, electrical, plumbing, and heating, ventilating and air conditioning systems. Each Owner shall be responsible for performing all snow removal on the sidewalks and driveways located on their Lot.

Owners shall be responsible to maintain, repair, and replace fences which mark the boundaries of their Lots (if any). When such non-perimeter fences serve, benefit, or otherwise mark a boundary of two or more Lots, the responsibility and cost to maintain, repair, and replace the shared portion of such fences shall be borne pro rata by all Owners bounded thereby.

7.3. **Utility Charges.** The charges for utilities that are metered separately to each Lot or Residence shall be the responsibility of the respective Lot Owner. In the event water, electrical, sewer, or other utilities are metered collectively for the Project, or metered separately for Common Areas, then the Association shall be responsible for paying for such utility costs as a Common Expense. The Association may pay for utilities where meters are common or shared.

7.4. **Owner Maintenance Neglect.** The Association shall have the power and authority, without liability to any Owner for trespass, damage, or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon; but only if the Owner fails to maintain and repair such Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of this Declaration or any Rules of the Association. The Board shall have the sole authority and discretion to decide whether an Owner has failed to meet its maintenance obligations. Except as necessary to prevent personal injury or property damage in an

emergency, the Association shall first provide reasonable notice and an opportunity to cure before exercising the power granted herein. All costs incurred by the Association in remedying Owner maintenance neglect shall be an Individual Assessment against the Owner's Lot.

The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any Rules promulgated by the Board, or to enforce by mandatory injunction or otherwise all the provisions of this Declaration and such Rules.

7.5. **Maintenance Caused by Owner Negligence**. If the need for maintenance or repair of Common Areas as specified herein is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests, tenants, or invitees of an Owner, the Board may cause such repairs to be made by the Association and the cost of such maintenance or repair work shall be added to and become an Individual Assessment to which such Lot is subject.

ARTICLE VIII. INSURANCE

NOTICE: The Association's Insurance Policy does not cover the personal property or personal liability of the Owners or their Occupants.

8.1. **Insurance**. The Board shall obtain insurance as required in this Declaration, the Act, or other applicable laws. 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. Insurance premiums shall be a Common Expense.

8.2. **Property Insurance**. The Association shall maintain a blanket policy of property insurance covering the Common Area and all buildings, fixtures, and equipment thereon that are the obligation of the Association to maintain. The Association may maintain broader coverage if afforded by the insurance contract.

1) The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an "all in" or "all inclusive" insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in Common Areas or otherwise permanently part of or affixed to Common Areas.

2) At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by "special form" property coverage.

3) The blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.

4) The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost; and (2) a Replacement Cost Endorsement under which the insurer agrees to

pay up to one hundred percent (100%) of the Project's insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.

5) The Association shall keep an amount equal to the Association's property insurance policy deductible or \$10,000, whichever is less, in an operations savings account. This requirement shall not apply to any earthquake or flood insurance deductible.

6) If a loss occurs that is covered by a property insurance policy in the name of an association and another property insurance policy in the name of a lot owner, then the Association's policy provides primary coverage and the Lot Owner is responsible for the Association's policy deductible.

7) If, in the exercise of its business judgment, the Board determines that a claim is likely not to exceed the Association's property insurance policy deductible: (a) the Owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible; (b) an Owner who does not have a policy to cover the Association's property insurance policy deductible is responsible for the loss to the amount of the Association's policy deductible; and (c) the Association need not tender the claim to the Association's insurer.

8) The Association shall provide notice to each Owner of the Owner's obligation for the Association's policy deductible and of any change in the amount of the deductible.

9) The Association shall have no obligation to obtain or maintain any insurance covering Owners' personal and real property, and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance.

8.3. Comprehensive General Liability (CGL) Insurance. The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than One Million Dollars (\$1,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which should preclude the insurer from denying the claim of an Owner because of the negligence acts of the Association or another Owner.

8.4. Director's and Officer's Insurance The Association shall obtain Directors' and Officers' liability insurance protecting the Declarant, the Board, the officers, and the Association against claims of wrongful acts and mismanagement. To the extent reasonably available, this policy shall include coverage for: (1) failure to maintain adequate reserves, (2) failure to maintain books and records, (3) failure to enforce the Governing Documents, (4) breach of contract, (5) volunteers and employees, (6) monetary and non-monetary claims, (7) claims made under fair housing act or similar statutes or that are based on discrimination or civil rights claims, and (8) defamation. In the discretion of the Board, the policy may also include coverage for the Manager and its employees and may provide that such coverage is secondary to any other policy that covers the Manager or its employees.

8.5. Theft and Embezzlement Insurance The Association may obtain insurance covering the theft or embezzlement of funds by Board Members, officers, employees, Manager, and contractors of the Association in the discretion of the Board.

8.6. Worker's Compensation Insurance The Association shall purchase and

maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law and as the Board deems appropriate.

8.7. **Certificates**. Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association, and upon written request, to any Owner or Mortgagee.

8.8. **Named Insured**. The named insured under any policy of insurance shall be the Association. Each Owner shall also be a named insured under the Association's insurance policies as required by law. The Declarant shall be listed by name as an additional insured under any and all policies of insurance during the Period of Declarant Control.

8.9. **Owner Insurance**. Each Owner shall be responsible to purchase and maintain in force appropriate hazard, content, property and liability insurance as such Owner shall determine to be appropriate to the Owner's needs, Residence, personal property, and circumstances. The Association is not required to file claims on any of its policies for any damage or liability claim of Owners.

8.10. **Right to Negotiate Claims & Receive Proceeds**. Insurance proceeds for a loss under the Association's property insurance policy are payable to the Association and shall not be payable to a holder of a security interest. The Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, or if there are remaining proceeds after such action as is necessary related to the property has been paid for, the remaining proceeds may be distributed to the Owners and lien holders, as their interests remain with regard to the Lots or may be held as credits in accordance with their interest in the Association. Each Owner hereby appoints the Association as attorney-in-fact for negotiating all losses related thereto, including the collection, receipt of, and appropriate disposition of all insurance proceeds; the execution of releases of liability; and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of the Owner.

8.11. **Owner Act Cannot Void Coverage Under Any Policy**. Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

8.12. **Waiver of Subrogation against Owners and Association**. All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Declarant, the Association, and the Owners and their respective affiliates, agents, and employees.

8.13. **Applicable Law**. This Declaration is specifically subjecting the Association to the insurance requirements and provisions in Part 4 of the Act, and any amendments thereto and thereafter enacted by law. It is the intent of this provision that any future changes to the insurance law applicable to community associations shall apply to this Association.

ARTICLE IX. USE RESTRICTIONS

9.1. **Use of Common Areas.** The Common Areas shall be used only in a manner consistent with their community nature and applicable Association use restrictions. Owners may not place any item in the Common Area without the authorization of the Board.

9.2. **Use of Lots and Residences.** Each Lot and Residence shall be used only as a single-family dwelling. No gainful occupation, business, trade, or other nonresidential use shall be conducted on any Lot or Residence except with the prior written consent of the Board and applicable governmental entities. Notwithstanding the foregoing, activities otherwise prohibited by this Section are permitted without Board approval if only normal residential activities would be observable outside of the Residence; the business activity does not involve persons coming on to the project who do not reside in the Project; the business activity does not involve the solicitation of Occupants or Owners; the business will not result in the increase of the cost of the Association's insurance; and that the activities would not be in violation of applicable local ordinances.

9.3. **Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried on upon any Lot, Residence, or Common Area, nor shall anything be done or placed on any Lot or Common Area which interferes with or jeopardizes the quiet enjoyment of other Lots, Residences, or the Common Areas, or which is a source of annoyance to residents. No unlawful use shall be made of a Lot or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. No use shall be made of any Lot which would result in an increase in the cost of the Association's insurance, or which would cause the improvements within the Project or any part thereof to be uninsurable against loss by fire or other perils included in insurance contracts, or cause such insurance to be canceled or suspected, or cause any company issuing such insurance to refuse renewal thereof.

9.4. **Recreational Vehicles.** The Board is authorized to adopt Rules governing the parking of boats, trailers, motorhomes, large trucks, commercial vehicles, RVs, or the like within the Project. Unless otherwise designated in the Association's Rules, Recreational Vehicles are prohibited from being parked in the Project.

9.5. **Pets.** Domestic pets may be kept in Residences in conformance with local government requirements. No pets, animals, livestock, or poultry of any kind shall be commercially bred in, on, or about the Project. The Board may adopt Rules that vary or expand upon the restrictions related to pets, including but not limited to, restrictions on the number and types of pets, requirements for registration with the Association, and noise limitations. Pets may not create a nuisance. The following acts of an animal may constitute a nuisance: (a) it causes damage to property of anyone other than its owner; (b) it causes unreasonable fouling of the air by odors; (c) it causes unsanitary conditions; (d) it defecates on any Common Area or Lot of another Owner and the feces are not immediately cleaned up by the responsible party; (e) it barks, whines, or howls, or makes other disturbing noises in an excessive, continuous, or untimely fashion. The Association may levy fines for Rule violations and assess Individual Assessments to Owners for any damages to the Common Areas and landscaping caused by a pet.

9.6. **Machinery and Equipment.** No machinery or equipment of any kind shall be placed, used, operated, or maintained on or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance, or construction

of a Residence or appurtenant structures.

