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WASATCH COUNTY CORPORATION
For: WHITAKER FARM DEVELOPMENT LLC

**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WHITAKER FARM SUBDIVISION**

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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WHITAKER FARM SUBDIVISION**

THIS DECLARATION made and executed this 26TH day of August, 2019, by WHITAKER FARM DEVELOPMENT, LLC, a Utah limited liability company with its principal place of business located in Midway, State of Utah, (hereinafter referred to as "Declarant"), with respect to the following:

RECITALS:

A. Declarant is the owner of certain real property located in Wasatch County, State of Utah (the "Property"), more particularly described in Article II, together with the Plat which is incorporated by reference to this Declaration.

B. In General, Declarant plans to develop the Property in accordance with a master plan which is subject to certain required governmental approvals. Declarant reserves the right to modify this master plan in its sole discretion from time to time and the consent of the Association, any Owner and any Mortgagee of any Owner shall not be required in connection therewith.

C. Declarant desires to provide for the preservation of the values and amenities of the Property and for maintenance of the Common Areas. To this end, and for the benefit of the Property and of the Owners thereof, Declarant desires to subject the Property described in Article II of this Declaration and the various Lots now or hereafter contained within the entire tract hereinafter described to these covenants, restrictions, easements, charges, and liens hereinafter set forth.

D. Declarant caused a community association to be formed which possesses the power to, among other things, maintain and administer the Common Areas, to establish, collect and disburse the Assessments and charges hereinafter provided for, act as agent and representative of the Owners and otherwise to administer and enforce the provisions of this Declaration. For such purposes Declarant has, in conjunction with recordation of this Declaration, caused to be incorporated under the laws of the State of Utah, as a nonprofit corporation, WHITAKER FARM OWNERS ASSOCIATION, INC (the "Association").

E. At or before the expiration of the Period of Declarant Control, the Association shall own the Common Areas of the Project and hold the power to

administer and enforce this Declaration as set forth herein.

F. This Declaration is adopted to clarify and define the rights of the Declarant, the Association and the Owners in and to the Project and provide for a general plan for managing the Property in furtherance of the effort to efficiently and economically provide a quality living environment and protect and enhance the value of the Project.

G. In order to cause this Declaration and the covenants contained herein to run with the Property and to be binding upon the Property and the Owners and other holders of an interest therein from and after the date this Declaration is Recorded, Declarant hereby makes or shall make conveyances of the Property, whether or not so provided therein, subject to this Declaration; and by accepting deeds, leases, easements or other grants or conveyances to any portion of the Property, the Owners and other transferees for themselves and their heirs, personal representatives, trustees, administrators, Board of Directors, members, successors and assigns, agree that they shall be personally bound by this Declaration (including but not limited to the obligation to pay Assessments) hereinafter set forth, except to the extent such Persons are specifically excepted here from and that all portions of the Property acquired by them shall be subject to this Declaration.

NOW, THEREFORE, Declarant hereby covenants, agrees and declares that all of the Property described in Article II hereof shall be held, transferred, sold, conveyed, occupied and used subject to the covenants, restrictions, conditions, easements, charges, Assessments, obligations, and liens hereinafter set forth.

ARTICLE I. DEFINITIONS

Capitalized terms in this Declaration are defined in this Article I:

1.1 Act shall mean the Utah Community Association Act, Utah Code Annotated sections 57-8a-101, et. seq. (2019).

1.2 Additional Property shall mean any additional property subject to Declarant's unilateral right of annexation as provided elsewhere in this Declaration.

1.3 Amendment shall mean an amendment to this Declaration Recorded by the Association pursuant to Section 10.2 of this Declaration.

1.4 Articles shall mean the Articles of Incorporation filed by Declarant with the Utah Division of Corporations and Commercial Code for Whitaker Farm Owners Association, Inc., a Utah non-profit corporation, as the same may from time to time be amended or supplemented.

1.5 Assessment shall mean a charge or expense related to ownership of a Lot that may include, but not be limited to, the maintenance and operation of the Common Areas and the Association. An unpaid fine or penalty may become an Assessment that the Association may enforce through a Lien.

1.6 Association shall mean and refer to THE WHITAKER FARM OWNERS ASSOCIATION, Inc., a Utah nonprofit corporation.

1.7 Association Expenses shall mean Common Expenses incurred by the Association for administration of the Association, as well as those expenses for: (i) the purchase, ownership, leasing, construction, operation, use, administration, maintenance, improvement, repair or replacement of Association facilities, including expenses for taxes, insurance, operating reserves, and emergency funds; (ii) providing, establishing, creating or managing a facility, activity, service, or program for the benefit of Owners, tenants, Community Areas, the Burdened Property, or property governed by the Association; or (iii) other facilities, activities, services, or programs that are required or permitted under the Association's Governing Documents.

1.8 Board of Directors (sometimes referred to as the "Board") shall mean and refer to the Board of Directors of the Association as duly appointed or elected in accordance with the terms and conditions of the Articles of Incorporation and the Bylaws of the Association.

1.9 Bylaws shall mean the bylaws of the Association as the same may from time to time be amended or supplemented.

1.10 Building Pad shall consist of the area located within the Lot boundaries shown on the Plat where a Dwelling or other building may be located, reduced however, by all setbacks which are required by the terms of this Declaration, the Design Guidelines and found in all applicable ordinances or codes promulgated by appropriate governmental agencies.

1.11 Burdened Property shall mean a Lot that is subject to the Reinvestment Fee Covenant described herein at Article V, Section 5.6 and for which the Reinvestment Fee shall be dedicated to benefit.

1.12 Common Areas shall mean and refer to that part of the Property which is not included in a Lot, which is owned by the Association and those easements either granted to or reserved for the benefit of the Declarant, the Association or the Owners and intended for the common use and enjoyment of the Owners, together with all improvements thereon and all easements appurtenant thereto including but not limited to private utility lines and fixtures and other personal property owned by the Association when the context so requires. Common areas specifically include,

but are not limited to, the entrances of the Subdivision, any amenities maintained by the Association, and those areas on the Plat designated as "Open Space."

1.13 Common Expenses shall mean and refer to all those costs and expenses arising out of or connected with the maintenance and operation of the Project and the Association and which determine the Assessments to be assessed to Owners of Lots.

1.14 Common Expense Fund shall mean the fund created or to be created into which all monies of the Association shall be deposited. Separate and distinct funds shall be maintained for operating expenses and capital or reserve expenses which shall together constitute the Common Expense Fund.

1.15 County shall mean Wasatch County, Utah.

1.16 Declarant shall mean Whitaker Farm Development, LLC, a Utah limited liability company, and the successors and assigns of Declarant's rights and powers hereunder. Declarant shall also include any Person or Persons that have been assigned and have agreed to assume certain of Declarant's rights and/or obligations in this Declaration effective upon the recording of a written instrument signed by the Declarant and such Person or Persons that evidences such assignment and assumption.

1.17 Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions.

1.18 Deed shall mean a deed or other instrument conveying the fee simple title in a Lot.

1.19 Design Guidelines shall mean and refer to those guidelines and regulations created by the Declarant for the design and construction of Dwellings and other improvements, including landscaping of Lots, within the Subdivision. Pursuant to Section 8.2, the Board may also adopt additional design criteria that expand those adopted by the Declarant herein in Article VIII.

1.20 Dwelling shall mean and refer to a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located therein or with respect to the Lot concerned which are used in connection with such residence.

1.21 Event(s) shall mean the earliest of certain happenings to occur which will mark the expiration of the Period of Declarant Control as described in Section 3. 2.3.

1.22 Governing Authority shall mean the applicable governmental entity or municipality which may have jurisdiction over some part of the Project.

1.23 Environmental Laws shall mean any federal, state, local or foreign statutes, codes, plans, regulations or common laws related to pollution or protection of the environment specifically including wetlands, including, without limitation, any common laws of nuisance or trespass and any laws or regulations relating to emissions, discharges, releases or threatened releases of Toxic Materials into the environment (including, without limitation, ambient air, surface water, ground water, land surface or subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Toxic Materials. "Environmental Laws" shall also include all orders, decrees, judgments, injunctions, notices or demand letters issued, entered, promulgated or approved under those Environmental laws.

1.24 Governing Documents shall mean this Declaration, Supplemental Declarations and Amendments hereto, the Articles, Bylaws, Design Guidelines and Rules and Regulations.

1.25 Improvement(s) shall mean any improvement now or hereafter constructed in the Project and includes anything which is a structure for purposes of applicable Municipal Authority including but not limited to a building, structure, shed, covered patio, fountain, pool, radio or television antenna, receiving dish, tree, shrubbery, paving, curbing, landscaping, tank, fence mailbox, sign, newspaper vending and distribution machine, overnight delivery service drop box, any excavation or fill having a volume exceeding ten (10) cubic yards and any excavation, fill, ditch, diversion, dam, or other thing or device which affects the natural flow of surface water or the flow of water in a natural or artificial stream, wash or drainage channel.

1.26 Lot shall mean and refer to anyone of the separately numbered and individually described plots of land described on a Plat: (a) which is intended to be owned individually, rather than by the Association or in common by Owners of different lots; and (b) which is intended to be used as the site of a single Dwelling. Reference to "Open Space" on the Plat does not mean a "Lot" as described herein.

1.27 Manager shall mean such person or entity retained by the Board of Directors to perform certain functions of the Board pursuant to this Declaration or the Bylaws. The Manager may carry out delegated responsibilities of the Association as required herein.

1.28 Member shall mean and refer to every person who holds a membership in the Association.

1.29 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.

1.30 Mortgagee shall mean any person named as a mortgagee of a mortgage or beneficiary under or holder of a deed of trust.

1.31 Owner shall mean and refer to the person who is the Owner of record (in the office of the County Recorder of Wasatch County, Utah) of a fee or an undivided interest in any Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust or like instrument, the term "Owner" shall not mean or include a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.32 Parcel shall mean and refer the Property which is subject to this Declaration and filed for record in the office of the County Recorder of Wasatch County, Utah, and is separately subjected to the terms of this Declaration with the intention that it shall thereby comprise the Subdivision. The real property described in Article II of this Declaration constitutes the Parcel.

1.33 Period of Declarant Control: shall mean the period during which the Declarant who filed this Declaration, or the Declarant's successor in interest, who retains authority to appoint or remove members of the Board or exercise power or authority assigned to the Association under the Governing Documents as defined in more detail in Section 3.2.3.

1.34 Person a natural individual, a corporation, limited liability company, partnership or any other entity with the legal right to hold title to real property.

1.35 Plat shall mean and refer to any subdivision plat, any plat of a planned Lot development, or any plat or map similar to any of the foregoing: (a) which covers the Property; (b) which describes or creates one or more Lots; (c) on which or in an instrument recorded in conjunction therewith there is expressed the intent that the Subdivision created by the Plat shall comprise the Subdivision; and (d) which is filed for record concurrently with this Declaration in the office of the County Recorder of Wasatch County, Utah on August 20, 2019, creating separately numbered Lots. Said subdivision plat shall constitute a Plat.

