

When Recorded Return To:
Fieldstone Utah Investors, LLC
12896 S. Pony Express Road, Suite 400
Draper, Utah 84020

**FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS FOR BOWDEN FIELDS**

This *First Amendment to Declaration of Covenants, Conditions, and Restrictions for Bowden Fields* (“**Amendment**”) is made this 1st day of February, 2016, by Fieldstone Utah Investors, LLC, a Utah limited liability company (“**Declarant**”).

RECITALS

- I. Bowden Fields (“**Property**” or “**Project**”) is a planned unit development located in Midway City, Wasatch County, Utah, more particularly described in Exhibit A attached hereto.
- II. The Declarant executed and caused to be recorded a *Declaration of Covenants, Conditions, and Restrictions for Bowden Fields* (“**Declaration**”). The Declaration was recorded in the real property records of Wasatch County, Utah, on April 28, 2015, as Entry No. 411329.
- III. Capitalized terms not defined herein have the meaning set forth in the Declaration, if a meaning is provided therein.
- IV. Section 12.2 of the Declaration provides that the Declaration may be amended by the affirmative vote of sixty-seven percent (67%) of the votes cast at a meeting of the Association.
- V. Section 19.4 of the Declaration provides that Declarant will be a Class B member of the Association as long as Declarant owns a Lot in the Project. So long as Declarant is a Class B member, all matters requiring a vote of the Association “shall be determined solely by the Class B votes (i.e., solely by the Declarant).”
- VI. Declarant continues to own Lots in the Project and remains a Class B member of the Association. Declarant now wishes to amend the Declaration in certain respects, as more particularly set forth below.

NOW THEREFORE, Declarant does hereby amend the Declaration as follows, with the changes identified in this Amendment to be effective and binding against the Property and to run with the land as of the date this Amendment is recorded in the real property records of Wasatch County, Utah:

A. Certification. Declarant, as the Class B member, certifies that this Amendment has been approved as required under the terms of the Declaration.

B. Mandatory Arbitration Requirements. Section 24 of the Declaration is deleted in its entirety and replaced with the following language:

24. DISPUTE RESOLUTION; MANDATORY BINDING ARBITRATION.

24.1 Statement of Intent. Prior to purchasing a Lot or a Unit, every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, an inspection on any Lot or Unit that Owner is purchasing or any other aspect of the Project, including, without limitation, the Common Areas and Facilities. Moreover, if any written warranty has been provided, it identifies the only items that are warranted by the Declarant. Having had the ability to inspect prior to purchasing a Lot, having received a written warranty if any warranty is provided, and having paid market price for a Lot in the condition it and the Lots and Common Areas and Facilities are in at the time of purchase, it is acknowledged that it is unfair and improper to later seek to have the Declarant and/or any subcontractor performing work in the Project to change, upgrade, or add additional work to the Project outside of any express warranty obligation. Moreover, the Owners (by purchasing a Lot or Unit) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving disputes and conflicts in that it can be slow, expensive, uncertain, and can often negatively impact the sale value and ability to obtain financing for the purchase of Lots for years, unfairly prejudicing those Owners who must or want to sell their Lot during any period when litigation is pending. For this reason, the Owners, by purchasing a Lot or Unit, and the Declarant covenant and agree that claims and disputes shall not be pursued through court action, but shall be asserted and resolved only through the specific alternative dispute resolution mechanisms described below, and only after full disclosure, satisfaction of the right to cure periods, and knowing approval of the Owners, as set forth in the provisions of this Section 24. In addition, the Association and the Owners agree that they take ownership and possession of the Lots and Common Areas and Facilities AS IS, with no warranties of any kind except as otherwise required as a matter of law. The Declarant specifically disclaims any and all warranties of merchantability, fitness for a particular use, or of habitability, to the full extent allowed by law.