9.7. **Nuisances**. No resident shall create, maintain or permit a nuisance in, on or about the Project. For purposes of this Section a "nuisance" includes any behavior which annoys, disturbs or interferes with other residents and interferes with their right to the quiet and peaceful enjoyment of their property. The Board shall have the sole and absolute discretion

and authority to determine if an activity or condition constitutes a nuisance. A nuisance includes, but is not limited to, the following:

- 1) The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about a Lot or the Common Areas;
- 2) The storage of any item, property or thing that will cause any Lot or the Common Area to appear to be in an unclean or untidy condition or that will be noxious to the senses;
- 3) The accumulation of rubbish, unsightly debris, garbage, equipment, or other things or materials that constitute an eyesore as reasonably determined by the Board;
- 4) The storage of any substance, thing or material upon any Lot or in the Common Areas that will emit any foul, unpleasant or noxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project;
- 5) The creation or maintenance of any noxious or offensive condition or activity in or about any Lot or the Common Areas;
- 6) Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, their guests or invitees, particularly if the police or sheriff must be called to restore order;
- 7) Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature that diminishes or destroys the enjoyment of the Association by other residents, their guests or invitees;
- 8) Too much noise or traffic in, on or about any Lot or the Common Area, especially after 10:00 p.m. and before 7:00 a.m.;
- 9) Allowing a pet to: be unleashed while outside of the Residence or fenced backyard; make continuous barking, meowing, or other animal noises; urinate or defecate in the Common Areas; or failing to clean up immediately any feces deposited by a pet in the Common Area.

9.8. **Signs.** The Association may regulate and restrict signs in the Project to the extent permitted by law through Association Rules. Unless otherwise designated in the Rules, "For Sale" or "For Rent" signs not exceeding 5 square feet may be placed on Lots. Occupants may display one reasonably sized American flag on the exterior of a Residence consistent with the Freedom to Display the American Flag Act of 2005, the Utah Display of Flag Act, and Utah Code § 57-8a-219. Flags, if displayed, must be displayed in accordance with United States Code Title 4, Chapter 1. The Declarant shall not be subject to any sign restrictions adopted by the Board.

9.9. **Holiday Decorations.** Owners may display holiday decorations on their Lots and Residences if the decorations are of the kinds normally displayed in similar neighborhoods, are of reasonable size and scope, and do not disturb other Owners and Occupants by excessive light or sound emission or by causing an unreasonable amount of spectator traffic. Permitted decorations may be displayed for such periods as are normal and customary for comparable residential communities. All determinations made pursuant to this Section shall be made in the Board's sole and exclusive discretion.

9.10. **Exterior Antennas, Dishes & Energy Conservation Equipment.** Prior, written approval from the Board, as to the location, size, color, type, and related infrastructure of any new

satellite dishes, antennas, exterior cable installation, solar energy equipment, generators and related hardware is required. Consistent with the Act and any applicable federal regulations, the Board may establish recommended sizes and locations for any such Improvements. Such exterior equipment no longer in use must be removed immediately upon the cessation of the service.

9.11. **Trash Containers**. All garbage and trash shall be placed and kept in covered containers of a type and style which shall be approved by the Board. Such containers shall be maintained as not to be visible from the street view except to make them available for collection for a reasonable amount of time as determined by the Board. The Association may adopt additional Rules for the storage and concealment of trash containers.

9.12. **Parking**. Vehicles shall not be parked in front of another Owner's garage or walkway, or at any other location within the Project which would impair vehicular or pedestrian access, or snow removal. The Board may adopt additional Rules expanding or varying the restrictions relating to the parking of vehicles within the Project, including, without limitation: the size and dimensions of the vehicles parked within the Project; the admission and temporary parking of vehicles within the Project; the right to remove or cause to be removed any vehicles that are improperly parked; and the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such Rules.

9.13. **No Patio / Deck Storage**. No observable outdoor storage of any kind shall be permitted on patios, front yards, porches, etc., except for patio furniture and portable barbecue grills in good condition which may be maintained on backyard patios. Said patio furniture and outdoor storage items shall conform with standards set by the Board in the Rules or Design Guidelines, which may include the regulation of colors and materials.

9.14. **Window Coverings**. Every Owner shall be obligated to ensure that window coverings are installed within their Residence within one month of purchasing or taking possession of the Residence. Furthermore, the Board is authorized to adopt and implement reasonable Rules pertaining to the type, color, material, etc. of window coverings.

9.15. **Leases**.

- (a) **No Short Term or Nightly Rentals**. Daily, nightly, weekly or monthly occupation is prohibited (whether pay or not), and Units shall not be advertised or listed for short term rental on such sites as Airbnb, VRBO, HomeAway, Flipkey, Wimdu, House Trip and similar international, national or local providers.
- (b) **Long Term Leasing**. Any occupancy by tenant(s) for longer than six months shall be considered a long-term lease. Any long-term lease shall be in writing, shall be for an initial term of at least six months, and shall provide as a term of the agreement that the occupant shall comply with the Governing Documents, and that any failure to comply shall be a default under the lease. If a lease does not include these provisions, they shall nonetheless be deemed to be part of the lease and binding on the Owner and the occupant.
- (a) An Owner shall provide the Board with information identifying the occupants, vehicles, phone numbers, and other applicable contact information.
- (b) A copy of any lease agreement shall be delivered to the Association prior to occupation by the tenants.
- (c) An Owner must reside in a Residence for at least one year before a Residence may be rented.
- (d) Less than the entire Residence may not be rented (no room rentals are allowed).
- (e) Long Term Leasing for an otherwise qualifying Residence shall be limited to no

more than 10% of the total Residences. As 100% of the Owners are approving this restriction at the time of this recording, no exceptions shall be given to exceed the 10%.

- (f) The Owner(s) of a Residence shall be responsible for the occupant's or any guest's compliance with the Governing Documents. In addition to any other remedy for noncompliance with this Declaration, the Association, following notice to the Owner, shall have the right to initiate a forcible entry and unlawful detainer action, or similar such action, with the purpose of removing the offending non-owner occupant. The Association, the Board, and the Manager shall not have any liability for any action taken pursuant to this subparagraph and the Owner shall indemnify and pay the defense costs of the Association, the Board, and the Manager arising from any claim related to any action taken in good faith by any of them pursuant to this subparagraph. For purposes of this subparagraph, each Owner in accepting the deed to a Residence expressly consents to such authority and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments and pursue any and all remedies available to remove the offending non-owner occupant.
- (g) The Board of Directors may adopt Rules requiring:
 - (i) Reporting and procedural requirement related to non-owner-occupied Residences; and
 - (ii) Other reasonable administrative provisions consistent with, and as it deems appropriate to enforce, the requirements of this Declaration.

9.16. Solar Energy Systems. Solar energy systems and equipment are prohibited from being constructed or installed in the Project. Notwithstanding the forgoing, if the Board elects to allow solar energy systems in the Project, the Board may adopt Rules and regulations for the installation of solar panels or other energy conservation equipment in the Design Guidelines. Any such rules must require that the installation be an integral and harmonious part of the architectural design of the Lot and Residence. Solar panels or other equipment shall not be installed so as to be visible from the streets in the Project without prior approval from the Board as a variance. Owners shall be responsible for the costs of the installation, operation, and maintenance of each solar energy system. If an approved solar energy system (installation, operation, maintenance, or otherwise) causes costs to the Association, then the Board may allocate these costs to the Owner who requested or benefit from the installation as the Board in its sole discretion determines. The costs arising under this Section shall be assessed and collected as an Individual Assessment. The Board shall have the sole discretion to determine compliance with the Design Guidelines and this Section.

9.17. Variances. The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article if the Board determines in its discretion (by unanimous vote): (i) that the restriction would create an unreasonable hardship or burden on an Owner or Occupant, (ii) that a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete and unreasonable to enforce, or (iii) that the activity permitted under the variance will not have any adverse financial affect or any other substantial adverse effect on the Association or other Owners and Occupants of the Project and is consistent with the high quality of life intended for residents of the Project. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then-existing Board. No variance may be granted that is inconsistent with the Act.

9.18. **Declarant Exception.** So long as the Declarant owns a Lot in the Project, the Declarant shall be exempt from the restrictions contained in this Article.

ARTICLE X. ARCHITECTURAL CONTROLS

10.1. **Architectural Controls.** The designs of all structures and Residences in the Project shall be limited to those approved by the Board. The Board shall act to ensure that all improvements and landscaping within the Project harmonize with existing surroundings and structures. In the event of any reconstruction of an improvement or Residence due to a casualty, the design, quality, and appearance of the reconstructed improvement shall be substantially the same as the structure initially built, unless otherwise approved by the Board. No landscaping, grading, excavation, building, fence, wall, residence, or other structure, or alteration of any kind, shall be commenced, erected, maintained, improved, altered, or made until the construction plans and specifications, have been approved in writing by the Board.

10.2. **Design Guidelines.** The Board may adopt Design Guidelines for the purpose of maintaining a consistent character and quality of appearance of the improvements within the Project. The Design Guidelines may designate the design, style, model, and manufacturer of any materials to be used for an exterior improvement or alteration that is acceptable to the Board. The Design Guidelines may also designate landscaping requirements. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values. Amendments to the Design Guidelines shall apply prospectively only. They shall not require modifications to, or removal of any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Design Guidelines as amended.