1.36 Property shall mean and refer to all of the real property described at Appendix A.

1.37 Project shall generally mean and refer to Whitaker Farm Subdivision.

1.38 Recreational Vehicle shall mean and collectively refer to boats, trailers, snowmobiles, all-terrain vehicles, wheeled or tracked vehicles, or any other vehicle or equipment that is primarily used for recreation. *See Section 7.4.1.*

1.39 Reinvestment Fee shall mean a maintenance fee, charge or expense charged by the Association to be paid by either a buyer purchasing or accepting a Deed to or an Owner selling a Burdened Property, upon and as a result of a Transfer of the Burdened Property as described in Article V, Section 5.16. The fee shall be dedicated to benefitting the Burdened Property, including payment for, but not limited to, common planning, facilities, and infrastructure; obligations arising from an environmental covenant; community programming; resort facilities; open space; recreation amenities; charitable purposes; Association Expenses; and/or any other purpose identified in Utah Code Annotated section 57-1-46(1)(i).

1.40 Rules and Regulations shall mean any Rules and Regulations for the Project adopted by the Board pursuant to Section 6.3.

1.41 Subdivision shall mean and refer to the entire residential development which is created and covered by the Plat.

1.42 Supplemental Declaration shall mean a supplement to this Declaration executed by or consented to by Declarant.

1.43 Toxic Materials shall mean any flammable explosives, asbestos, industrial substances, pollutants, contaminants, chemicals, wastes, discharges, emissions, radioactive materials and other hazardous substances, whether injurious by themselves or in combination with other materials, including, but not limited to, substances defined as "hazardous substances," "hazardous materials," "hazardous wastes" or "toxic substances" described in the "Environmental Laws."

1.44 Visible from Neighboring Property shall mean, with respect to any given object, that such object is or would be visible to a person six feet (6') tall standing on Neighboring Property, on the level of the base of the object being viewed.

ARTICLE II. PROPERTY SUBJECT TO DECLARATION

2.1.1 Submission. The Property which is and shall be held, conveyed, transferred, sold, conveyed, hypothecated, encumbered, leased, occupied built or otherwise used or improved, in whole or in part, subject to the provisions of this Declaration as amended, supplemented and modified from time to time and the Utah Community Association Act, Utah Code Annotated Section 57-8a-*et seq.*, consists of the following described real property situated in Wasatch County, State of Utah:

SEE THE LEGAL DESCRIPTION ATTACHED HERETO AS APPENDIX A,
TOGETHER WITH THE RECORDED PLAT WHICH IS INCORPORATED BY
REFERENCE.

EXCLUDING all presently existing or to be constructed or installed sewer lines, water mains, gas lines, electrical conduits, telephone lines, and related

facilities to the extent that they are located outside the Lots included with the above-described tract; provided, however, that lines and systems specifically conveyed to the Association by Declarant shall not be included within this exclusion.

RESERVING UNTO DECLARANT, however, such easements and rights of ingress and egress over, across and through and under the above-described tract and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant or any assignee of Declarant (in a manner which is reasonable and not inconsistent with the provisions of this Declaration): (i) to construct a Dwelling on a Lot; and (ii) to improve the Common Areas with such facilities as Declarant may reasonably determine to be appropriate, including, but not limited to, recreational facilities, entry island, walkways and various landscaped areas, monuments, signage and lighting fixtures designed for the use and enjoyment of all the Members. If, pursuant to the foregoing reservation, the above-described tract or any improvement thereon is traversed or partially occupied by a permanent improvement or utility line, a perpetual easement for such improvement or utility line shall exist. With the exception of such perpetual easements, the reservation hereby effected shall expire, unless sooner terminated in accordance with its terms, upon the expiration of the Period of Declarant Control.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments and charges imposed or levied by governmental or quasigovernmental authorities; all patent reservations and exclusions; all mineral reservations and exclusions; all mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described tract or any portion thereof, including without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; and all easements and rights-of-way of record.

2.2 Storm Drain Easements. Storm drain easements as designated upon the Plat are dedicated and reserved for the temporary holding of storm waters. No buildings, trees or shrubs are allowed to impede the function of Storm Drains or block vehicular access to the Storm Drain Easement. The Association shall be solely responsible to maintain the function of such easement areas including, but not limited to, all storm drain pipelines, ponds, sumps and other equipment and/or improvements constituting such storm drain systems that are not dedicated to the public. Midway City retains the right to maintain, operate and inspect the Storm Retention Pond and Easement.

2.3 Irrigation Ditch Easements. The irrigation ditch easements designated on the Plat are reserved for the Midway Irrigation Company. The Association shall be solely responsible for the maintenance of the ditch and will post a bond to ensure

performance to the Midway Irrigation Company in accordance with that certain Irrigation Easement Agreement which is incorporated by reference.

2.4 Not Condominium or Cooperative. This Declaration is not a declaration of condominium. No portion of the Property is submitted by this Declaration to the condominium form of ownership. Moreover, no portion of the Project shall be a cooperative. However, portions of the Property may be submitted to the condominium form of ownership by a Supplemental Declaration.

2.5 No Timeshare / Fractional Share Development or Timeshare/Fractional Share Use. Notwithstanding anything to the contrary contained in this Declaration, Declarant has decreed that no portion of the Property shall be utilized or subjected to any Timeshare or Fractional Share Development or Timeshare or Fractional Share Use as defined under Utah Code Ann. Sections 57-19-2(25) through (27) or successor statutes.

2.5 Annexation of Additional Property. Declarant reserves the absolute right and option to expand the Property at any time (within the limits herein prescribed) and from time to time by adding to the Property certain Additional Property or a portion or portions thereof. Notwithstanding any provision of this Declaration which may be construed to the contrary, prior to the expiration of the Period of Declarant Control, Declarant shall have the unilateral right, privilege, and option, in its sole discretion, to subject any Additional Property to the provisions of this Declaration and to the administration of the Association by Recording a Plat and Supplemental Declaration in Wasatch County, Utah. Such Supplemental Declaration shall not require the consent of any of the Owners, any mortgagee of any Owner or the Association, but shall require the consent of the owner of such Additional Property, if the owner of such Additional Property is other than Declarant. Any such annexation shall be effective upon the filing of record of a corresponding Plat and such Supplemental Declaration unless otherwise provided therein. Declarant shall have the right, in its sole discretion, to transfer to any other Person the right, privilege, and option to annex Additional Property. Except to the extent specifically indicated herein, Declarant shall have no obligation to expand the Property upon the annexation of Additional Property. Once Additional Property has been annexed, it shall be considered part of the Property and shall be subject to all Governing Documents.

2.6 Supplemental Declarations. In General, Declarant shall have the right, alone and in its sole discretion, to execute and Record in Wasatch County, Utah, Supplemental Declarations from time to time containing provisions which (a) assign a specific use to a portion of the Property; (b) impose additional restrictions or delete restrictions on a portion of the Property; (c) assign some or all of Declarant's rights and obligations hereunder; (d) subject some or all of the Additional Property to the effect of this Declaration; or (e) do anything else permitted by this Declaration.

2.7 Exempt Property. Parts of the Project that are not subject to Assessment by the Association shall include:

2.7.1. Declarant Owned Property. All Property, including each Lot, while owned by Declarant or a Declarant-related developer entity, until the happening of the first of the Events described in Section 3.2.3.;

2.7.2. Common Areas. All Common Areas for as long as the Declarant or Association is the owner thereof;

2.7.3. Governing Authority Property. All land and Improvements owned by or dedicated to and accepted by the United States, a Governing Authority, or any political subdivision thereof, for as long as any such entity or political subdivision is the owner thereof or for so long as said dedication remains effective, including all Governing Authority Property better described at Section 2.8.

2.8 Governing Authority. From time to time, Declarant may, in its sole and exclusive discretion and without the vote of the Members, convey, assign, or transfer by Deed or other written instrument certain Common Areas to the applicable Governing Authority. Once any such Common Areas are conveyed, assigned or transferred to a Governing Authority, they shall be Exempt Property and shall constitute Governing Authority Property. It is contemplated that from time to time certain Common Areas, the Trail System and other real property and facilities, may be conveyed, assigned or transferred by Deed or other written instrument to the Governing Authority, which conveyances are authorized pursuant to this Declaration.

ARTICLE III. MEMBERSHIP AND VOTING RIGHTS

3.1 Membership. Every Person who is an Owner shall be a Member of the Association and shall be subject to Assessments. 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. Neither the issuance nor the holding of shares of stock shall be necessary to evidence Membership in the Association.

3.1.1 Declarant-Owned Property. The Declarant shall be a Member of the Association for so long as the Declarant holds a Class B Membership pursuant to Section 3.2.3. below or owns any Lots within the Project and holds a Class A Membership.

3.1.2 Exempt Property. No Memberships shall be allocated to Owners of Exempt Property (except as otherwise provided regarding Declarant) or any Property utilized for general public uses.

3.1.3 Multiple Ownership Interests. In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, 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, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

3.2 Voting Rights. The Association shall have the following described two classes of voting membership:

3.2.1 Class A. Class A Members shall be all Owners other than the Declarant until the Class B membership ceases. Class A Members shall be entitled to one (1) vote for each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any Lot.

3.2.2 Class B. The Class B Member shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale and who is designated as such in a recorded instrument executed by Declarant. The Class B Member shall be entitled to two (2) votes for each Lot that it holds an ownership interest that is required for Membership in the Association.

3.2.3 Expiration of Period of Declarant Control. The Class B Membership shall automatically cease and be converted to a Class A membership, on the basis of the number of Lots then owned by the Declarant, on the happening of the first of the following events (herein referred to as the "Event" or "Events"):

3.2.3.1 Sixty (60) days after 75% of the Lots within the Project owned by Declarant have been conveyed to Owners other than Declarant; or

3.2.3.2 Seven (7) years after Declarant and any successor in interest to the rights of Declarant as the Declarant under this Declaration has ceased to offer Lots for sale in the ordinary course of business; or

3.2.3.3 The day when Declarant, in its sole discretion, records an instrument in the Office of the Recorder in Wasatch County, Utah, that it voluntarily surrenders some or all of its rights to control activities of the Association following written notice to the Owners.

3.2.3.3.1. If Declarant elects to voluntarily relinquish control of the Association, Declarant shall send written notice of such relinquishment to

the Board. The notice shall state the effective date of the relinquishment, which date shall be the effective date of the Event.

3.2.4. Upon the happening of such above-described Events, whichever occurs first, (i) the Class B Member shall be deemed to be a Class A Member entitled to one vote for each Lot owned, (ii) the Board shall call an annual or special meeting, as applicable, in the manner described in the Bylaws to (A) advise the Owners of the termination of the Class B Member status, and (B) elect a new Board in accordance with Section 3.2.3. above.

3.2.5 Prior to the expiration of the Period of Declarant Control described in section 3.2.3., the Declarant may voluntarily surrender the right to appoint and remove members of the Board, but may require that the following actions of the Board be approved by the Declarant before they become effective:

3.2.5.1 Increasing the Annual Assessment amount in any fiscal year;

3.2.5.2 Dedicating any Property within the Subdivision to another Person, entity or governmental agency;

3.2.5.3 Proposing an amendment or modification of a provision of this Declaration, the Bylaws or the Articles;

3.2.5.4 Amending or modifying the Design Guidelines in any substantive way that would change or impact the philosophy of the Subdivision as noted in the Design Guidelines as referenced in Article VIII;

3.2.5.5 Adopting or amending a Rule;

3.2.5.6 Expanding the Subdivision;

3.2.5.7 Merging with another community association; and

3.2.5.8 Any other action that the Declarant would have had the unilateral right to do prior to the date of the first Event to occur.