24.2 Binding Arbitration for All Disputes. To the fullest extent permitted by law, all claims and disputes of any kind that any Owner or the Association may have involving the Declarant, or any agent, employee, executing officer, manager, affiliate or owner of the Declarant, or any engineer or contractor involved in the design or construction of the Project, which arise from or are in any way related to a residence or

other improvement on a Lot, Unit, Common Areas and Facilities, Limited Common Areas or any other improvement on or component of the Project (a “**Dispute**”), shall be submitted to final and binding arbitration. Binding arbitration shall be the sole remedy for resolving claims and disputes between or involving the Declarant and any Owner or between or involving the Declarant and the Association. Arbitration proceedings, however, shall not be commenced unless the Pre-Arbitration Requirements set forth in Section 24.3 below have been satisfied in full. Without in any way limiting the foregoing, Disputes subject to binding arbitration shall include the following:

- (a) Any allegation that a condition in any of the residences on the Lots, Units, the Common Areas and Facilities, the Limited Common Areas, or other improvements in the Project is or involves a construction defect;
- (b) Any disagreement as to whether an alleged construction defect has been corrected;
- (c) Any disagreement about whether any warranties, including implied warranties, are applicable to the subject matter of any Dispute;
- (d) Any disagreement as to the enforceability of any warranties alleged to be applicable to the subject matter of any Dispute;
- (e) Any disagreement about whether any warranty alleged to be applicable to the subject matter of any Dispute has been breached;
- (f) Any alleged violations of consumer protection, unfair trade practice, or other statutes or laws;
- (g) Any allegation of negligence, strict liability, fraud, and/or breach of duty of good faith, and all other claims arising in equity or from common law;
- (h) Any allegation that any condition existing in the Project or created by the Declarant (or any of its contractors), including construction-related noise, dust, and traffic, is a nuisance, a defect, or a breach of any implied warranties of habitability or other implied warranties;
- (i) Any disagreement concerning the scope of issues or claims that should be submitted to binding arbitration;
- (j) Any disagreement concerning the timeliness of performance of any act to be performed by Declarant or any of its contractors;
- (k) Any disagreement as to the payment or reimbursement of any fees associated with binding arbitration;
- (l) Any disagreement or dispute regarding management of the Association, or regarding reserve studies or funding of Association expenses; and

(m) Any other claim or disagreement arising out of or relating to the sale, design, or construction of any of improvement on the Lots, Common Areas and Facilities, Limited Common Areas, off-site improvements, management of the Association, or other claims regarding the Project.

24.3 Pre-Arbitration Requirements. An Owner or the Association may only pursue a claim against the Declarant in arbitration after all of the following efforts of dispute resolution have been completed: (1) Right to Cure: the claimant (e.g. the Owner or the Association) shall provide to the Declarant a written Notice of Claim (defined below) and permit the Declarant one hundred eighty (180) days to cure or resolve the claim or defect or to try to get the builder or the appropriate subcontractor to cure or resolve the claim or defect, prior to initiating any formal arbitration proceedings; (2) if the dispute is not resolved within the 180-day Right to Cure period, the parties shall participate in formal mediation with a mutually-acceptable third-party mediator in an effort to resolve the Dispute prior to taking further action or commencing arbitration. If additional, different, or modified claims, damages, calculations, supporting information, or descriptions are added, provided to, or asserted against the Declarant that were not included in any previously submitted Notice of Claim, the Right to Cure period provided for in this Section shall immediately apply again and any pending action or proceedings, including any mediation or arbitration, shall be stayed during the 180-day period.

(a) "Notice of Claim" shall mean and include the following information: (1) an explanation of the nature of the claim, (2) a specific breakdown and calculation of any alleged damages, (3) a specific description of the claim along with any supporting opinions, information, or factual evidence upon which the claim is based, (4) photographs of any alleged defective condition, if applicable, (5) samples of any alleged defective conditions or materials, if reasonably available, (6) an explanation of the efforts taken to avoid, mitigate, or minimize the claim or any alleged damages arising therefrom, and (7) the names, phone numbers, and address of each person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim.

24.4 Member Approval; Legal Opinion; Arbitration. If a claim or dispute has not been resolved after satisfying and complying with the above-described "Pre-Arbitration Requirements," then the claimant (Owner or Association) shall have the right to proceed with binding arbitration; however, the Association shall not pursue or commence binding arbitration unless such action is first approved by a majority of the total votes of the Association after the Association has obtained a written opinion from legal counsel advising the Association of the likelihood of success on the merits of the claims, the anticipated costs and legal fees, the anticipated expert witness fees, and the likelihood of recovery if the Association prevails. The written opinion from legal counsel, addressing these topics, must be provided to all Owners before the formal vote on whether to proceed with binding arbitration. The binding arbitration shall be conducted by a mutually-acceptable arbitrator (preferably a former judge), or, if an arbitrator cannot be mutually selected, then by a member of the National Panel of Construction ADR Specialists promulgated by Construction Dispute Resolution Services,

LLC (“**CDRS**”). The binding arbitration shall be conducted according to the rules and procedures set forth in the Arbitration Rules and Procedures promulgated by CDRS. The award of the arbitrator shall be final and may be entered as a judgment by any court of competent jurisdiction.