10.3. **Declarant's Exemption.** Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of temporary structures, trailers, improvements or signs necessary or convenient to the development, marketing, or sale of property within the Project. Furthermore, the provisions of this Declaration which prohibit or restrict non-residential use of Residences, regulate parking of vehicles, and restrict signage, banners, and the like, shall not prohibit the construction and maintenance of model homes by Declarant and/or other persons engaged in the construction of residences within the Project. The Declarant may use Lots and other areas for parking in connection with the showing of model homes or for vehicles necessary for development and construction activities.

10.4. **Variances.** The Board may authorize variances from compliance with any of the architectural provisions of this Declaration or Design Guidelines. Such variances must be in writing and must be signed by all of the members of the Board. If a variance is granted, no violation of the Governing Documents shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any Restrictions of the Governing Documents, other than those specifically identified in the variance, nor shall it affect an Owner's obligation to comply with all governmental laws and regulations.

10.5. **Liability for Damages.** The Board and the Declarant shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it made pursuant to this Article.

ARTICLE XI. ENFORCEMENT

11.1. **Compliance with Restrictions and Rules.** Each Owner and Occupant shall comply with the Restrictions imposed by this Declaration. Further, each Owner, Occupant and guest shall fully and faithfully comply with the Association's Rules and Restrictions and shall be personally jointly and severally liable for any fines for violations thereof.

11.2. **Enforcement of Governing Documents.** The Association, Declarant, or any Owner shall have the right to enforce, by proceedings at law or in equity, each provision of this Declaration and other Governing Documents, including the right to prevent any violation of such, and the right to recover damages and other sums for such violation(s). The prevailing party in any action for the enforcement of any provisions of the Governing Documents (including but not limited to litigation and the appeal thereof) shall be entitled to collect court costs and reasonable attorney fees. Failure to enforce any covenant or restriction within the Governing Documents shall in no event be deemed a waiver of the right to do so thereafter.

11.3. **Violation Deemed a Nuisance.** Any violation of these covenants that is permitted to remain on the Property is deemed a nuisance and is subject to abatement by the Association.

- (a) Any single or continuing violation of the covenants contained in this Declaration may be enjoined in an action brought by the Association. In any action brought to enforce these covenants, the prevailing party shall be entitled to recover as part of its judgment the reasonable costs of enforcement, including reasonable attorney fees and court costs.
- (b) Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state or local laws and ordinances for the abatement of nuisances, health and safety, or other matters. This Declaration is to be construed as being in addition to those remedies available at law.
- (c) The remedies available under this Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.
- (d) The failure to take enforcement action shall not be construed as a waiver of the contents contained in this Declaration in the future or against other similar violations.

ARTICLE XII. SPECIAL DECLARANT RIGHTS

12.1. **Improvements.** Declarant hereby reserves the right, without obligation, to construct:

- 1) Any improvement shown on the Plat or included in the Project;
- 2) Any Lots and corresponding Residences upon all or any portion of the Additional Land, and subject to the requirements of Section 12.2, the addition of the same to the Project; and
- 3) Any other buildings, structures, or improvements that Declarant desires to construct in the Project, or any other real estate owned by Declarant, regardless of whether the same ever become part of the Project.

12.2. **Expandable Project.** The Declarant herewith expressly reserves the right and option to expand the Project by the addition of Additional Land, or portions thereof, and Lots and Residences to be constructed thereon, in accordance with the provision of this Section.

- 1) The Project may be expanded by the addition of any real property designated by Declarant.

2) Expansion or contraction of the Project by the Declarant is without limitation, except as set forth in this Section, and shall be effective without prior approval of the Association or any Owner.

3) Declarant's right to expand or contract the Project shall not expire until the Declarant elects in writing to not add land to the Project or the Period of Declarant Control expires.

4) Additional Land may be added in total or in part, in any order, by using any procedure or manner as Declarant may determine.

5) To submit or withdraw land to or from the Project, the Declarant shall record a Supplemental Declaration in the office of the County Recorder setting forth that an expansion or contraction of the Project has occurred. Such Supplemental Declaration shall include: (i) a description of the land added or withdrawn; and (ii) shall reference this Declaration and state that the provisions of this Declaration apply to the added land, or that the withdrawn land is no longer subject to the provisions of this Declaration.

12.3. Special Declarant Rights. Special Declarant Rights are those rights reserved for the benefit of the Declarant in this Declaration and the Governing Documents and shall include, among others, and regardless of anything in the Declaration to the contrary, the following rights, which shall remain in effect for the maximum period allowed by law, which may exceed the Period of Declarant Control:

1) the right to maintain sales offices, model Residences, and signs advertising the Project or any Residence at any location in the Project;

2) the right to use easements through the Common Areas as set forth in this Declaration;

3) the right to dedicate the roads and streets within the Project for and to public use, to grant road easements with respect thereto, and to allow such street or road to be used by owners of adjacent land;

4) the right to convert any part of the Project to a different regime of residential ownership;

5) the right to create or designate additional Common Area within the Project;

6) the exclusive right to act as the Board of Directors, or appoint or remove Board Members in Declarant's sole discretion, during the Period of Declarant Control;

7) unless expressly and specifically bound by a provision of the Governing Documents, Declarant shall be exempt from the provisions of the Governing Documents;

8) the right to withdraw land from the Project for up to fifteen (15) years from the date this Declaration is recorded in the office of the Davis County Recorder;

9) the right to set all Assessments for the Association including Regular, Special, and Individual Assessments;

10) the right to set all fines and fees for the Association including but not limited to collection fees, reinvestment fees, architectural review fees, and fines for violations of Association Rules;

11) the exclusive right to amend the Declaration, Bylaws, and Rules of the Association without approval from any Members;

12) the right to cast all votes on behalf of all Owners for the conveyance or modification of Common Area as may be required by Utah law;

13) the right to exert any right allowed to the Board or the Association pursuant to the Act and this Declaration;

14) the right to make and adopt Association Rules without being subject to the requirements of Utah Code § 57-8a-217; and

15) pursuant to Utah Code § 57-8a-211(10), Utah Code § 57-8a-211(2) through (9), shall not apply or have any effect during the Period of Declarant Control, and the Declarant shall have no duty whatsoever to obtain a Reserve Analysis, or to fund any Reserve Fund during the Period of Declarant Control.

12.4. Repurchase Option for Construction Defect Claims. In the event any Owner shall commence action against Declarant or Declarant' Related Entities for the purpose of constructing Residences on the Lot (collectively "Declarant") in connection with any alleged construction defects in such Owner's Residence, Declarant shall have the option, but not the obligation, to purchase such Residence on the following terms and conditions:

- (a) The purchase price shall be an amount equal to the sum of the following, less any sums paid to such Owner under any homeowner's warranty, in connection with the alleged defect:
 - (i) The purchase price paid by the original Owner of the Residence & Lot when originally purchased from Declarant;
 - (ii) The agreed upon value of any improvements made to the Residence by anyone other than Declarant; and
 - (iii) The Owner's reasonable moving costs.
- (b) Close of escrow shall occur not later than forty-five (45) days after written notice from Declarant to the Owner of Declarant' intent to exercise the option herein.
- (c) Title shall be conveyed to Declarant free and clear of all monetary liens and other encumbrances other than non-delinquent real estate taxes.
- (d) Exercise of the repurchase option as provided for herein above shall constitute full and final satisfaction of all claims relating to the subject Residence and Lot. The Owner shall promptly execute and deliver any notice of dismissal or other document necessary or appropriate to evidence such satisfaction.
- (e) Declarant's option to repurchase granted herein with respect to any particular Residence and Lot shall automatically terminate upon the expiration of the last applicable statute of limitations applicable to any construction or warranty claim governing such Residence and Lot including all applicable tolling periods.

12.5. Exercising Special Declarant Rights. Declarant may exercise the Special Declarant Rights at any time prior to the later to occur of the date on which the Period of Declarant Control expires or the date when the Declarant relinquishes such rights in writing. Declarant may exercise its Special Declarant Rights in any order, and no assurance is given as to the order in which Declarant will exercise them. If Declarant exercises any Special Declarant Right with respect to any portion of the Project, Declarant may, but is not obligated to, exercise that Special Declarant Right with respect to any other portion of the Project. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this Article and any other right reserved to the Declarant in this Declaration, without the consent of the Association or any Owners.

12.6. Interference with Special Declarant Rights. Neither the Association nor any

Owner may take any action or adopt any Rules that interferes with or diminishes any Special Declarant right contained in this Declaration without Declarant's prior written consent. Any action taken in violation of this Section shall be null and void and have no force or effect.

12.7. **Limitation on Improvements by Association.** Until such time as the earlier of the following events occur: (a) termination of the Period of Declarant Control, or (b) such time as Declarant chooses, neither the Association nor the Board shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally constructed or created by Declarant.

12.8. **Transfer of Special Declarant Rights.** The Declarant may transfer, convey, or assign its rights created or reserved under this Declaration to any Person in whole or in part. The Declarant's successor shall enjoy any and all Declarant rights set forth in the Declaration regardless of whether such rights are stated to be transferable. All references in the Governing Documents to Declarant shall equally apply to its successor. A contract transferring the Declarant's rights may, but shall not be required to, be recorded in the office of the Davis County Recorder.

12.9. **Changes by Declarant.** Nothing contained in this Declaration shall be deemed to affect or limit in any way whatsoever the right of the Declarant, its successors or assigns, to sell or to change the location, design, method of construction, grade, elevation, or any other part or feature of a Lot and Residence prior to the contracting for the conveyance of the Lot to a purchaser.