3.3 Retained Declarant Rights. As long as Declarant continues to hold title to a Lot in the Subdivision, even if the Period of Declarant Control has expired, the Declarant retains the right to do the following unless it forfeits the right in writing and serves it upon the Board:

3.3.1 Unilaterally manage the development of amenities within the Project and the open space; and

3.3.2 Unilaterally manage the flow, direction, and distribution of water within the Project;

3.3.3 Unilaterally manage the agricultural status of the Project; and

3.3.4 Appoint one of its principals as a Member of the Design Review Committee.

3.4 **Voting Threshold.** Except as otherwise expressly provided in this Declaration or in any of the other Governing Documents, any issue put to a vote by ballot without a meeting or at a duly called meeting of the Members at which a quorum is present shall be decided by a simple majority of all votes represented in Person or by valid proxy at such meeting.

3.5 **Record of Ownership.** Every Owner shall promptly cause to be duly filed for record the Deed conveying interest of a Lot to him. Each Owner shall file a copy of such conveyance, transfer, sale contract or deed with the secretary of the Association with an account set up fee of \$50.00, who shall maintain a record of ownership of the Lots. Any Owner who mortgages his Lot or any interest therein by a mortgage which has priority over the lien of any assessment provided herein shall notify the secretary of the Association of the name and address of the Mortgagee and also of the release of such Mortgage; and the secretary of the Association shall maintain all such information in the records of ownership. 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 in accordance with the provisions of Section 5.5.

ARTICLE IV. PROPERTY 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. Any Member may delegate the right and easement of use and enjoyment described herein to a family member, tenant, lessee or contract purchaser who resides on such Member's Lot.

4.2 **Form for Conveyance.** Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering title to a Lot shall describe the interest or estate involved substantially as follows:

Lot No. ___, contained within Whitaker Farm Subdivision, as the same is identified in the Plat recorded as Entry No. ___ in Book ___ at Page ___ and in the "Declaration of Covenants, Conditions and Restrictions of

"Whitaker Farm Subdivision" recorded as Entry No. ___, in Book ___, at Page ___, of the official records of the Wasatch County Recorder.

TOGETHER WITH a right and easement of use and enjoyment in and to the Common Areas described and provided for in said Declaration of Covenants, Conditions and Restrictions and in the Record of Survey Map in the official record of the Wasatch County Recorder.

4.2.1 Whether or not the description employed in any such instrument is in the above specified form, however, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot.

4.3 Transfer of Title. Declarant agrees to convey to the Association title to the various Common Areas noted on the Plat free and clear of all liens (other than the lien of current general taxes and the lien of any assessments, charges, or taxes imposed by governmental or quasigovernmental authorities) as each such Common Area is substantially completed. In the event the Declarant fails to convey the Common Areas by deed or other instrument, the filing of the Plat shall nevertheless be deemed a conveyance of the Common Areas to the Association.

4.3.1 Declarant reserves the right before or after the expiration of the Period of Declarant Control to transfer title any Lot to the Association as a Common Area Lot. If the Declarant exercises this right, the Association will accept the Lot as a Common Area Lot and will bear any costs or attorney's fees related to the preparation and recordation of the necessary supplemental plat to denote the change in the Lot's characteristics.

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

4.4.1 The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas.

4.4.2 The right of the Association to suspend the voting rights and right to the use of the Common Areas by a Member (i) for any period during which any Assessment against his Lot remains delinquent; (ii) for a period not to exceed sixty (60) days for any infraction of this Declaration, a Supplemental Declaration, the Rules or Design Guidelines; and (iii) for successive sixty (60) day periods if any such infraction is not corrected during any prior sixty (60) day suspension period.

4.4.3 The right of the Association to dedicate or transfer all or any part of the Common Areas and any sewer, water and storm drain trunk 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 (i) all holders of first Mortgages secured by Lots and (ii) by two-thirds (2/3) of the vote of each class of membership which Members present in person or by proxy are entitled to cast at a meeting duly called for that purpose. Written or printed notice setting forth the purpose of the meeting and the action proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

4.4.4 The right of the Association to regulate the use of the Common Areas through a Rule and to prohibit access to any Common Area, such as landscaping right-of-ways or protected wetlands, not intended for use by the Members. Any Rule adopted by the Declarant or the Board, in their absolute discretion for this purpose, shall be intended, to enhance the preservation of the Common Areas or the safety and convenience of the users thereof, or otherwise shall serve to promote the best interests of the Owners, their guests and other residents.

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

4.5 Use of Common Area Open Space. Common Area Open Space in the Project shall be restricted to recreational purposes, including but not limited to walking, horseback riding, hiking, nature study, bird watching, cross country skiing, swimming in ponds, fishing in streams, gardening in areas provided by the Board, biking (excluding motorized vehicles), viewing of scenic areas and any other activities that receive prior written authorization by the Board.

4.5.1 Notwithstanding the limitations described in Section 4.5, Owners may submit a written request to allow specific activities to be conducted within Common Area Open Spaces. The approval of such requests shall be at the discretion of the Board.

4.5.2 The amenities located within the Common Area Open Space are reserved for the enjoyment of Owners and their guests. The Declarant and later the Association will be responsible to maintain the area and undertake necessary safety measures while preserving this benefit of Members.

ARTICLE V. ASSESSMENTS

5.1 **Personal Obligation and Lien.** Each Owner shall, by acquiring or in any way becoming vested with his interest in a Lot, be deemed to covenant and agree to pay to the Association the Regular and Special Assessments described in this Article, together with the hereinafter provided for interest and costs of collection, specifically including attorney's fees. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made; 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 attorney's 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 therefor.

5.2 **Purpose of Assessments.** Assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of residents of the Property, including but not limited to the appearance and aesthetics of the Subdivision. 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, Amenities and Open Spaces; maintenance, repair and improvement of the Common Areas, Amenities and Open Spaces; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas, Amenities and Open Spaces; and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration or its Articles of Incorporation.

5.3 **Regular Assessments.** Regular Assessments shall be computed and assessed against all Lots and shall be based upon advance estimates of the Association's cash requirements to provide for payment of all estimated expenses arising out of or connected with the maintenance and operation of the Common Areas and operating the Association. Such estimated expenses may include, without limitation, the following: expenses of management; real property taxes and Special Assessments (unless and until the Lots and Parcels are separately assessed); premiums for all insurance that the Association is required or permitted to maintain hereunder; repairs and maintenance; wages of Association employees, including fees for a Manager; utility charges; legal and accounting fees; any deficit remaining from a previous period; creation of an adequate contingency reserve, major maintenance reserve and/or sinking fund; creation of an adequate reserve fund for maintenance, repairs, and replacement of those Common Areas that must be replaced on a periodic basis; and any other expenses and liabilities which may be incurred by the

Association for the benefit of the Members under or by reason of this Declaration. Such shall constitute the Common Expense, and all funds received from assessments under this Section shall be part of the Common Expense Fund. Two separate and distinct funds shall be created and maintained hereunder, one for operating expenses and one for capital expenses that together shall constitute the Common Expense Fund.

5.4 Special Assessments. From and after the Period of Declarant Control, the Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by Regular Assessments; or (b) the cost of any construction, reconstruction or unexpectedly required repair or replacement in connection with the Common Areas, Amenities and Open Spaces. Any such Special Assessment must be assented to by not less than a majority of the Members other than the Declarant (or if the two class voting structure is still in effect as provided herein, a majority of the votes of the Members), present in person or represented by proxy are entitled to cast at a meeting duly called for the purpose. Written notice setting forth the purpose of the meeting shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date.

5.5 Individual Assessment on Specific Lot. In addition to the Regular Assessment and any Special Assessment authorized pursuant to Sections 5.3 and 5.4 above, the Board may levy Individual Assessments against a particular Lot and its Owner at any time related to (a) costs of providing services and Improvements to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made at the written request of the Owner of the Lot to be charged; (b) costs associated with damages caused to the Common Areas by the Owner, its occupant, guest or invitee; (c) costs incurred in bringing the Owner or the Owner's Lot or Dwelling into compliance with the Provisions of the Governing Documents; (d) expenses incurred for maintenance or repair work performed, or enforcement action taken, or other provisions of this Declaration; (e) fines, late fees, collection charges and interest; (f) attorney fees, costs and other expenses relating to any of the incidents described in this Section regardless of whether a lawsuit is filed and (g) reinvestment fees described in Section 5.16; and (h) any other charge designated as pertaining to an individual Lot in the Governing Documents. 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's 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, and such Assessment may be made in advance of the performance of work. If a special benefit arises from any Improvement that is part of the general maintenance obligations of the Association, it shall not give rise to an Individual Assessment against the Lots benefitted.

5.6 **Uniform Rate of Assessment; Declarant Exception.** Except as provided in this section above, Regular and Special Assessments shall be fixed at a uniform rate for all Lots, except for each unsold Lot owned by the Declarant in the Subdivision, the Declarant shall be excused from paying Assessments until such date as Declarant closes and conveys a Lot to an Owner (other than Declarant).

5.7 **Regular Assessment Due Dates.** The Regular Assessments provided for herein shall commence as to all Lots on (i) the date a deed is delivered to the purchaser of a Lot, or if the sale is by way of a contract of sale, on the date the contract is executed by the parties thereto, (ii) the date of occupancy agreement, or the date the Owner actually takes possession of a Lot, or (iii) if either of the foregoing has occurred as of the date of recording of this Declaration, the first day of the month following recording, whichever first occurs. The first Regular Assessment shall be adjusted according to the number of days remaining in the month of conveyance, contract or occupancy as the case may be. Thereafter all Regular Assessments shall be due and payable on the first day of each month. A Regular Assessment not paid within ten (10) days of the due date thereof shall be deemed late and subject to a late fee of \$25.00 or 5% of the Assessment amount, whichever is greater. 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 amount and the first due date of the Assessment concerned.

5.7.1 Notwithstanding the foregoing, in the event that a majority of the Owners elect, the Association may provide for the payment of Regular Assessments on a quarterly or annual basis, provided such Assessments are payable in advance.

5.8 **Inadequate Funds.** In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Member's Assessment, the Board may levy additional Special Assessments in accordance with the procedure set forth in Section 5.4 above, except that the vote therein specified shall be unnecessary.

5.9 **Rules Regarding Billing and Collection Procedures.** The Board shall have the right to adopt Rules setting forth procedures for the purpose of making the Assessments provided herein and for the billing and collection of the Regular and Special Assessments and the Individual Assessments imposed, provided that said procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to a Member shall not relieve any Member of his or her liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than fifteen (15) days written notice prior to the commencement of such foreclosure or enforcement, at the address of the Member on the records of the Association, that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after the

delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the Ownership of a Membership changes during an Assessment Period; successor Owners of Lots be given credit for prepayments, on a prorated basis, made by prior Owners. In case the Owner of a Membership becomes liable for payment of an increased sum during the Assessment Period, he or she shall notify the Association but his or her failure to notify the Association shall not relieve him or her of the liability for such amounts.

5.10 Reserve Funds. The Board of Directors shall conduct a reserve analysis study consistent with the content and frequency requirements of the Act to determine the need for a reserve fund to cover the cost of repairing, replacing, or restoring Common Areas or Amenities that have a useful life of no fewer than three (3) years but less than thirty (30) years, when the cost cannot reasonably be funded from the general budget or other funds of the Association. The Board of Directors shall include a reserve fund line item in its annual budget. The amount of the reserve fund line item shall be set by the Board of Directors based upon the reserve analysis and the amount the Board determines is prudent under the circumstances.