24.5 Fees and Costs of Arbitration. Each party shall bear its own attorney fees and costs (including expert witness costs) for the arbitration. The arbitration filing fee and other arbitration fees shall be divided and paid equally as between the parties. The arbitrator shall not award attorney fees, expert witness fees or arbitration costs to the prevailing party.

24.6 No Waiver of Arbitration Right. If any Owner, the Association, or the Declarant files a proceeding in any court to resolve any Dispute, such action shall not constitute a waiver of the right of such party, or a bar to the right of any other party, to seek arbitration or to insist on compliance with the requirements set forth in this Section 24. If any such court action is filed, then the court in such action shall, upon motion of any party to the proceeding, stay the proceeding before it and direct that such Dispute be arbitrated in accordance with the terms set forth herein, including, without limitation, compliance with the Pre-Arbitration Requirements set forth above.

24.7 Waiver of Subrogation. The Association and each Owner waives any and all rights to subrogation against the Declarant and any builder, contractor, and engineer in the Project. This waiver shall be broadly construed and applied to waive, among other things, any attempt by any insurer of any Owner or of the Association from pursuing or exercising any subrogation rights, whether arising by contract, common law, or otherwise, against the Declarant, the Project engineer, and builder, contractors of the Declarant and the builder, and their officers, employees, owners, and representatives. To the full extent permitted by law, the Association and Owners hereby release Declarant, the Project engineer, and builder, and their respective officers, employees, owners, contractors, insurers, and representatives from any and all liability to the Association and all Owners, and anyone claiming through or under them by way of subrogation or otherwise, for any loss, injury, or damage to property, caused by fire or any other casualty or event, even if such fire or other casualty shall have been caused by the fault or negligence of Declarant or builder, their officers, employees, owners, and representatives. The Association and each Owner agrees that all policies of insurance shall contain a clause or endorsement to the effect that this release and waiver of subrogation shall not adversely affect or impair such policies or prejudice the right of the Association or any Owner to recover thereunder. The Association and all Owners shall indemnify and defend the Declarant, the builder, and any of their officers, employees, owners, contractors, or representatives from any claims barred or released by this provision, including but not limited to any claim brought under any right of subrogation.

[End of Addition to Section 24 of the Declaration.]

C. Interpretation. To the extent any other provision of the Declaration conflict with the foregoing terms, the terms of this Amendment will control.

D. Limitation of Amendment. Except as modified by this Amendment, all provisions of the Declaration shall remain in full force and effect and the Declaration.

IN WITNESS WHEREOF, the Delcarant has executed this Declaration as of the date first set forth above.

DECLARANT
FIELDSTONE UTAH INVESTORS, LLC

By: 

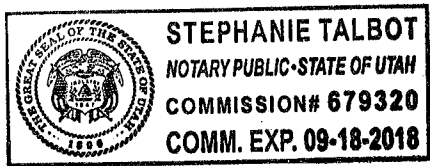
Printed Name: Kameron Spencer

Title: _____

STATE OF UTAH)
 ss.

COUNTY OF)

The foregoing instrument was acknowledged before me this 4th day of February, 2016 by Kameron Spencer as the authorized signer of Fieldstone Utah Investors, LLC.





NOTARY PUBLIC

EXHIBIT A

Property Description

The land referred to is located in Wasatch County, State of Utah, and is described as follows:

Lots 1-18, Bowden Fields Subdivision, Midway City, Wasatch County, State of Utah, according to the official plat thereof on file and of record in the office of the Wasatch County Recorder.

00-0021-8033 (Lot 1), 00-0021-8034 (Lot 2), 00-0021-8035 (Lot 3), 00-0021-8036 (Lot 4),
00-0021-8037 (Lot 5), 00-0021-8038 (Lot 6), 00-0021-8039 (Lot 7), 00-0021-8040 (Lot 8),
00-0021-8041 (Lot 9), 00-0021-8042 (Lot 10), 00-0021-8043 (Lot 11), 00-0021-8044 (Lot 12),
00-0021-8045 (Lot 13), 00-0021-8046 (Lot 14), 00-0021-8047 (Lot 15),
00-0021-8048 (Lot 16), 00-0021-8049 (Lot 17), 00-0021-8050 (Lot 18).