12.10. **Easements Reserved to Declarant.**

1) The reservation to Declarant, its successors and assigns, of non-exclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Plat as "Public Utility Easement," or otherwise designated as an easement area over any road or Common Area on the Project, and over those strips of land running along the front, rear, side and other Lot lines of each Lot shown on the Plat.

2) An easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Project and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm water, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Lot, or in the area or on the area in which the same is located.

3) Easement granting the privilege of entering upon the Common Areas for such purposes and making openings and excavations thereon, which openings and excavations shall be restored in a reasonable period of time, and for such alterations of the contour of the land as may be necessary or desirable to affect such purposes.

4) The reservation to the Declarant and its successors and assigns, of a non-exclusive easement and right-of-way in, through, over and across the Common Area for the storage of building supplies and materials, parking of construction vehicles, erection of temporary structures, trailers, improvements or signs necessary or convenient to the

development of the Project, and for all other purposes reasonably related to the completion of construction and development of the Project and the provision of utility services, and related services and facilities.

5) The Declarant reserves unto itself and its successors and assigns, the right to dedicate all of said roads, streets, alleys, rights of way, or easements, including easements in the areas designated as "open space" and storm water management reservation, to public use all as shown on the Plat. No road, street, avenue, alley, right of way or easement shall be laid out or constructed through or across any Lot or Lots in the Project except as set forth in this Declaration, or as laid down and shown on the Plat, without the prior written approval of the Declarant.

6) Declarant further reserves unto itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Lot and grade a portion of such Lot adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any structure built on such Lot, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

12.11. No Modification of Declarant Rights. The Special Declarant Rights in this Declaration or other Governing Documents, and specifically in this Article, shall not be substantively or procedurally altered, amended, or removed without the written consent of the Declarant until at least six (6) years have passed after the Period of Declarant Control has ended, at which time the Declarant's approval shall no longer be required. Any document or amendment attempted without obtaining proper consent shall be void *ab initio* to the extent it attempts to alter the rights of the Declarant or any provision of this Article without the consent of the Declarant.

12.11 Right to Modify Lot Boundaries and Interior Boundary Lines. Declarant reserves the unilateral right to modify Lot boundaries and interior boundary lines and/or combine Lots or Residences so long as it owns the Lots; provided, however, such changes may not extensively alter the boundaries of the Common Area and facilities nor change the percentages of ownership interest.

ARTICLE XIII. RIGHTS OF FIRST MORTGAGEE

13.1. Title In Mortgagee. Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage will not be liable for such Lot's Assessments or charges which accrue prior to the acquisition of title of such Lot by the Mortgagee. However, such first Mortgagee shall be responsible for all Assessments levied while it holds title to the Lot.

13.2. Notice of Default by Owner. If an Owner neglects, for a period of sixty (60) days or more, to cure any failure on his part to perform his obligations under this Declaration or other Governing Documents, the Association, upon written request from the Mortgagee, shall give written notice of such fact to the Mortgagee covering such Owner's Lot.

13.3. Priority. No provision herein is intended, nor shall it be construed, to give any Lot Owner, or any other party, priority over any rights of the first Mortgagee of a Lot pursuant

to its Mortgage in the case of a distribution to such Lot Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Areas.

ARTICLE XIV. RIGHT OF ENTRY

14.1. **Right to Enter Lots.** The Association acting through the Board or its duly authorized agent shall have the right at all times and upon reasonable notice of at least 48 hours to enter upon any Lot on the areas located outside the exterior boundaries of a Residence, without trespass, and regardless of whether or not the Lot Owner or Occupant thereof is present at the time, to abate any infractions, to fulfill its responsibilities, to exercise its rights, to make repairs, and to correct any violation of any of the Governing Documents. The notice set forth in this Section shall not be necessary in case of an emergency threatening other Residences, Occupants, or other parts of the Project. Nothing in this Section shall be construed to authorize the entry of the Association into the interior of a Residence (even in the event of an emergency) without the consent of the Lot Owner and under any terms or conditions set forth by such Owner. Owners shall maintain up-to-date emergency contact information records with the Association, including any local representative an Owner may have for notice purposes. Owners shall be responsible for any costs incurred by the Association as a result of entering a Lot under this Section and shall defend, indemnify and hold harmless the Association for all damages related to such entry, except for such damages resulting from intentional or willful misconduct.

ARTICLE XV. AMENDMENTS

15.1. **Amendments by Declarant.** So long as the Declarant or one of its designated affiliates own one or more Lots in the Project, or any part of the Additional Land, the Declaration and the Plat may be amended solely by the Declarant without any additional approval required. In addition, no other amendment shall be valid or enforceable without the Declarant's prior written consent so long as Declarant owns one or more Lots in the Project or any part of the Additional Land. Amendments shall become effective upon recordation in the office of the County Recorder. Declarant's right to amend shall be construed liberally and shall include, without limitation, the right to amend and/or restate this Declaration in part or in its entirety.

15.2. **Amendments by Association.** After all of the Lots have been sold to third parties by Declarant and its affiliates, all Additional Land has been annexed into the Project, and the Period of Declarant Control has expired, this Declaration may be amended upon the affirmative vote of at least sixty-seven percent (67%) of the voting interests of the Association. No meeting shall be required for an amendment if the required vote for approval is obtained by written consent or ballot. Any amendment(s) shall be effective upon recordation in the office of the County Recorder. In such instrument, the Board shall certify that the vote required by this Section for amendment has occurred. If a Lot is owned by more than one Owner, the vote of any one Owner shall be sufficient to constitute approval for that Lot under this Section. If a Lot is owned by an entity or trust, the vote of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Lot under this Section. No signature or acknowledgment of any signature used for voting shall be required. Notwithstanding, the foregoing, the Members' authority to amend Articles XII and XVI of this Declaration is subject to the amendment restrictions set forth therein, and any amendment purporting to modify the provisions of Articles XII and XVI shall be null and void unless such amendment is in compliance with the amendment provisions and restrictions therein.

15.3. **Necessary Amendments.** Declarant or the Association may unilaterally amend this Declaration without Owner vote if such amendment is necessary: (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to satisfy the requirements of any local, State, or Federal governmental agency; or (c) to correct any scrivener's error. However, any such amendment occurring after the Period of Declarant Control shall not adversely affect the title to any Lot unless the Owner shall consent in writing.

15.4. **Validity of Amendments.** Any procedural challenge to an amendment must be made within six (6) months of its recordation, or such amendment shall be presumed to have been validly voted upon and adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

ARTICLE XVI. DISPUTE RESOLUTION

16.1. **Alternative Dispute Resolution Without Litigation.**

(a) **Bound Parties.** The Declarant; the Association; the Owners; the officers, directors, managers, members, employees, representatives, agents, successors and assigns of any of the foregoing; any other person subject to this Declaration; and any other person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree that it is in the best interest of all Bound Parties to encourage the amicable resolution of Claims without the emotional and financial costs of litigation or the toll or market taint such litigation can have on the value of the Project and/or the Lots that may be involved or impacted. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 16.2 in a good faith effort to resolve such Claim.

(b) **Claims.** As used in this Article, the term "Claim" means any claim, grievance, or dispute arising out of or relating to:

- (i) the interpretation, application, or enforcement of the Governing Documents;
- (ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or
- (iii) the design or construction of improvements on the Project, other than matters of aesthetic judgment to be determined by the Association or Board under the Design Guidelines and other provisions hereof, which shall not be subject to review and shall not be subject to this Article.

(c) **Exclusion from Definition of Claims.** The following shall not be considered "Claims" unless all Parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 16.2:

- (i) any suit by the Association to collect assessments or other amounts due from any Owner;
- (ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article X of this Declaration (relating to the Design Guidelines);

(iii) any suit that does not include the Declarant, any affiliate of the Declarant, or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

(iv) any dispute that affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 16.2;

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 16.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Article;

(vi) any suit or dispute between the Declarant or an affiliate of Declarant and a builder, developer, contractor(s), subcontractor(s), or any other party contracted by the Declarant or an affiliate of the Declarant in connection with the development of the Project; and

(vii) any suit or dispute involving a governmental entity as a party.

16.2. Dispute Resolution Procedures.

(a) **Notice.** The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice ("Notice") by mail or personal delivery to each Respondent and to the Board, stating plainly and concisely:

(i) the nature of the Claim, including the persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy;

(iv) that the person alleged to be responsible for the acts giving rise to the Claim shall have six (6) months to cure or resolve the Claim; and

(v) the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

(b) **Right to Cure.** For any Claim arising from a dispute over the construction of improvements within the Project, the Claimant shall provide Respondent six (6) months to rectify alter or fix the claimed defect(s) in the improvements. The expiration of this six-month cure period shall be a prerequisite to Claimant's ability to initiate litigation as permitted under Section 16.3 below. For all Claims involving alleged defects in construction, the negotiation, mediation, and settlement requirements shall remain in effect during the cure period, however, the mediation deadline set forth in subsection (d) below shall be extended to expire on the same date the cure period expires.

(c) **Negotiation.** The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(d) **Mediation.** If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have 30 additional days to submit the Claim to mediation with an individual or entity designated by the Association (if the Association is not a party to the Claim) or to an

independent mediator providing dispute resolution services predominately in Utah. Each Bound Party shall present the mediator with a written summary of the Claim or will otherwise comply with the mediator's proscribed procedures and requirements for mediating claims.