5.10.1 The Association shall establish and maintain two (2) separate and distinct funds, one for the periodic regular maintenance and repair of the Project and for other routine operating expenses and one for replacement of Improvements to the Common Areas, Amenities and Open Spaces that the Association may be obligated to maintain, repair or replace. These two (2) funds shall be maintained out of Regular Assessments for Common Expenses. See Article XIII of the Bylaws.

5.10.2 The Board may not use money in a reserve fund for daily maintenance expenses unless at least sixty-seven percent (67%) of the Members vote to approve the use of reserve funds for that purpose; or for any purpose other than the purpose for which the reserve fund was established.

5.11 Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the Regular Assessments authorized above, the Association may levy, in any Assessment Period, a Special Assessment applicable to that period only for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto; for the purpose of defraying, other extraordinary expenses, provided that any such Assessment shall have the assent of at least sixty percent (60%) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose or by written approval of such Members. The provisions of this Section are not to preclude or limit the assessment, collection or use of Regular Assessments for the aforesaid purposes.

5.11.1 Notice and Quorum for Any Action Authorized Under Section 5.11.

Written notice of any meeting called for the purpose of taking any action authorized under this Article shall be sent to all Members no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called for the consideration of a Special Assessment, the presence of Members or of proxies entitled to cast fifty percent (50%) of all the votes (exclusive of suspended voting rights) of each class of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

5.12 Statement of Account. Upon the written request of any Owner 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. The Association may charge a reasonable fee for this service not to exceed \$25.00, unless the Association has turned such account over to its attorney for collection and the related attorney's fees and costs incurred to compile the statement may apply. Such statements shall be conclusive in favor of all persons who in good faith rely thereon.

5.13 Effect of Non-Payment; Remedies. Any Assessment not paid when due shall, together with the hereinafter provided for interest and costs of collection, constitute and remain a continuing lien on the affected Lot; provided, however, that any such lien will be subordinate to the lien or equivalent security interest of any first mortgage on the Lot recorded prior to the date any such Assessments became due. If the Assessment is not paid within sixty (60) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at the rate of eighteen percent (18%) per annum and the Association may bring an action against the Owner who is personally liable or to foreclose the lien against the Lot, either judicially or non-judicially as provided for in the Act. Any judgment obtained by the Association shall include reasonable attorneys' fees, court costs, and each and every expense incurred by the Association in enforcing its rights.

5.13.1 Except as provided otherwise herein, the Association may record a lien against a Lot for an Assessment, a fine imposed by the Association against the Owner of a Lot, fees, charges and costs associated with collecting an unpaid Assessment, including, but not limited to, court costs and reasonable attorney's fees, late charges, interest and any other amount that the Association is entitled to recover under the Act, this Declaration, the Bylaws or any other governing document. The recording of this Declaration constitutes record notice and perfection of a lien.

5.13.2 A lien is for the full amount of the Assessment from the time the first installment is due, unless otherwise provided in a notice by the Association.

5.13.3 A lien under this section has priority over each other lien and encumbrance on a Lot except a Lien or encumbrance recorded before the Declaration is recorded, a first or second security interest of a Lot secured by a mortgage or trust deed that is recorded before a recorded notice of lien by or on behalf of the Association, or a lien for real estate taxes or other governmental assessments or charges against a Lot.

5.13.4 A lien hereunder is not subject to the Utah Exemptions Act, U.C.A. 78B-5-*et seq.* (2013).

5.14 Unpaid Assessments; Future Lease Payments. If an Owner who is leasing his Lot fails to pay an Assessment for more than sixty (60) days after the Assessment is due, the Board of Directors, upon compliance with this paragraph and Section 57-8a-310 of the Act, may demand that the tenant pay to the Association all future lease payments due to the Owner, beginning with the next monthly or other periodic payment, until the amount due to the Association is paid.

5.14.1 The Board of Directors shall give the Owner written notice of its intent to demand full payment from the tenant under this section unless full payment is received from the Owner within fifteen (15) days. The notice shall explain that full payment includes the amount of assessment due, including an interest or late payment fee, collection cost and attorney's fees and that any costs of collection, and other assessments that become due may be added to the total amount due.

5.14.2 If the Owner fails to pay the full assessment due by the date specified in the notice described above, the Board of Directors may deliver written notice to the tenant that demands future payments due to the Owner to be paid to the Association. The Board of Directors shall provide a copy of the notice sent to the tenant to the Owner. The notice to the tenant shall state:

5.14.2.1 That due to the Owner's failure to pay an Assessment within the required time, the Board of Directors has notified the Owner of its intent to collect all lease payments until the amount owing is paid;

5.14.2.2 The law requires the tenant to make the future lease payments, beginning with the next monthly or other periodic payment, to the Association until the amount owing is paid; and

5.14.2.3 The tenant's payment of lease payments to the Association does not constitute a default under the terms of the lease with the Owner.

5.14.3 If the tenant makes payments in compliance with this section, the Owner shall credit each payment the tenant makes to the Association under this section against any obligations the tenant owes to the Owner as though the tenant made the payment to the Owner. The Owner may not initiate a suit or any other action against the tenant for the tenant's compliance with this section.

5.14.4 All funds paid to the Association pursuant to this section shall be deposited in a separate account and disbursed to the Association until the assessment due, together with any cost of administration which may not exceed \$25.00, is paid in full.

5.14.5 Within five (5) business days after payment in full of the assessment, including any interest, late fees, costs of administration and collection and any other available amounts, the Board of Directors shall (1) notify the tenant in writing that future lease payments are no longer due to the Association, (2) mail a copy of the notification to the Owner and (3) pay any remaining balance to the Owner.

5.15 Tax Collection by County Authorized. It is recognized that under the Declaration the Association will own the Common Areas, Amenities and Open Spaces and that it may be obligated to pay property taxes to Wasatch County. It is further recognized that each Owner of a Lot as a Member of the Association will be required to reimburse the Association for his pro rata share of such taxes paid. Notwithstanding anything to the contrary contained in the Declaration, Wasatch County shall be authorized to collect such pro rata share of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot.

5.16 Reinvestment Fee Covenant. The Board shall have the right to establish from time to time (but shall not be required to establish) a Reinvestment Fee in accordance with this Section and Utah Code Section 57-1-46. If established, the following terms and conditions shall govern Reinvestment Fees which shall be charged and collected as Individual Assessments:

5.16.1 Upon the occurrence of any sale, transfer or conveyance (defined in this section as "Transfer") of any Lot as reflected in the office of the Wasatch County Recorder ("Burdened Property"), regardless of whether it is pursuant to the sale of the Burdened Property, the party transferring or receiving title to the Burdened Property (defined in this section as "Payor") shall pay the Association a Reinvestment Fee in an amount to be established by the Board in the Association's Rules and Regulations which may be amended from time to time.

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

5.16.3 The Reinvestment Fee shall be due and payable by the Payor to the Association at the time of the Transfer giving rise to the payment of such Reinvestment Fee.

5.16.4 The Reinvestment Fee shall not exceed .5% of the value of the Burdened Property being transferred pursuant to the limitations imposed by Utah Code Section 57-1-46(5).

5.16.5 To effectuate this covenant, the Association has recorded or will record with the office of the Wasatch County Recorder a Notice of Reinvestment Fee Covenant on August _____, 2019, as Entry No. _____, at Book _____ and Page _____, which is incorporated by reference.

ARTICLE VI. DUTIES AND POWERS OF THE ASSOCIATION

6.1 Duties of the Association. Without limiting any other duties that may be imposed upon the Association by its Articles of Incorporation or this Declaration, the Association shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Property:

6.1.1 The Association shall accept all Owners as Members of the Association.

6.1.2 The Association shall accept title to all Common Areas conveyed to it by Declarant.

6.1.3 The Association shall maintain, repair, and replace all landscaping and improvements in the Common Areas, Amenities and Open Spaces, including but not limited to the maintenance of all exterior trees, shrubs, grass, and other Common Area improvements. The Association shall be solely responsible to maintain Common Areas, Amenities, Open Spaces and Easements within the Subdivision, as well as other areas of the Property that the Board designates, all of which shall include, but are not limited to:

6.1.3.1 Open Spaces denoted on the Plat, including the prairie grasses contained therein, which shall be cut a minimum of three (3) times per growing season with each cutting to occur at least thirty (30) days after the prior cutting;

6.1.3.2 The trails designated as private on the Plat, the maintenance of which shall include snow plowing;

6.1.3.3 The landscaping located within Common Areas including but not limited to the entries of the Project which may include an island feature, monument, sign, water or irrigation features;

6.1.3.4 The irrigation ditches running along through the Project; and

6.1.3.5 The function of drainage pipes and basins throughout the Project.

6.1.4 In the event that the need for maintenance or repair of Common Areas or Amenities 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 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 (and administrative expenses equal to ten (10%) percent of such costs) shall be added to and become part of the Individual Assessment (as set forth in Section 5.5) to which such Lot is subject.

6.1.5 To the extent not assessed to or paid by the Owners directly, the Association shall pay all real property taxes and assessments levied upon any portion of the Common Areas, provided that the Association shall have the right to contest or compromise any such taxes or assessments.

6.1.6 The Association shall obtain and maintain in force the policies of insurance required by the provisions of this Declaration.

6.1.7 The Association may employ a responsible corporation, partnership, firm, person or other entity as the Managing agent to manage and control the Common Areas, Amenities and Open Spaces, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board. The compensation of the Managing Agent shall be such as shall be specified by the Board. Any agreement appointing a Managing Agent shall be terminable by either party, with or without cause and without payment of any termination fee, upon thirty (30) days written notice thereof; and the term of any such agreement may not exceed one year, renewable by agreement of the parties for successive one-year periods. Any Managing Agent may be an independent contractor and not an agent or employee of the Association.

6.2 Powers and Authority of the Association. The Association shall have all the powers set forth in the Act, its Articles of Incorporation and its Bylaws, together with its general powers as a nonprofit corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the

Association under and by virtue of this Declaration, including the power to levy and collect assessments as hereinafter provided. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

6.2.1 Right to Enter. After written notice of at least five (5) days, the Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Lot as necessary for the maintenance, repair or replacement of any Common Area and for making emergency repairs provided, however, in the case of an emergency, the Association need only provide reasonable notice under the circumstances. See section 7.14 concerning the Association's right to enter a Lot for the purpose of maintaining and repairing a Lot when an Owner fails to maintain and repair such Lot or improvement.

6.2.2 The Association shall have the right to close all or any portion of a Common Area to such extent as may be legally sufficient to prevent a dedication thereof or the accrual of any right therein to any person or the public. 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 and Regulations promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such Rules and Regulations.

6.2.3 In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Common Areas (and exterior repairs of Dwellings to the extent necessitated by the failure of the Owners of such Lots) or in exercising any of its rights to construct, maintain and repair improvements or other work upon any of the Common Areas, and provided that any contract for goods or services having a term of more than one (1) year shall state that it may be terminated by either party at the end of the first year or at any time thereafter upon no less than ninety (90) days written notice, the Association shall have the power and authority (i) to pay and discharge any and all liens placed upon any Common Areas on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration and (ii) to obtain, contract and pay for, or to otherwise provide for:

6.2.3.1 Construction, maintenance, repair and landscaping of the Common Areas (and exterior repairs of Dwellings upon Lots to the extent necessitated by the failure of Owners of such lots) on such terms and conditions as the Board shall deem appropriate;

6.2.3.2 Such insurance policies or bonds as the Board may deem appropriate for the protection or benefit of Declarant, the Association, the members of the Board and the Owners;

6.2.3.3 Such utility services, including (without limitation) water, sewer, trash removal, snow removal, electrical, telephone and gas services, as the Board may from time to time deem desirable;

6.2.3.4 The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem desirable;

6.2.3.5 Fire, police and such other protection services as the Board may deem desirable for the benefit of the Owners or any of the Property; and

6.2.3.6 Such materials, supplies, furniture, equipment, services and labor as the Board may deem necessary.

6.2.4 The Board may delegate by resolution or contract to a Managing Agent any of its powers under this Declaration; provided, however, that the Board cannot delegate to such Managing Agent the power to execute any contract binding on the Association for a sum in excess of Five Thousand Dollars (\$5,000.00), nor the power to sell, convey, mortgage, or encumber any Common Areas.

6.3 Association Rules and Additional Design Criteria. The Board from time to time and subject to the provisions of this Declaration and the Act, may adopt, amend, repeal and enforce rules and regulations governing, among other things: (a) the use of the Common Areas; (b) the use of any facilities owned by the Association; (c) the collection and disposal of refuse; (d) the types of animals permitted and the maintenance of permitted animals on the Property; (e) the use of Dwellings for business or rental purposes; and (f) other matters concerning the use and enjoyment of the Property and the conduct of residents. The Board may also adopt additional Design Guidelines beyond those adopted by the Declarant, for the construction of Dwellings and landscaping of Lots; provided, however, that until the Period of Declarant Control expires, Declarant shall have the unilateral right to amend or modify the Rules or Design Guidelines or to reject any additional Rules or Design Guidelines proposed by the Board so long as any amendment or rejection does not substantially alter the overall concept, aesthetic or character of the Subdivision. Rules and Regulations and/or Design Guidelines adopted by the Board may be enforced in accordance with the specific provisions found in Sections 7.14 through 7.18 or the general enforcement provisions contained herein or available by law.

6.4 Limitation of Liability. No member of the Board acting in good faith shall be personally liable to any Owner, guest, lessee or any other person for any error or omission of the Association, its representatives and employees, the Board, any Committee appointed by the Board or the Managing Agent.

6.5 Insurance. The Association shall secure and at all times maintain the following insurance coverage:

6.5.1 Policy or policies of fire and casualty insurance, with extended coverage endorsement, for the full insurable replacement value of all improvements comprising a part of the Common Areas. The name of the insured under each such policy shall be in form and substance similar to: "Whitaker Farm Owners Association for the use and benefit of the individual lot Owners and Mortgagees, as their interests may appear."

6.5.2 A policy or policies insuring the Owners, the Association, and its directors, officers, agents, and employees against any liability incident to the ownership, use or operation of the Common Areas which may arise among themselves, to the public, and to any invitees or tenants of the Property or of the Owners. Limits of liability under such insurance shall be not less than \$500,000 for anyone person injured; \$2,000,000 for all persons injured in anyone accident; and \$100,000 for property damage resulting from one occurrence. Such policies shall be issued on a comprehensive liability basis and shall provide a cross-liability endorsement pursuant to which the rights of the named insured as between themselves are not prejudiced.

6.5.3 The following additional provisions shall apply with respect to insurance:

6.5.3.1 In addition to the insurance described above, the Association shall secure and all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature and use.

6.5.3.2 All policies shall be written by a company holding a rating of "AA- or better from Best's Insurance Reports.

6.5.3.3 The Association shall have the authority to adjust losses.

6.5.3.4 Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their mortgagees.

6.5.3.5 Each policy of Insurance obtained by the Association shall, if reasonably possible, provide: a waiver of the insurer's subrogation rights with respect to the Association, the Owner, and their respective directors, officers, agents, employees, invitees, and tenants; that it cannot be cancelled, suspended or invalidated due to the conduct of any particular Owner or Owners; that it cannot be cancelled, suspended or invalidated due to the conduct of the Association or of any director, officer, agent or employee of the Association without a prior written demand that the defect be cured; without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to Insurance held individually by Owners.

6.6 Quorum Requirements. The quorum required for any action by the Members hereunder, unless otherwise specifically set forth in this Declaration, shall be as follows: At the first meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of all outstanding votes shall constitute a quorum. If a quorum is not present at the first meeting, another meeting may be called at which time all Members present or by proxy shall establish a quorum. No such subsequent meeting shall be held more than ten (10) days' time following the preceding meeting and it falls within the same fiscal year. See Bylaws at section 4.9.

ARTICLE VII. USE RESTRICTIONS AND ENFORCEMENT

7.1 Use of Common Area, Amenities and Open Spaces. The Common Areas, Amenities and Open Spaces shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Dwellings.

7.2 No Business or Commercial Use of Lots and Dwellings. All Lots are intended to be improved with Dwellings or remain open space and shall be restricted to such use. No gainful occupation, profession, trade or other non-residential use shall be conducted on any Lot or Dwelling; provided, however, nothing herein shall preclude the use of a home office. Each Dwelling shall be used only as a single-family residence. Owners may maintain horses on their Lot and allow horses to graze on Lots consistent with section 7.5.1 and 7.5.2, but may not erect structures thereon to house or maintain horses as a business or for compensation. No Lot or Dwelling shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Dwelling, so as to create a nuisance or interfere with the rights of any Owner, or in a way which would result in an increase in the cost of any insurance covering the Common Areas.

7.3 Maintenance of a Lot. An Owner shall have the obligation to provide exterior maintenance of his Dwelling including but not limited to painting, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, and landscaping installed by an Owner or his predecessor in title. Each Owner shall

paint, repair, and otherwise maintain the exterior and interior of his Dwelling and shall maintain all mechanical devices, including but not limited to, appurtenant electrical, plumbing and heating, ventilating and air conditioning systems. The maintenance of all Dwellings and accessory buildings shall be in accordance with the Design Guidelines described in Article XIII herein and any additional design criteria adopted by the Board.

7.3.1 Maintenance and Repair. No Dwelling, building, structure (including interiors thereof), or landscaping upon any Lot shall be permitted to fall into disrepair and, subject to the requirements herein as to approval by the Design Review Committee, each such building, structure, or landscaping at all times shall be kept in good condition and as appropriate, adequately painted or otherwise finished by its Owner.

7.3.2 Any landscaping improvements installed at, near or along easement areas, trails, ditches or swales shall be the maintained by the relevant Lot Owner. Failure to maintain such landscaping in such areas will be addressed by the provisions in Article VII.

7.4 Vehicles. Owners are expected to utilize their garages or other buildings constructed for the parking, housing and storage of their vehicles. When an Owner's household owns more vehicles than his garage will accommodate, Owner may park excess vehicles in his driveway. No motor vehicle of any kind may be repaired, constructed or reconstructed outside of a garage or other building constructed to house and store vehicles upon any Lot within the Subdivision, except for emergency repairs. Temporary street parking for guests will be allowed for up to seven (7) days.

7.4.1 Recreational Vehicles must be kept in a garage or building constructed upon a Lot to house and store such vehicles. No Recreational Vehicles, large trucks or commercial vehicles may be parked outside of a garage or building constructed upon a Lot within the Subdivision for more than seven (7) days.

7.5 Animals. Animals may be kept or allowed on any Lot so long as the animal does not make an unreasonable amount of noise, create offensive odors or otherwise become a nuisance. Whenever an animal is allowed to leave a Lot, it shall be kept on a leash, in a cage or otherwise contained. With the exception of small animals such as chickens, goats, or sheep, large commercial farm animals, specifically including but not limited to pigs and cows shall not be permitted to be kept on the property. No animals may be bred for commercial purposes. The exterior structure for the care, housing or confinement of any such pets shall be maintained by Owner and approved by the Design Review Committee. Any Owner or other resident within the Subdivision who violates this Section shall be subject to such penalties or fines as the Board may provide.

7.5.1 Owners of undeveloped Lots may allow horses thereon so long as the horses do not create a nuisance, become unsightly or cause damage or destroy landscaping of a Lot. Plans to maintain a horse must receive prior written approval by the Design Review Committee.

7.5.2 Owners of developed Lots, or Lots smaller than one acre may keep horses temporarily, for a maximum of seven (7) days, so long as the horses do not create a nuisance or cause damage to landscaping.

7.6 Common Areas. The Common Areas of the Subdivision shall be improved and used only for the following purposes:

7.6.1 Pedestrian, horse and bicycle access to and from and movement within the Subdivision.

7.6.2 Recreational use by Owners and occupants of Dwellings and their guests including but not limited to walking, horseback riding, nature study, bird watching, cross country skiing, bathing in ponds or springs, gardening in areas provided by the board, biking (excluding motorized vehicles), viewing of scenic areas, grazing animals where permitted, and any other activities that receive prior written authorization by the Board.

7.6.3 Beautification of the Subdivision.

7.6.4 Privacy for the Owners and occupants of Dwellings.

7.6.5 Such other uses as shall be determined from time to time by the Board for the benefit of members of the Association, following consultation with the Design Review Committee.

7.7 Insurance. No use shall be made of any Dwelling which shall cause the improvements within the Subdivision or any part thereof to be uninsurable against loss by fire or other perils included in insurance contracts, or cause such insurance to be cancelled or suspended, or cause any company issuing such insurance to refuse renewal thereof. Each Owner shall be responsible for securing insurance presently known as homeowners special form coverage (Form 3, or better). An Owner may be required to obtain flood insurance as a condition to obtaining any financing covering any improvements upon a Lot.

7.8 Machinery and Equipment. No machinery or equipment of any kind shall be placed, used, operated or maintained in 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 Dwelling or appurtenant structures.

7.9 Signs. No signs whatsoever (including, without limitation, political signs) shall be erected or maintained on any Lot, except:

7.9.1 Such signs as may be required by legal proceedings.

7.9.2 Construction identification signs, placed and maintained only during construction of a Dwelling, not exceeding four feet wide and four feet high, for each Dwelling.

7.9.3 "For Sale" or "For Rent" sign, to the extent permitted by the Board.

7.9.4 Political Signs not exceeding 24 by 36 inches in size, further provided that such signs may be displayed only for a period of 45 days before a primary or general election through a date one day after each such, as applicable.

7.10 Trash Containers and Collection. All garbage and trash shall be placed and kept in covered containers of a type and style which shall be approved by the Design Review Committee. Such containers shall be maintained as not to be visible from neighboring Lots except to make them available for collection and then only for the shortest time necessary to effect such collection.

7.11 Toxic Materials. No Owner shall store, use, manufacture, process, distribute, treat, transport, handle, emit, dispose of, discharge or release any Toxic Materials at or from the Subdivision or any portion thereof in violation of any Environmental Laws.

7.12 Nuisances. No rubbish or debris of any kind shall be placed or permitted by an Owner upon or adjacent to any Lots, so as to render such Lot or portion thereof unsanitary, unsightly, offensive, or detrimental to other Owners. No Dwelling or Lot shall be used in such manner as to obstruct or interfere with the enjoyment of occupants of other Dwellings or Lots. Implementation and use of exterior speakers, may be located or placed on Lots or in Dwellings so long as they do not create a nuisance or interfere with the use and enjoyment of other Owners and guests within the Project.

7.13 Exception for Declarant. Notwithstanding the restrictions contained in this Article VII, Declarant shall have the right to use any Lot or Dwelling owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvement of the Common Areas or improvement and/or sale of all Lots owned by the Declarant until the Period of Declarant Control expires.