(i) Waiver of Claim for Failure to Appear or Participate. If the Claimant does not submit the Claim to mediation within such time or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

(ii) Termination of Mediation Proceedings. If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

(iii) Costs of Mediation. Each Bound Party shall bear its own costs of the mediation, including attorney fees, and each Party shall pay an equal share of the mediator's fees.

(e) Settlement. Any Claim settlement through negotiation or mediation shall be documented in writing and signed by the Parties. If any Party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate such proceedings as are necessary to enforce such agreement without the need to comply again with the procedures set forth in this Article. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorney fees and court costs.

16.3. Initiation of Litigation by Association. The requirements of this Section are intended to be in addition to those requirements set forth in § 57-8a-229 of the Act. After expiration of the Period of Declarant Control the Association may not bring a legal action against a Declarant, a Board of Directors, an employee, an independent contractor, an agent of the Declarant, or the previous Board of Directors related to the Period of Declarant Control unless:

(a) The Right to Cure period set forth in Section 16.2(b) above has expired;
(b) the legal action is approved in advance at a meeting by Owners holding at least 51% of the total allocated voting interests of the Owners in the Association:

(i) Owners may be represented by a proxy specifically assigned for the purpose of voting to approve or deny the proposed legal action at the meeting. Any such proxy shall not be valid unless the proxy is notarized with each Owner certifying that they have received and reviewed the information required by Section 16.4(a) and (b) below.

(c) the Association provides each Owner with the items described in Section 16.4(a) and (b), below;

(d) the Association establishes a trust account, described in Section 16.4(c) below;
and

(e) the Association first goes through the procedures described in Section 16.2 above, giving notice and an opportunity to resolve the dispute that is the basis of the Claim and proposed legal action.

(f) The procedures and approval required in the preceding subsections (a) through (e) shall not be required for actions or proceedings:

- (i) initiated by Declarant during the Period of Declarant Control on behalf of the Association;
- (ii) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
- (iii) initiated to challenge ad valorem taxation or condemnation proceedings (including bringing an action for inverse condemnation);
- (iv) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (v) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended without the written consent of the Declarant for a period of 10 years following the expiration of the Period of Declarant Control. Any such amendment shall also be approved by a vote of 67% of the total votes of the Association.

16.4. **Informed Vote.** Before the Owners, as Members of the Association may vote to approve the filing of a legal action for a Claim, the Association shall first provide each Owner with:

(a) A written notice stating:

- (i) that the Association is contemplating legal action;
- (ii) the percentage vote required for approval of the litigation;
- (iii) the date, time, and location of any Member meeting that has been scheduled to discuss the litigation or to vote on the approval of the litigation;
- (iv) a description of the claims that the Association desires to pursue in sufficient detail to permit each Member to reach an informed decision on the litigation matter; and

(b) A written report from an attorney licensed to practice in Utah, which provides an assessment of:

- (i) The likelihood that the legal action will succeed;
- (ii) The likely amount in controversy in the legal action;
- (iii) The likely cost of resolving the legal action to the Association's satisfaction; and
- (iv) The likely effect the stigma of a legal action will have on value or on an Owner's ability to market for sale, or a prospective Lot buyer's ability to obtain financing for a Lot due to a pending legal action.

(v) In providing this report, the attorney shall obtain and rely on reports and assessments from experts in their field such as construction, real property, sales, or any other relevant factor in the contemplated litigation.

(c) Before the Association commences any legal action as authorized above, the

Association shall:

- (i) allocate an amount equal to 25% of the cost estimated to resolve the Claim not including attorney fees; and
- (ii) place the 25% allocated funds in a trust account that the Association may only use to pay the costs to resolve the Claim.

Sections 16.3 and 16.4 do not apply if the Association brings a legal action that has an amount in controversy of less than \$25,000.00.

16.5. **Strict Compliance Required.** Any post-turnover litigation involving the Bound Parties shall strictly comply with each of the provisions in this Article. The Bound Parties hereby covenant, stipulate, and agree that in the event the Bound Parties fail to satisfy the prerequisites set forth herein, the non-compliant Party will indemnify, defend, hold harmless, and exculpate the other Bound Party to the fullest extent permissible by law, and the non-breaching Bound Party shall be entitled to recover any and all attorney fees and costs expended as a result of enforcing this Article, which fees and costs may include, without limitation, pre-litigation attorney fees, costs incurred in connection with investigation of potential claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. If any claims or actions falling within the scope of this Article are filed without satisfying all of the requirements set forth above, such claims or actions shall be dismissed without prejudice and shall not be re-filed unless and until all such requirements have been satisfied.

16.6. **Owner Warranties.** The Declarant may provide certain warranties to the Owners related to a Lot purchased. The first Owner of a Lot to whom any warranty is issued, or with whom a legal warranty arises, and only that Owner, shall have the right to directly enforce and seek performance from the Declarant of any terms of the warranty, and only consistent with the warranty itself. The Association shall have no right to seek the performance of or take assignment of any rights in any warranties against the Declarant, and the Owner shall have no right to assign any rights of any kind to the Association related to pursuing litigation against the Declarant.

16.7. Unless specifically set forth in this Declaration, no action may be brought by the Association, its Board of Directors, or its Officers on behalf of an Owner, as its respective interest may appear, with respect to any cause of action relating to the Common Areas and facilities.

16.8. ALL PARTIES HEREBY AGREE TO RESOLVE ANY CLAIM ACCORDING TO THE PROVISIONS OF THIS ARTICLE AND SUCH PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE THE CLAIM IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE.

16.9. The dispute resolution restrictions contained in this Article shall not be amended, altered, or eliminated from the Declaration without the written consent of the Declarant for a period of 10 years after the expiration of the Period of Declarant Control.

ARTICLE XVII. MISCELLANEOUS

17.1. **Notices.** Any notice required or permitted to be given to any Owner according to the provisions of this Declaration shall be deemed to have been properly furnished if personally delivered, emailed, texted, or if mailed, postage prepaid, to the Person who appears as an Owner, at the latest email or mailing address for such Person appearing in the records of the

Association at the time notice is sent. If no email, phone number, or mailing address has been provided, the physical address of the Lot owned by said Owner shall be used for notice purposes. The use of the term "written notice" in this Declaration or other Governing Document shall include notices sent via email, text, facsimile, or other electronic communication; or notices printed on paper and sent by hand-delivery, regular mail, or any notice otherwise physically received by an Owner.

Unless an Owner notifies the Association in writing that they desire to receive notices via USPS mail, each Owner shall provide to the Board, or the Association's Manager, an email address that the Association may use to affect notice as described herein, along with a telephone number that can receive texts. Any notice sent via email or text shall be deemed to be delivered once the notice has been sent to the email address or phone number on file with the Association. Any notice sent by mail shall be deemed delivered when deposited in the United States mail. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivered to all such co-Owners. The declaration of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been sent to any Owner or Owners, in any manner that this Section allows, shall be deemed conclusive proof of such delivery.

Notice to the Association shall be delivered by registered or certified United States mail postage prepaid, addressed to the office of the Manager of the Association (if any); or if there is no Manager, the Registered Agent with the Utah Department of Commerce (if any); or if there is none, to the President of the Association. The Association shall have the right to designate an email or USPS mailing address for receipt of notices hereunder by Rule.

17.2. **Consent in Lieu of Voting.** In any case in which this Declaration requires authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast the required percentage of membership votes. The Association may use any method for obtaining votes allowed under Utah law and the Utah Revised Nonprofit Corporation Act.

17.3. **Dissolution.** The Association may be dissolved by the Declarant at any time during the Period of Declarant Control in its sole discretion and thereafter by a vote of at least ninety percent (90%) of the Owners. Upon dissolution, the Association shall transfer any Common Area real property it owns to a municipality, utility, or other person as permitted by law and disperse any remaining funds or assets to the Owners pro rata. In the event such dedication or transfer is not made or is not accepted, the Association's assets shall be transferred to a nonprofit corporation, trust, or other entity to be used for such similar purposes, and each Owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the Common Areas, common access roadways, curbs, gutters, and sidewalks on a pro rata basis which conforms substantially with the assessments procedure, terms and conditions set forth herein.

17.4. **Interpretation and Severability.** The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is constructed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include the other. The invalidity or unenforceability of any portion of the Declaration shall not affect the validity or enforceability of the remainder hereof. Except for judicial construction, the Board, shall have the exclusive right to construe and interpret the

provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all Persons and property benefitted or bound by the covenants and provisions hereof.

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

17.6. **Fair Housing Accommodations.** Notwithstanding anything to the contrary in this Declaration, the Association, upon receipt of a written opinion from its 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 State or Federal Fair Housing Acts, to accommodate a Person with a disability (as defined by State or Federal law at the time the accommodation is requested). Reasonable accommodations or modifications may include modifications to a Lot, the Common Area facilities and buildings, 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 any other Person or Owner.

17.7. **No Waiver.** No delay or failure by the Association or by any Owner to enforce any Restriction, right, remedy, power, or provision herein contained, or contained in the Bylaws, Articles, or the Rules, in any certain instance or on any particular occasion (or partial exercise thereof) shall be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction, right, remedy, power, or provision. No Association delay or failure to demand strict adherence to the terms, Restrictions or provisions of the Governing Documents shall be deemed to constitute a course of conduct inconsistent with the Association's right at any time, before or after an Owner violation or breach, to demand strict adherence to the terms, Restrictions, or provisions of this Declaration or other Governing Document.