7.14 Right of Entry. After reasonable notice of at least three (3) days, any member of the Board of Directors, the Design Review Committee, or any officer or authorized representative of any of the Association, during reasonable hours, shall have the right to enter upon and inspect any Lot, and the improvements thereof, to ascertain whether or not the provisions of this Declaration and the rules and regulations of the Board or of the Association have been or are being complied with. Prior to entry, the agent of the Association shall attempt to alert the Owner of his presence at the Lot.

7.14.1 Right of Entry When Owner Fails to Maintain. The Association may enter upon any Lot at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to for the purpose of maintaining and repairing such Lot or any improvement thereon if for any reason 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 Article VII of this Declaration. The Association shall utilize the due process procedures outlined in section 7.14.

7.15 Enforcement of Land Use Restrictions. The following persons shall have the right to exercise or seek any remedy at law or in equity to enforce strict compliance with this Declaration:

- 7.15.1 Declarant before the expiration of the Period of Declarant Control;
- 7.15.2 The Association; or
- 7.15.3 Any Owner.

7.16 Prevailing Attorney's Fees and Costs. The prevailing party in an action for the enforcement of any provisions of this Declaration shall be entitled to collect court costs and reasonable attorney's fees.

7.17 Violations; Non-Conforming Use Sanctions. The Association, by and through its Board of Directors, may issue a fine or citation to any Owner whose behavior or use of his Lot or the Association's Common Areas does not conform to the Association's Governing Documents ("Non-Conforming Owner"). Owners are responsible for the action and/or failure to act on the part of their family members, guests, visitors, tenants, and invitees.

7.17.1 First Notice of Non-Conforming Use. The Association's Board of Directors shall send a first notice of citation in writing to the Non-Conforming Owner at the address given to the Association for such purposes, and to the Owner's Lot if the Non-Conforming Owner's registered address is different from the address of the Lot. The first notice of citation shall generally advise the Non-Conforming Owner of the nature of the offense, cite the specific provision with the Governing Documents which has allegedly

been violated, specify the remedy required, and state the number of days within which the Non-Conforming Owner must complete corrective action, which shall be at least 48 hours. Notwithstanding the provisions in this section, the Board is not required to provide this first notice as set forth in this section if it determines that the interests of health and safety of the other Owners and Occupants of the Project requires a more expedited handling of the allegations.

7.17.2 Second Notice of Non-Conforming Use / Hearing. If the Non-Conforming Owner does not remedy the offense within the number of days noted in the first notice, the Board will issue a second notice of citation, which shall follow the basic form of the first notice of citation and include additional information deemed important by the Board concerning the offense, including a final deadline for the corrective action to be completed. The Association's Board of Directors will send the second notice by Certified Mail, Return Receipt Requested, and first-class mail, postage pre-paid, to the Non-Conforming Owner at the address given to the Association for such purposes, and to Non-Conforming Owner's Lot, if the Member's registered address is different from his Lot. Notification will be deemed effective if any Member fails or refuses to sign for any certified mailing from the Association.

7.17.3 The second notice shall also advise the Non-Conforming Owner of the Board's power to impose reasonable fines or other monetary penalties in the amounts listed in the Association's Governing Documents, suspend privileges for violations of the Governing Documents and the ability to conduct self-help.

7.17.4 If the Non-Conforming Owner does not remedy the offense within the number of days noted in the second notice, the Board may assess the Non-Conforming Owner with a penalty and/or fine in the amount specified in the Association's Governing Documents which shall accrue interest and late fees as provided in the Association's Governing Documents.

7.17.5 Unpaid fines and/or monetary penalties may be collected as an unpaid Assessment.

7.17.6 Hearing. A Non-Conforming Owner who is assessed a fine or monetary penalties may submit a written request for an informal hearing within thirty (30) days of the date the fine or penalty is assessed. If a hearing is requested, no interest or late fees may accrue until after the hearing has been conducted and a final decision has been rendered.

7.17.6.1 The Non-Conforming Owner shall be afforded a reasonable opportunity to be heard so long as the request for a hearing is timely. At the hearing, the Board shall provide the Non-Conforming Owner

with a reasonable amount of time to present any and all defenses to the citation. The Non-Conforming Owner may have counsel present at the hearing at the Member's own expense. Under no circumstances shall the Association be responsible for any attorney fees or costs incurred by a Non-Conforming Owner relating to a citation or hearing conducted pursuant to this policy.

7.17.6.2 Extenuating Circumstances. The Non-Conforming Owner must demonstrate extenuating circumstances which require deviation from the Governing Documents and shall include all pertinent information to support the existence of the extenuating circumstance.

7.17.7 Following the hearing, the Board shall meet in executive session to discuss whether satisfactory proof of the alleged violation was presented and take a vote. If the judgment is unfavorable to the Non-Conforming Owner, the Board will affirm the fines and other penalties. The Board shall deliver notice of its decision to the Non-Conforming Owner by Certified Mail, Return Receipt Requested, and first-class mail, postage pre-paid at the Non-Conforming Owner's address of record with the Association, within seven (7) days of the date of the hearing. The notice shall also be sent by email if an email address for the Non-Conforming Owner is on file with the Association.

7.17.8 An Owner may appeal a fine or penalty by initiating a civil action (a) if the Owner timely requests an informal hearing as described in Section 7.17.6 within 180 days after the day on which the final decision from the informal hearing is issued, or (b) if the Owner does not timely request an informal hearing as described in Section 7.17.6 within 180 days after the day on which the time to request an informal hearing expires.

7.17.9 Other Remedies. The procedures outlined in this section may be applied to all violations of the Association's Governing Documents and does not preclude the Association from exercising other enforcement procedures and remedies authorized by the Association's Governing Documents, including, but not limited to, the initiation of suit or self-help remedies.

7.18 Suspension of Services / Voting Rights. In the event a Member fails to correct or cure a violation of this Declaration, the Board of Directors shall suspend (a) the Delinquent Member's access and use of the any recreational or community areas and all other facilities, and common amenities, (b) services provided by the Association or paid for as a Common Expense, if any, e.g. internet, cable and satellite television, and (c) the Delinquent Member's voting rights. All Delinquent Members shall be notified in writing at least ten (10) days prior to suspension. All suspensions will be lifted upon (a) the cure or correction of the violation, or (b) receipt of payment in full of outstanding account balance which shall include but not limited to

all past due Assessments, Association fees, fines, interest, attorney's fees and costs and all other collection charges.

7.19 **No Resubdivision.** No other subdivision of Lots will be permitted without the approval of a majority of Class A votes, except for the Declarant's reservation of the right to subdivide Lot 4.

ARTICLE VIII. DESIGN PROCESS AND CONTROL

8.1 **Design Review Committee.** The Board of Directors of the Association shall appoint a three (3) member Committee, the function of which shall be to ensure that all improvements and landscaping within the Property harmonize with existing surroundings and structures. The Committee need not be composed of Owners. If such a Committee is not appointed, the Board itself shall perform the duties required of the Committee.

8.2 **Submission to Committee.** No Dwelling, accessory building, fencing or structure or addition to a Dwelling and no landscape additions and changes shall be constructed, and no alteration, change in paint color, or refurbishing of the exterior of any Dwelling, nor of any court enclosure, except as herein otherwise mentioned, shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Committee and/or the Declarant if the Committee has not yet been appointed. All such plans and specifications shall be consistent with the Design Guidelines as well as any additional design criteria which shall be from time to time adopted by the Board.

8.3 **Standard.** In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment to insure that all improvements, construction, landscaping and alterations on Lots within the Property conform to and harmonize with the Design Guidelines and any additional design criteria adopted by the Board, existing surroundings and structures and that such proposed improvements enhance the value and aesthetics of the Subdivision.

8.4 **Approval Procedure.** Any plans and specifications submitted to the Committee shall be submitted on a form provided by the Committee and in duplicate. A preliminary review of design drawings will be required with a final review to be made of working drawings. Upon completion of each review, one set of plans will be retained by the Association and the remaining set of plans will be returned to the property owner.

8.4.1 The following design review fees (made payable to the Association) are required with the submittal of plans and specifications: \$100.00 for each separate submittal of architectural, landscaping, fencing and/or lighting drawings; provided that if any of the foregoing plans are submitted together, all plans submitted at the same time shall be considered one submittal.

8.4.2 All plans and specifications shall be approved or disapproved by the Design Review Committee in writing within thirty (30) days after submission. In the event the Committee fails to take any action within such period it shall be deemed to have approved the material submitted.

8.5 Fees and Deposits.

8.5.1 Review Fee/Deposit. The Design Review Committee shall require that an Owner pay a deposit to review and approve a plan submission described herein. The Committee may utilize the services of design professionals in the review process. Once the plans are approved and all contingencies, if any, are met, any remaining amounts of the review fee shall be refunded to Owner. The Committee reserves the right to require additional fees if the cost of review exceeds the initial deposit. See Design Guidelines for review fees and deposits.

8.5.2 Improvement/Construction and Landscaping Deposit. The Design Review Committee shall require that an Owner make a refundable deposit in the amount defined in the Design Guidelines, in favor of the Association, as a condition to approving plans to construct a Dwelling or any proposed work or improvement or Landscaping. No person shall commence any work or improvement until any and all such bonds, security deposits and letters of credit have been properly posted with the Design Review Committee. The deposit made under this section is intended to assure (a) the proper clean-up of dirt and debris and the repair of any damage to the landscaping, streets or other property within the Subdivision, caused by Owner or his agents in the construction of improvements; (b) compliance with the requirements of this Declaration; and (c) the Association's monitoring of the construction of improvements and work and compliance with approved design. Once a certificate of occupancy or a certificate of completion is issued and submitted to the Committee and the approved landscaping improvements have been completed if there are no certificates to be issued, the Committee shall refund any amounts remaining of this deposit.

8.5.3 Address for Submittal. Plans and specifications for the construction and installation of any and all improvements within the Subdivision shall be submitted to and approved by the Design Review Committee prior to submittal to any required governmental agency at the following address:

WHITAKER FARM OWNERS ASSOCIATION
c/o WHITAKER FARM DEVELOPMENT, LLC
143 West Farm Springs Ln,
Midway, Utah, 84049

The Board of Directors of The Whitaker Farm Owners Association has the authority to change the address for the submittal of plans and specifications.

8.6 Construction. Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion:

8.6.1 The exterior construction of all structures on any Lot shall be completed within a period of one (1) year following commencement of construction.

8.6.2 All construction activities occurring on any day shall be limited to periods between 7:00 a.m. and sundown but not earlier than 7:00 p.m.

8.6.3 The front, side and back yards of each Lot shall be landscaped within a period of six (6) months following completion or occupancy of the Dwelling; provided, however, that if completion of or occupancy of a Dwelling occurs during winter and such weather conditions preclude the installation of landscaping, such landscaping shall be completed no later than July 1 following such winter.

8.6.4 Owners and builders shall clean up all trash and debris on the construction site at the end day. Trash and debris shall be placed in containers that shall in all instances be covered. Trash and debris shall be removed from each construction site to a dumping location off-site of the Subdivision. Lightweight material, packaging and other items shall be covered or weighted down to prevent wind from blowing such materials of the construction site. Owners and builders are prohibited from dumping, burying or burning trash anywhere on the Lot. During the construction period, each construction site shall be kept neat and shall be promptly removed from public or private roads, open spaces and driveways.

8.6.5 Each property owner and builder shall be responsible for providing adequate sanitary facilities for his construction personnel. Portable toilets or similar temporary toilet facilities shall be located only on the site itself or in areas approved by the Design Review Committee.

8.6.6 Construction crews shall not park on, or otherwise use, other lots or any open space. All construction vehicles and machinery shall be parked only in areas designated by the Design Review Committee.

8.7 Liability for Damages. Neither the Association nor the Committee shall be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article VIII.

8.8 **Building Features and Materials.** The location of all buildings, and each building's design, features and materials must be consistent and in accordance with the requirements of Article VIII and the Design Guidelines, any additional design criteria adopted by the Board and any variance thereto shall have been previously approved by the Board upon the submission of a written request. Reference must be made to the additional design criteria adopted by the Board, if any, for additional requirements and conditions for the design and construction of Dwellings.

8.9 **Building Location.** Each building (including Dwelling) shall be located such that:

8.9.1 Subject to the provisions of this subparagraph: (i) providing for a "Minimum Approved Setback Requirements" (as defined below) and (ii) below providing a procedure for a variance, all buildings shall be located upon a Lot solely within the Minimum Approved Setback Requirements, regardless of the designation of a Building Pad or setbacks as shown on the Plat, and oriented as may be required by or consented to by the Design Review Committee in accordance with the provisions of Article VIII and the Design Guidelines.

8.9.2 Notwithstanding the designation of a Building Pad and/or setbacks for a Lot upon the Plat, the following "Minimum Approved Setback Requirements" are required for all lots: 50 feet from the front, 50 feet from the back, and a minimum of 15 feet from each side.

8.9.3 For the purposes of this covenant, steps and open porches shall be considered as a part of a Building, and same may not extend beyond the Building Pad or the area of any setback.

8.9.4 **Variances.** Notwithstanding the provisions of the section above, upon the written request of the Owner of any Lot, the Design Review Committee shall have the authority to grant a variance to the "Minimum Approved Setback Requirements" as specified above, after consideration of those Owners that may be affected by the requested variance and based upon a showing of good cause, to modify one or more of the Minimum Approved Setback Requirements for such Lot (regardless of what is shown on the Plat), provided the Design Review Committee determines in its discretion that: (i) the existing requirements would create an unreasonable hardship or burden on an Owner or a change of circumstances since the recordation of the Plat and this Declaration has rendered such restriction obsolete; and (ii) the activity permitted under the variance will not have any substantial adverse effect on other Owners and is not inconsistent with the intent to create open spaces and views between Dwellings. Any variance granted by the Design Review Committee shall be evidenced in writing signed by a representative of such Design Review Committee. The grant of any variance as to any Lot as

provided in this subparagraph shall not constitute a waiver any requirements herein and does not affect the ability of the Design Review Committee to withhold its approval of any similar request subsequently made.

8.9.5 Nothing in this subparagraph shall be construed as permission for any Owner to violate the setback requirements of any governmental entity having jurisdiction over the Property.

8.10 Consistency with Design Guidelines. The location, size, and design of any Dwelling and improvement installed within a Lot in the Subdivision shall be built consistent with the provisions in this section and in accordance with the Design Guidelines.

8.11 Size limitation and Height of Dwelling. The Dwelling to be constructed upon each Lot shall be limited in the size of its total footprint (measured by the outer boundaries of the Dwelling excluding garages) to 6,000 square feet. The minimum total living space will be 3,000 square feet, excluding garages. These building sizes are based on a 1-acre lot. Lots larger than 1-Acre may accommodate building sizes that are proportionally larger. The maximum height of any feature upon any Dwelling shall not exceed applicable building codes.

8.12 Fences and Walls. Rail fencing is required to be installed on the back of all Lots and Lot boundaries that are facing the Open Spaces defined by Parcels A, B, and C. Acceptable materials and sources will be outlined by the Design Review Committee. Any pillars for driveway entries should reflect the materials and architecture of the primary residence. Solid privacy fencing is not allowed in the Subdivision. Fencing must be completed within six (6) months of acquisition of a Lot if Dwelling construction has not begun. All fencing permitted pursuant to the Design Guidelines shall be maintained by Owners and may not be permitted to go into disrepair.

8.13 Antennas; Satellite Dishes. All antennas are restricted to the attic or interior of the residence. Satellite dish antennas shall be allowed provided they are screened from view and their location is approved in advance by the Design Review Committee. Satellite dish antennas shall not be permitted on roofs. Notwithstanding the foregoing, should an Owner determine that his antenna or satellite dish cannot be located in compliance with this Declaration without precluding reception of an acceptable quality signal, then the Design Review Committee shall work with the Owner to find the least conspicuous alternative location on the Lot. The Design Review Committee may adopt Design Guidelines establishing a preferred hierarchy of alternative locations and screening methods so as not to unreasonably increase the cost of installation, maintenance or use of the antennae or satellite dish.

8.14 Pools, Spas, Fountains, Game courts, Etc. Pools, spas, fountains, game courts, children's play sets and all other outdoor equipment or facilities shall be pre-approved by the Design Review Committee and shall be located to avoid impacting adjacent properties with light or sound. Nothing herein shall be construed to permit the construction of skateboard areas and/or ramps, which structures shall be prohibited.

8.15 Exterior Mechanical Equipment. All air conditioning, heating equipment, soft water tanks, gas and electric metering devices, transformers, etc., must be screened from view and insulated for sound attenuation. Air conditioning units are not permitted on roofs, through windows or installed on walls unless screened from view and approved by the Design Review Committee. Swamp coolers are permitted so long as they are screened from view.

8.16 Landscape Site Preparation Guidelines. All demolition, clearing, grubbing, stripping of soil, excavation, compaction and grading must be performed within the confines of a Lot and conform to the Design Guidelines.

8.17 Site Grading and Drainage. Wasatch County and other applicable governmental agencies require that each Owner retain on his Lot water runoff in accordance with the approved grading and drainage plan submitted by the Declarant in connection with its application for subdivision approval. Owners shall be solely responsible for any and all drainage requirements necessitated by construction of such Owner's Dwelling or any damage or loss occasioned by water runoff.

8.18 City and Other Approval. Approval of any improvements by the Design Review Committee does not waive the requirement for any other required public agency review or permit approval process. The Design Review Committee assumes no responsibility for plan conformity to any other criteria other than the requirements of this Declaration and the Design Guidelines, as well as any additional design criteria adopted by the Board.

8.31 Landscaping & Maintenance of Lots, Easements and Common Area Improvements. Subject to Design Review Committee approval of a landscaping plan, within six (6) months of receiving a certificate of occupancy for a Dwelling upon a Lot, each Owner shall be responsible to install and thereafter maintain landscaping improvements on their Lot and within any Common Area adjacent to their Lot which faces the street including, but not limited to, ditch banks, trail areas and road swales. Should an Owner fail to maintain landscaping on any Lot and the street facing Common Areas, the Association may exercise any of the remedies found in Article VII, the general enforcement provisions of this Declaration or the Act.

8.31.1 Undeveloped Lots. Lots held by Owners must be maintained including the installation of rail fencing as outlined in 8.12. Owners will be responsible

to water and cut field grass and control weeds on Lots and street facing Common Areas adjacent to their Lots. Where owners are unwilling or unable to maintain their undeveloped lots, the Association will assign a resource to do so at the Owner's expense. Such expenses will be reasonable and customary and will ensure that all undeveloped lots are properly maintained.

8.31.2 **Tree Removal.** Except for the construction of a Dwelling which is approved in accordance with the procedures set forth in this Article, each Owner shall be restricted from removing or modifying trees (10 inches in caliper or larger) which are located upon and naturally grow upon such Owner's Lot, unless the same shall be dead or dying. The only exception to this section relates to the removal of Russian olive trees, which may be removed without restriction. Each such Owner shall be responsible at his own cost and expense to maintain and water all such trees, including any which Declarant may have planted upon such Lot during development of the Subdivision or which are installed by Owner (or predecessor) after approval by the Design Review Committee.

8.31.2.1 All trees, shrubs and other vegetation (excluding annuals) to be installed to the front of any Dwelling or the side yard of any Lot abutting a street shall be approved by the Design Review Committee prior to installation. Any addition to, modification of, or removal of trees and other approved vegetation (including removal of the same because of death which is not thereafter replaced by substitute approved vegetation) that is significantly different from what has previously been approved, shall require prior approval of the Design Review Committee or such improvement shall be deemed a violation of the requirements of Owner to maintain the same and the Design Review Committee shall have the right to require Owner to restore such area to its prior approved condition at the sole cost of Owner. In the event Owner fails to restore such area as required herein, the Association shall have the right to restore the same and the cost of such restoration together with administrative expenses equal to ten percent (10%) of such costs, shall be added to and become part of the Individual Assessment (as set forth in Section 5.5) to which such Lot is subject. The provisions of this Section relating to the removal of trees and shrubs shall not be applicable or binding upon Declarant with respect to the initial clearing, grading and landscaping of the Property including the development of Common Areas and the installations of utilities serving the Subdivision.

8.32 **Exception for Declarant.** The foregoing provisions of this Article VIII shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant on any Lot or on any part of the Common Areas and which occurs at any time prior to the expiration of the Period of Declarant Control.

8.33 Declarant's Obligation. Declarant hereby covenants in favor of each Owner that all improvements of the Common Areas accomplished by it in the Subdivision shall be architecturally compatible with respect to one another.

ARTICLE IX. RIGHTS OF FIRST MORTGAGEE

9.1 Notwithstanding anything to the contrary contained herein, the following provisions shall apply:

9.1.1 Notice of Default. In the event 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, the Association shall give written notice of such fact to the holder of any first mortgage covering such Owner's lot.

9.1.2 Abandonment; Termination. Unless all of the holders of first mortgages on the individual Lots have given their prior written approval, neither the Association nor the Owners acting as a group shall be entitled by act, omission or otherwise:

9.1.2.1 To abandon or terminate the Subdivision or to abandon or terminate the arrangement which was established by the Declarant and the Plat of the Subdivision;

9.1.2.2 To abandon, partition, subdivide, encumber, sell, hypothecate, transfer or otherwise encumber all or any part of the Common Areas except for the creating of easements and similar purposes consistent with the intended use of the Common Areas; or

9.1.2.4 To use hazard insurance proceeds resulting from damage to any part of the development for any purposes other than the repair, replacement, or reconstruction of such improvements.

9.2 Notice of Substantial Damage or Destruction. The Association shall notify all holders of any first mortgage lien or equivalent security interest on a Lot in writing in the event that there occurs any substantial damage to or destruction of any Dwelling or any part of the Common Areas involving an amount in excess of, or reasonably estimated to be in excess of \$15,000.00. Said notice shall be given within thirty (30) days after the Association learns of such damage or destruction.

9.3 Condemnation or Eminent Domain Proceedings. The Association shall give written notice to all holders of any first mortgage lien or equivalent security interest of any condemnation proceedings or proposed acquisition of a Dwelling or of any portion of the Common Areas within thirty (30) days after the Association learns of the same.

9.4 Hazard Policy to Include Standard Mortgagee Clause. Each hazard policy of the insurance shall include the standard mortgagee clause which either shall be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of mortgagees as their interests may appear, or shall be otherwise endorsed to fully protect the interest of mortgagees. In addition, the mortgagee clause shall provide that the insurance carrier shall notify each mortgagee at least ten (10) days in advance of the effective date of any reduction in or cancellation of the policy.