17.8. **Condemnation.** If a portion of the Common Area is taken by eminent domain, or sold under threat thereof, and the taking does not include any Lot, the Board shall cause the award to be utilized for repairing or restoring that area adjacent to the taking, and the portion of the award not used for restoration shall be added to the general funds of the Association. If a Lot is taken by eminent domain, or sold under threat thereof, leaving the Owner with a remnant that may not be practically or lawfully used for any purpose permitted by this Declaration, then that Lot's interest in the Common Areas shall be reallocated to the remaining Lots in proportion to their respective interests immediately before the taking.

17.9. **Attorney Fees.** If the Association utilizes legal counsel to enforce any Restriction, or after an Owner communicates or demonstrates an intent not to comply with a Restriction, the Association may assess all reasonable attorney fees and costs associated with such enforcement to the Owner as an Individual Assessment, regardless of whether a lawsuit is initiated or not. The term "costs" as used in this Section shall include all costs including but not limited to copying costs, deposition costs, expert witness fees, investigative costs, service

costs, and filing fees paid to courts. "Costs" is specifically defined in this Section 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.

17.10. **Noncompliance Notice.** Any construction, alteration, or other work done in violation of this Declaration shall be deemed to be in noncompliance. By acquiring title to a Lot in the Project, all Owners agree and consent that upon any act of noncompliance, the Board, at its discretion, may record a "Notice of Noncompliance" on an offending Lot or property in the records of the County Recorder. Upon receipt of a Notice of Noncompliance, Owners shall, at their own cost and expense, remove such non-conforming construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the non-conforming construction, alteration, or other work. Should an Owner fail to act as required hereunder, the Board or their designee, without liability for trespass or nuisance, shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as existed prior to the change. All costs incurred by the Association pursuant to enforcement of this Section shall be an Individual Assessment.

17.11. **Security.** The Declarant or Association shall in no way be considered an insurer or guarantor of security within or relating to the Project, including any Common Area in which the Association may have an obligation to maintain, and the Association shall not be held liable for any loss or damage by reason of any failure to provide adequate security or any ineffectiveness of security measures undertaken. Owners agree by purchasing a Lot in this Association that the Association, Declarant, and the Board are not insurers of the safety or well-being of Owners or Occupants or of their personal property, and that each Owner or Occupant assumes all risks for loss or damage to persons, the Lots, the Common Areas, and to the contents of improvements located thereon to the extent not insured by the Association. EACH OWNER AND OCCUPANT UNDERSTANDS AND ACKNOWLEDGES THAT THE ASSOCIATION, DECLARANT, AND BOARD HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND AND THAT EACH 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 SECURITY OF THE PROJECT.

17.12. **Effective Date.** The Declaration and any amendment hereof shall take effect upon its filing in the office of the Davis County Recorder.

Destination Homes, Inc., the Declarant

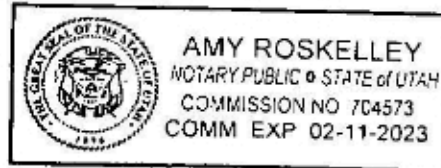
Scott Lalli

By: Scott Lalli
Its: Authorized Representative

STATE OF UTAH)
)
COUNTY OF Weber : ss
)
~~DAVIS~~

On this 10th day of May, 2022, personally appeared before me Scott Lalli, who being by me duly sworn, did say that he is an authorized representative of Destination Homes, Inc., and that the within and foregoing instrument was signed on behalf of said corporation and duly acknowledged to me that he executed the same

Amy Roskelley
Notary Public
Residing at: Weber County, UT
My Commission Expires: 2-11-2023



Discovery Development L.L.C., the owner of the Property

Scott Lalli

By: Scott Lalli
Its: Authorized Representative

STATE OF UTAH)
)
COUNTY OF Weber : ss
)

On this 10th day of May, 2022, personally appeared before me Scott Lalli, who being by me duly sworn, did say that she is an authorized representative of Discovery Development, L.L.C., and that the within and foregoing instrument was signed on behalf of said limited liability company and duly acknowledged to me that she executed the same

Amy Roskelley
Notary Public
Residing at: Weber County, UT
My Commission Expires: 2-11-2023



EXHIBIT A
LEGAL DESCRIPTION

TRW
September 15, 2021
Wilcox Farms

Farm Purchase Area Description

A parcel of land, situate in the Southwest Quarter of Section 11, Township 4 North, Range 2 West, Salt Lake Base and Meridian, said parcel also located in Clearfield City, Davis County, Utah. Being more particularly described as follows:

Beginning at a point on the northerly right-of-way line of 1600 South Street, said point being North 00°07'41" East 509.19 feet along the section line (NAD83 Bearing being N 0°28'00" East between the Southwest Corner and the West Quarter Corner of said Section 11, per the Davis County Township Reference Plat) and South 89°52'19" East 244.03 feet from the Southwest Corner of said Section 11 and running thence:

North 00°00'10" East 161.62 feet;
thence North 89°52'19" West 85.69 feet;
thence North 00°25'04" East 197.84 feet;
thence South 89°52'19" East 24.00 feet;
thence North 00°07'41" East 22.00 feet;
thence South 89°52'19" East 166.00 feet;
thence North 00°07'41" East 123.00 feet;
thence North 89°52'19" West 99.00 feet;
thence North 00°07'41" East 88.72 feet;
thence South 89°52'19" East 354.49 feet;
thence South 00°00'10" West 300.12 feet;
thence southerly 61.94 feet along the arc of a 470.00-foot radius tangent curve to the left (center bears South 89°59'50" East and the long chord bears South 03°46'21" East 61.89 feet with a central angle of 07°33'01");
thence southerly 69.91 feet along the arc of a 530.00-foot radius curve to the right (center bears South 82°27'09" West and the long chord bears South 03°46'08" East 69.86 feet with a central angle of 07°33'27");
thence North 89°52'19" West 60.00 feet;
thence South 00°00'10" West 152.56 feet;
thence southwesterly 23.56 feet along the arc of a 15.00-foot radius tangent curve to the right (center bears North 89°59'50" West and the long chord bears South 45°00'10" West 21.21 feet with a central angle of 90°00'00") to the aforementioned northerly right-of-way of 1600 South Street;
thence along said right-of-way line the following three (3) courses and distances:

- 1) North 89°59'50" West 206.51 feet;
- 2) westerly 40.20 feet along the arc of a 270.28-foot radius tangent curve to the right (center bears North 00°00'10" East and the long chord bears North 85°44'12" West 40.16 feet with a central angle of 08°31'16");
- 3) westerly 49.04 feet along the arc of a 329.72-foot radius curve to the left (center bears South 08°31'26" West and the long chord bears North 85°44'12" West 48.99 feet with a central angle of 08°31'16") to the Point of Beginning.

Contains: 212932 square feet or 4.888 acres.

TRW
October 4, 2021
Wilcox Farms

Farm Phase 2 Purchase Area Description

A parcel of land, situate in the Southwest Quarter of Section 11, Township 4 North, Range 2 West, Salt Lake Base and Meridian, said parcel also located in Clearfield City, Davis County, Utah. Being more particularly described as follows:

Beginning at a point on the northerly right-of-way line of 1600 South Street, said point being North $00^{\circ}07'41''$ East 1219.79 feet along the section line (NAD83 Bearing being N $0^{\circ}28'00''$ East between the Southwest Corner and the West Quarter Corner of said Section 11, per the Davis County Township Reference Plat) and South $89^{\circ}52'19''$ East 33 feet from the Southwest Corner of said Section 11 and running thence:

North $00^{\circ}07'41''$ East 56.00 feet;
thence South $89^{\circ}52'19''$ East 561.23 feet;
thence South $36^{\circ}41'00''$ East 755.64 feet;
thence North $89^{\circ}52'19''$ West 432.90 feet;
thence northerly 69.91 feet along the arc of a 530.00-foot radius non-tangent curve to the left (center bears North $89^{\circ}59'24''$ West and the long chord bears North $03^{\circ}46'08''$ West 69.86 feet with a central angle of $07^{\circ}33'27''$);
thence northerly 61.94 feet along the arc of a 470.00-foot radius curve to the right (center bears North $82^{\circ}27'09''$ East and the long chord bears North $03^{\circ}46'21''$ West 61.89 feet with a central angle of $07^{\circ}33'01''$);
thence North $00^{\circ}00'10''$ East 300.12 feet;
thence North $89^{\circ}52'19''$ West 354.49 feet;
thence North $00^{\circ}07'41''$ East 117.42 feet;
thence North $89^{\circ}52'19''$ West 217.00 feet to the Point of Beginning.

Contains: 203,596 square feet or 4.674 acres.

EXHIBIT B
BYLAWS
OF
WILCOX FARMS OWNERS ASSOCIATION

The following are the Bylaws of Wilcox Farms Owners Association ("Bylaws"), a Utah nonprofit corporation ("Association"). Upon recordation of these Bylaws, they are binding upon the Association and all present and future Owners and/or occupants.

ARTICLE I - DEFINITIONS

Section 1.1 Definitions. All terms used but not defined herein shall have the meanings given them under that certain Declaration of Covenants, Conditions & Restrictions for Wilcox Farms, a Planned Unit Development of even date and recorded in the Official Records of the Davis County Recorder's Office, as amended ("Declaration").

ARTICLE II - MEETINGS OF OWNERS

Section 2.1 Annual Meetings. An annual meeting of the Owners shall be held no less than once each calendar year at a location and time designated by the Board of Directors ("Board"). The Board may set the date, time, and location of the annual meeting in accordance with Section 2.3 below, which locations may include virtual or electronically held meetings through available technology. During the Period of Declarant Control, annual meetings shall not be required but may be held in the sole discretion of Declarant.

Section 2.2 Special Meetings. Special meetings of the Owners may be called at the request of the Board, or upon written request of the Owners holding at least fifty-one percent (51%) of all eligible votes. Notwithstanding, the Board remains the only authorized body to act for and on behalf of the Association. During the Period of Declarant Control, only the Declarant may call Special Meetings.

Section 2.3 Notice of Meetings. Unless an Owner requests in writing that all notices be provided to said Owner by U.S. mail, all notices shall be given by, or at the direction of, the Board via electronic communication, which may include but is not limited to: email, text, voicemail, or posted on the community website (if applicable). Notice shall be provided at least ten (10) days before a meeting, but no more than ninety (90) days, to each Owner at the email or electronic address provided by the Owner. Said notice is effective upon sending the email or electronic communication. Notices provided by U.S. mail shall be sent via U.S. First Class Mail and effective upon deposit in the mail. Such notice shall specify the location, day and time of the meeting, and, in the case of a special meeting, the purpose of the meeting.

- (a) Upon becoming an Owner of the Association, or upon the written request by the Association, Owners shall provide a valid email address or other requested electronic information for purpose of notification related to the Association unless the Owner has opted out by providing a written request for notice by U.S. Mail. If no address is registered with the Association, an Owner's Lot address shall be deemed to be his registered address for purposes of notice.
- (b) The location of meetings may also occur virtually, telephonically, or through other available technology.

Section 2.4 Quorum. Unless otherwise specifically set forth in the Declaration, at any meeting of Owners, a quorum shall be established by those Owners present, in person or by proxy, at a properly noticed meeting. Notwithstanding, the Board remains the only authorized body to act for and on behalf of the Association. Further, a majority of those Owners present in person or proxy at such meeting may vote to reschedule the meeting based upon low attendance. Otherwise, the meeting shall proceed as scheduled.

Section 2.5 Proxies. At all meetings of Owners, each Owner may vote in person or by proxy. All proxies shall be in writing, signed by the Owner, and filed with the Board at or before said meeting. Notwithstanding, any proxy delivered to the Board at the meeting must be provided no later than any point in the meeting announced as the final time to deliver proxies. The proxy form provided with any notice of meeting may also provide additional requirements and a deadline to return proxies. Every proxy shall be revocable and shall automatically terminate upon conveyance by the Owner of his Lot. If conflicting proxy votes for an Owner or Lot exist, said proxy votes will not be counted.

Section 2.6 Conduct of Meetings. The Board, or its authorized representatives, shall preside over all meetings. The Secretary or other authorized person shall keep and maintain minutes of all meetings. The Board may adopt further policies and procedures with regard to conduct at an Association meeting.

- (a) **Recording.** No person, whether an Owner, occupant, owner representative, or other third party is permitted to record (whether audio, video, transcription or combination) any Association or Board meeting, work session or similar event regardless of the location without the written consent of the Association.

Section 2.7 Action Taken Without a Meeting. Under the direction of the Board, any action that may be taken at any annual or special meeting of Owners may be taken without a meeting and without prior notice, if one or more consents in writing, setting forth the action taken, are signed by the Owners having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all Owners eligible to vote on the action were present and voted, unless a different approval percentage for the action is specifically set forth in the Declaration. The Board may obtain such approvals and conduct business through mail or email/electronic ballots.

Ballots shall set forth each proposed action and provide the option of voting for or against each proposed action. The ballot must specify the period of time, up to 120 days, during which the Association shall accept written ballots. Following this period, the Association shall provide notice if such action was approved.

Section 2.8 Voting. Only an Owner that is current on all assessments and charges due and owing at least ten (10) days prior a duly noticed meeting shall be deemed in good standing and eligible vote. The Association shall have two (2) classes of voting membership, Class "A" and Class "B," as set forth in the Declaration.

The number of votes for each Lot shall be in accordance with the Declaration.

The votes appurtenant to any one Lot may not be divided between Owners of such Lot and all such votes appurtenant to any one Lot shall be voted in one block. If the vote of a majority of the Owners of a Lot cannot be determined, no vote shall be cast in relation to such Lot. The Association shall honor the vote of: a duly authorized trustee or successor trustee of a trust that is an Owner; the duly authorized representative of a legal entity that is an Owner; and shall honor the vote of an individual that is a holder of a Limited or General Durable Power of Attorney with respect to an Owner as though such vote were the vote of the Owner.

ARTICLE III - BOARD, SELECTION AND TERM OF OFFICE

Section 3.1 Number & Tenure. Except for the Initial Board selected by Declarant, which consists of three members and their successors, that may hold office during the Period of Declarant Control, the affairs of the Association shall be managed by a Board of Directors composed of three (3) individuals. At the first meeting of the Owners at which the election of Directors will take place following the Period of Declarant Control, the candidate who receives the most votes shall serve as a Director for three (3) years. The candidate that receives the second highest number of votes shall serve as a Director for two (2) years, and the third candidate who receives the third highest number of votes shall serve as Director for one (1) year. At each annual election, the successor to the Director whose term shall expire in that year shall be elected to hold office for the term of (3) years. Any change in the number of Directors may be made only by amendment of these Bylaws. The members of the Board of Directors shall serve until their respective successors are elected, or until their death, resignation or removal.

Section 3.2 Advisory Board Member. During the Period of Declarant Control and prior to turnover of the Association to Owner control, the Declarant and/or Board may identify an owner(s) to be an advisory member of the Board and participate in Board meetings and activities. This advisory member(s) shall not vote.

Section 3.3 Eligibility. Following the Period of Declarant Control, all members of the Board shall be Owners or an Owners' spouse or legal partner that resides with Owner in the Unit. Notwithstanding, only one member of a single household can be a member of the Board at any one time. During the Period of Declarant Control, eligibility requirements shall not apply.

Section 3.4 Resignation & Removal. A Director may resign at any time by delivering a written resignation to either the President or the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Director, except during Period of Declarant Control, may be removed from the Board with or without cause by a majority vote, a quorum being present, at a special meeting called for such purpose. In the event of death, resignation or removal of a Director, his successor shall be selected by the remaining Directors and shall serve for the unexpired term of his predecessor.

Section 3.5 Compensation. No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for actual and approved expenses incurred in the performance of his duties.

Section 3.6 No Estoppel or Reliance. No one may rely upon any authorization (from the Board or otherwise) contrary to the terms and conditions of the Governing Documents regardless of circumstances. No claim of estoppel, waiver or similar equitable claims or defense may be raised by anyone related to any alleged reliance.

Section 3.7 Records Retention. The Board shall take appropriate action to develop, implement and update procedures for record retention. The Board should maintain documents in a manner to be easily accessible and copied. The Board may budget specifically for this expense and may seek the advice of consultants in developing retention procedures.

ARTICLE IV - NOMINATION AND ELECTION OF DIRECTORS

Section 4.1 Nomination. Following the Period of Declarant Control, Nomination for election to the Board may be made by the Board, Owners from the floor at the annual meeting, or pursuant to other written notice and procedures established by the Board

Section 4.2 Election. Following the Period of Declarant Control, the election of Directors may be by vote or written ballot, as determined at the discretion of the Board. The persons receiving the largest

number of votes shall be elected. Cumulative voting is not authorized. The Association may utilize available technology for casting and counting votes.

ARTICLE V - MEETINGS OF THE BOARD

Section 5.1 Regular Meetings. Regular meetings of the Board shall be held at least annually, or more frequently as determined by the Board. All notices shall be provided by email or other electronic means. Directors are required to provide an email or electronic address for purposes of notice of Board meetings. Notice shall be provided at least five (5) days before a meeting, but no more than thirty (30) days. During the Period of Declarant Control, board meetings shall not be required but may be held in the sole discretion of Declarant.

Owners, and Owner representatives (if designated in writing in advance) may attend Board meetings and may be present for all discussions, deliberations, and decisions except when the Board is in executive session. Owners shall comply with all reasonable rules established by the presiding officer for their attendance. The Board may limit Owners' comments and/or questions to a specific period of time within the meeting. The Board shall provide email notice in accordance with the Act to Owners that have requested, in writing, to be notified of Board Meetings and have provided a valid email address.

Section 5.2 Special Meetings. When, in the discretion of the President or two members of the Board, circumstances require that a meeting be held sooner than the required five (5) day notice for a regular meeting, a special meeting may be called by the President or by any two (2) Directors, after not less than twenty-four (24) hours' notice to each Director. During the Period of Declarant Control, only the Declarant may call Special Meetings.

Section 5.3 Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 5.4 Conduct of Meetings. The Board, or its authorized representatives, shall preside over all meetings. The Secretary or other authorized person shall keep and maintain minutes of all meetings. The Board may adopt further policies and procedures with regard to conduct at a Board meeting.

- (a) **Recording.** No person, whether an Owner, occupant, owner representative, or other third party is permitted to record (whether audio, video, transcription or combination) any Association or Board meeting, work session or similar event regardless of the location without the written consent of the Association.

Section 5.5 Action Taken Without a Meeting. The Directors may take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of a majority of the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Board.

ARTICLE VI - POWERS AND DUTIES OF THE BOARD

Section 6.1 Powers and Duties. The Board shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Governing Documents and Utah law. The Board may delegate its authority to manager(s), subject to any limitations or provisions contained in the Governing Documents.

ARTICLE VII - OFFICERS AND THEIR DUTIES

Section 7.1 Enumeration of Officers. The officers of this Association shall be a president, secretary,

and treasurer, or as otherwise designated by the Board.

Section 7.2 Election of Officers. The election/appointment of officers shall take place at the first Board meeting following the annual meeting of the Owners. Officers shall serve in their office for a period of one (1) year. Notwithstanding, nothing in these Bylaws prevent an officer or directors from being re-elected to their respective positions.

Section 7.3 Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine. Appointed Officers may be removed by the Board with or without cause.

Section 7.4 Resignation and Removal. Any officer may resign at any time by delivering a written resignation to any Director or to any Manager. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced by a majority of the Board of Directors at any time, with or without cause. In the event of death, resignation or removal of an officer, his successor shall be selected by the Board and shall serve for the unexpired term of his predecessor.

Section 7.5 Duties. The Board may adopt policies and resolutions to define the respective duties of Directors and Officers.

ARTICLE VIII - COMMITTEES

Section 8.1 Committees. The Board may appoint such committees as deemed appropriate in carrying out its purposes. A committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Board. The Board may terminate any committee at any time.

ARTICLE IX - MISCELLANEOUS

Section 9.1 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 asserting 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 attended the meeting and no objection to the particular procedural issue was made at the meeting;
- (b) If the objecting person was not in attendance at the meeting but had proper notice of the meeting; or
- (c) 12 months following the meeting.

Section 9.2 Requirements for Objections. All objections except those made at a meeting shall be in writing. Whenever made, objections must specifically describe the circumstances giving rise to the objection and reference the specific provision of the Governing Documents or law that is alleged to have been violated, with a brief statement of the facts supporting the claimed violation.

Section 9.3 Irregularities that Cannot Be Waived. Any irregularity that is the result of fraud or that was done knowingly and intentionally in violation the Governing Documents or Utah law.

Section 9.4 Fiscal Year. The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

Section 9.5 Amendment. During the Period of Declarant Control, these Bylaws may be amended at any time by the Declarant. Following the Period of Declarant Control, these Bylaws may be amended by

Owners holding at least sixty-seven percent (67%) of all eligible votes. An amendment to these Bylaws shall be effective immediately upon recordation in the Office of the Davis County Recorder, State of Utah.

The foregoing Bylaws are adopted by the undersigned and made effective upon recordation in the Office of the Davis County Recorder, State of Utah.

Pursuant to Utah Code § 16-6-801(2)(b) and the Articles, the Declarant, Destination Homes, Inc., is authorized to execute these Bylaws and may act for the Board during the Period of Declarant Control.

DATED this 10th day of May, 2022.

DESTINATION HOMES, INC., INCORPORATOR

Scott Lall
By (printed name): Scott Lall
Its: President

**ARTICLES OF INCORPORATION OF
WILCOX FARMS OWNERS ASSOCIATION**

The undersigned person, acting as incorporator of a non-profit corporation pursuant to the Utah Code § 16-6a-201(1), hereby adopts the following Articles of Incorporation ("Articles") of Wilcox Farms Owners Association ("Association").

ARTICLE I – NAME, PRINCIPAL ADDRESS & DURATION

- 1.1 The name of the nonprofit corporation is Wilcox Farms Owners Association.
- 1.2 The Association's principal address shall be: 67 S. Main St. Suite 300, Layton, Utah 84041. Such principal address may be modified at any time with the Utah Secretary of State by the Incorporator or Board of Directors without amendment to these Articles.
- 1.3 The duration of the Association shall be perpetual unless earlier dissolved pursuant to law.

ARTICLE II - DEFINITIONS

- 2.1 Definitions. All terms used herein shall have those meanings given them under that certain Declaration of Covenants, Conditions & Restrictions for Wilcox Farms Subdivision ("Declaration") and accompanying Bylaws, as amended. The term "Member" shall mean and refer to those persons entitled to membership in the Association, as provided in the Declaration and these Articles.

ARTICLE III –REGISTERED AGENT & OFFICE

- 3.1 The address of the initial registered agent of the Association is:
Amy Roskelley
Destination Homes, Inc.
67 S. Main Street, Suite 300
Layton, Utah 84041

Such agent and office may be modified at any time with the Utah Secretary of State by the Incorporator or Board of Directors without amendment to these Articles.

ARTICLE IV – INCORPORATOR

- 4.1 Pursuant to Utah Code §§ 16-6a-201(1) and 202, the name and address of the incorporator of the Association is as follows:
Destination Homes, Inc.
67 S. Main Street, Suite 300
Layton, UT 84041

ARTICLE V – BOARD OF DIRECTORS & AUTHORIZED PERSONS

- 5.1 Declarant shall appoint three natural persons to serve as the initial Board of Directors. Until the Class B Control Period ceases and is automatically converted to a Class A pursuant to the terms of the Declaration, Declarant, its successors and assigns, shall have the right to appoint, remove and replace all the members of the Board at any time in its sole discretion.
- 5.2 Pursuant to Utah Code § 16-6-801(2)(b), these Articles hereby authorize Declarant, Destination Homes, Inc., to exercise all powers and authority of the Board of Directors during the Class B Control Period. Declarant, in its sole discretion, may act for and on behalf of the Board and Association. Accordingly, during the Class B Control Period, the directors are relieved from such authority and duty.

ARTICLE VI – MEMBERSHIP SHARES AND VOTING RIGHTS

- 6.1 Membership/Shares. Every Owner shall be a Member of the Association. Declarant shall be deemed a Member of the Association, as set forth in the Declaration. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains. The Association shall not issue shares of stock. Neither the issuance nor the holding of shares of stock shall be necessary to evidence membership in the Association.
- 6.2 Voting Rights. The Members of the Association shall have voting rights, as set forth in the Bylaws and/or Declaration.
- 6.3 Membership List. The Association may for all purposes act and rely on the information concerning Members and Lot ownership that is obtained from the office of the County Recorder. The address of a Member shall be deemed to be the address of the residence situated on such Member's Lot unless the Association is otherwise advised in writing.

ARTICLE VII - POWERS AND PURPOSES

- 7.1 Purpose. The Association is organized and shall be operated as a nonprofit corporation for the purpose of enforcing the terms and conditions of Governing Documents and otherwise administering any Common Areas, Limited Common Areas, or facilities for the benefit of Members.
- 7.2 Powers. The Association shall have all of the powers conferred upon it by the Governing Documents, as amended, including all powers conferred by the Utah Revised Nonprofit Corporation and Utah Community Association Acts, and as otherwise allowed by law.
- 7.3 Non-Profit. The Association is not organized for pecuniary profit. No dividend shall be paid to any of its Members, Directors, Officers, or any other person.

ARTICLE VIII – MISCELLANEOUS

- 8.1 **Amendment.** Following the Class B Control Period, any amendment to these Articles shall require the consent of at least sixty-seven percent (67%) of all eligible votes. During the Class B Control Period, the Declarant may amend these Articles in Declarant's sole discretion.
- 8.2 **Dissolution.** Dissolution may occur consistent with the Declaration and the Utah Revised Non-profit Corporation Act, which dissolution proposal must be approved by Members holding not less than seventy-five percent (75%) of the voting interest of the Association. During the Class B Control Period, dissolution shall also require the written consent of Declaration. Upon dissolution, the assets of the Association shall transferred or divided among Members, as required by law.
- 8.3 **Manager.** Declarant (and the Board following the Class B Control Period) may utilize the assistance of professional community management to carry out duties and functions authorized by these Articles.
- 8.4 **Rules, Policies & Resolutions.** The Association may adopt, amend, and repeal rules, policies and resolutions for the regulation and management of the affairs of the Association consistent with the Governing Documents and the Act.
- 8.5 **Interpretation.** The captions that precede the various portions of these Articles are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include all genders. The invalidity or unenforceability of any provision contained in these Articles shall not affect the validity or enforceability of the remainder hereof. These Articles have been prepared in conjunction with the Bylaws and Declaration and should be read and construed in light of that fact and liberally so as to affect all the purposes of these instruments.
- 8.6 **Indemnification.** No director, officer, managing agent, committee member, or authorized person acting on behalf of the Association 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 person. The Association shall and does hereby indemnify and hold harmless each person who shall serve in such capacity, 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 director, officer, managing agent, committee member or authorized person by reason of any action alleged to have been taken or omitted to have been taken by them in such capacity, and the Association shall advance and reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability. The right of any person to be indemnified shall be subject always to the right of the Association, 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.

ACKNOWLEDGMENT

In witness hereof and under penalty of perjury, I hereby acknowledge that I am authorized by the Incorporator to execute these Articles, which I have read and know the contents thereof, and the same are true to the best of my knowledge and belief.

DATED this 10th day of May, 2022.

DESTINATION HOMES, INC., INCORPORATOR

Scott Lawl
By (printed name): Scott Lawl
Its: President