9.5 Rights Upon Foreclosure of Mortgage. The lien of the assessments provided herein shall be subordinate to the lien of any First Mortgage upon such Lot; and the holder of a first mortgage (or deed of trust) on a Lot who comes into possession of the Lot by virtue of foreclosure of such first Mortgage, or in lieu of foreclosure obtains possession by deed or assignment, or any purchaser at a foreclosure sale, will take the Lot free of any claims for unpaid assessments and charges against the Lot which accrue prior to the time such holder comes into possession of the Lot, except for claims for a share of such assessments or charges resulting from a reallocation of such assessments or charges to all Lots including the mortgage Lot.

9.6 Mortgagees' Rights Concerning Amendments. No material amendment to this Declaration, the By-Laws or the Articles of Incorporation of the Association shall be accomplished or effective unless at least two-thirds (2/3) of the mortgagees (based on one vote for each mortgagee) of the individual Lots have given their prior written approval to such amendment. The mortgagees' approval or consent is presumed if the person the Association designates to receive a response does not receive a response within sixty (60) days after the Association sends notice to the mortgagee by certified mail.

9.7 Mortgagees' Rights to Inspect Association Records. The holders of first Mortgages shall have the right upon reasonable notice and during business hours to inspect and copy at their own expense all books and financial records of the Association.

ARTICLE X. MISCELLANEOUS

10.1 Notices. Any notice required or permitted to be given to any Owner or Member under the provisions of this Declaration shall be deemed to have been properly furnished if mailed, postage prepaid, to the person who appears as a Member or Owner, at the latest address for such person appearing in the records of the Association at the time of mailing.

10.2 Amendment. Subject to the provisions of Section 2 of Article VIII of this Declaration any amendment hereto shall require (i) the affirmative vote of at sixty-seven percent (67%) of all Class A membership votes, which Members present in

person or by proxy are entitled to cast at a meeting duly called for such purpose; and so long as the Class B membership exists, (ii) the written consent of the Declarant. Written notice setting forth the purpose of the meeting and the substance of the amendment proposed shall be sent to all Members at least ten (10) but not more than thirty (30) days prior to the meeting date. The quorum required for any such meeting shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast fifty percent (50%) of all votes of the Class A Membership shall constitute a quorum. If the quorum is not present at the first meeting, another meeting may be called (subject to the notice requirement set forth in the foregoing portion of this Section 3), at which the number of Members present in person or by proxy shall establish a quorum. No such subsequent meeting shall be held more than ten (10) days' time of the preceding meeting so long as it falls within the same fiscal year. Any amendment authorized pursuant to this Section shall be accomplished through the recordation of an instrument executed by the President or Vice President of the Association, and by the Declarant if the Class B Membership then exists. In such instrument the President or Vice President of the Association shall certify that the vote required by this Section for amendment has occurred.

10.3 Consent in Lieu of Voting. In any case in which this Declaration requires for 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 at least the stated percentage of all membership votes outstanding in connection with the Class of membership considered. The following additional provisions shall govern any application of this Section 10.3:

10.3.1 All necessary consents must be received prior to the expiration of ninety (90) days after the first consent is given by any Member.

10.3.2 The total number of votes required for authorization or approval under this Section shall be determined as of the date on which the last consent is received.

10.3.3 Except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose. A change in ownership which would otherwise result in an increase in the total number of Class A votes outstanding shall, however, be effective in that regard and shall entitle the new Owner to give or withhold his consent.

10.3.4 The consent of at least one Member whose membership is appurtenant to a Lot owned by more than one Member will be effective, unless a conflicting consent is received from another Member whose

membership is appurtenant to the same Lot, then making both consents voice and ineffective.

10.4 Lease Provision. Any Owner may lease his Lot and such buildings as are situated thereon; provided, however, that any lease agreement between a Lot Owner and a Lessee must be in writing, and must provide, *inter alia*, that:

10.4.1 The terms of the lease shall in all respects be subject to the provisions of the Governing Documents;

10.4.2 Any failure by the Lessee to comply with the terms of such documents shall constitute a default under the lease; and.

10.4.3 Any violation of the Governing Documents by a Lessee or guest of a Lessee or Owner shall be the responsibility of the Owner to cure and any related fine shall be an Individual Assessment against the Lot and the Owner.

10.5 Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration or in any way relating to the Property may be assigned.

10.6 Dissolution. Subject to the restrictions set forth in Article VIII of this Declaration pertaining to mortgagee protection, the Association may be dissolved by the affirmative assent in writing of eighty (80) percent of the votes of each class membership. Upon dissolution of the Association all of its assets (including the Common Areas) may be dedicated or transferred to an appropriate public agency or authority to be used for purposes similar to those provided for in the By-laws, the Articles of Incorporation or this Declaration. 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 assessment procedure, terms and conditions set forth in Article V of this Declaration.

10.7 Interpretation. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any party thereof, and any gender shall include the other gender. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

10.8 Covenants to Run With Land. This Declaration and all provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may

be, and shall be binding upon and shall inure to the benefit of the Declarant, and all parties who hereafter acquire any interest in a Lot or in the Common areas shall be subject to the terms of this Declaration and the provisions of any rules, regulations, 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.

10.9 Effective Date. This Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Wasatch County, Utah.

10.10 Lenders' Agreement of Subordination. By its execution of this Declaration, the undersigned lender, secured by one or more Lots located in the Subdivision (hereinafter the "Lender"), and each of them agrees, covenants and declares that this Declaration shall be senior in priority to such lender's interest as lien holder, regardless of when Lender may have obtained a lien, mortgage, deed of trust, and/or security agreement, as such instrument is described below by such Lender's signature (herein collectively "lien") and such lien shall be subordinate to and subject to this Declaration notwithstanding the fact that this Declaration is recorded later in time than the date such lender acquired a lien.

10.11 Trustee. Pursuant to section 57-8a-212(j) of the Act, the Declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-402 to Debra Griffiths Handley, attorney at law, as trustee, with power of sale, the Lot and all improvements to the Lot for the purpose of securing payment of assessments under the terms of the Declaration. The Declarant may replace the trustee at any time so long as the trustee qualifies under Subsection 57-1-21(1)(a)(i) or (iv).

EXECUTED the day and year first above written.

WHITAKER FARM DEVELOPMENT, LLC

By: Daniel Luster
Daniel Luster
Its: Managing Member

STATE OF UTAH)
: ss.
COUNTY OF WASATCH)

On the 29th day of Aug., 2019, personally appeared before me Daniel Luster, who being duly sworn did say that he is the Managing Member of WHITAKER FARM DEVELOPMENT, LLC, and that the within and foregoing instrument was signed in behalf of said company by authority of a resolution of its members in accordance with its operating agreement and duly acknowledged to me that he executed the same.

Notary Public - State of Utah
Marva Lee Edwards
Comm. #700478
My Commission Expires
June 4, 2022

APPENDIX A: LEGAL DESCRIPTION OF WHITAKER FARM SUBDIVISION

BEGINNING NORTH 89°47'17" EAST 603.51 FEET FROM THE NORTH QUARTER CORNER OF SECTION 35, TOWNSHIP 3 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN, SAID NORTH QUARTER CORNER LIES SOUTH 85°32'21" WEST 1.98 FEET FROM A WASATCH COUNTY MONUMENT REFERENCING THE NORTH QUARTER CORNER;

THENCE EAST 151.16 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 232.00 FEET AND TO WHICH POINT A RADIAL LINE BEARS NORTH 40°39'26" EAST; THENCE 58.73 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 14°30'15" (CHORD BEARING AND DISTANCE OF SOUTH 42°05'26" EAST 58.57 FEET); THENCE SOUTH 34°50'19" EAST 81.72 FEET; THENCE NORTH 55°09'41" EAST 196.68 FEET; THENCE NORTH 89°46'06" EAST 1459.36 FEET ALONG THE SECTION LINE; THENCE FOLLOWING ALONG THE HOBBIT HOUSE PROPERTY BOUNDARY PER RECORD OF SURVEY #545 THE FOLLOWING TWO COURSES: 1) SOUTH 18°25'10" EAST 66.51 FEET, 2) SOUTH 10°16'10" EAST 94.00 FEET; THENCE FOLLOWING THE DEED FOR PROPERTY OWNED BY THE UNITED STATES OF AMERICA (ENTRY NO. 221202) THE FOLLOWING TEN COURSES: 1) SOUTH 09°51'20" EAST 84.10 FEET, 2) SOUTH 49°04'15" EAST 245.07 FEET, 3) SOUTH 21°07'10" EAST 82.27 FEET, 4) SOUTH 02°39'15" WEST 102.71 FEET, 5) SOUTH 17°08'31" WEST 140.73 FEET, 6) SOUTH 06°05'45" WEST 64.07 FEET, 7) SOUTH 02°57'09" EAST 82.00 FEET, 8) SOUTH 32°09'13" EAST 123.39 FEET, 9) SOUTH 09°01'38" EAST 115.86, 10) SOUTH 12°11'03" WEST 223.51 FEET; THENCE FOLLOWING ALONG PROPERTY OWNED BY THE UNITED STATES OF AMERICA (ENTRY NO. 209025) THE FOLLOWING TWO COURSES: 1) SOUTH 12°11'03" WEST 475.80 FEET, 2) SOUTH 27°44'45" WEST 188.06 FEET; THENCE ALONG THE BOUNDARY OF HAUTER PER RECORD OF SURVEY #1597, AS EVIDENCED BY FOUND REBARS, THE FOLLOWING THREE COURSES: 1) SOUTH 89°51'40" WEST 326.08 FEET, 2) SOUTH 89°37'09" WEST 781.56 FEET, 3) SOUTH 89°25'44" WEST 447.30 FEET TO A FENCE LINE REPRESENTING THE BOUNDARY OF MEMORIAL HILL; THENCE ALONG SAID MEMORIAL HILL FENCE LINE BOUNDARY THE FOLLOWING FIVE COURSES: 1) NORTH 40°58'07" WEST 337.74 FEET, 2) NORTH 43°20'49" WEST 151.72 FEET, 3) NORTH 50°56'07" WEST 101.86 FEET, 4) NORTH 56°37'55" WEST 99.46 FEET, 5) NORTH 63°34'27" WEST 83.21 FEET; THENCE NORTH 78°24'46" WEST 2.93 FEET; THENCE NORTH 11°35'14" EAST 70.36 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY HAVING A RADIUS OF 8.00 FEET; THENCE 8.95 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 64°05'52" (CHORD BEARING AND DISTANCE OF NORTH 43°38'10" EAST 8.49 FEET); THENCE NORTH 75°41'06" EAST 76.75 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORtherly HAVING A RADIUS OF 432.00 FEET; THENCE 93.47 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 12°23'50" (CHORD BEARING AND DISTANCE OF NORTH 69°29'11" EAST 93.29 FEET); THENCE NORTH 63°17'17" EAST 53.59 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 368.00 FEET; THENCE 60.88 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 09°28'44" (CHORD BEARING AND DISTANCE OF NORTH 68°01'39" EAST 60.81 FEET) TO THE BEGINNING OF A COMPOUND CURVE CONCAVE SOUTHERLY HAVING A RADUIS OF 283.00 FEET; THENCE 130.13 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 26°20'47" (CHORD BEARING AND DISTANCE OF NORTH 85°56'25" EAST 128.99 FEET); THENCE NORTH 11°20'26" EAST 71.05 FEET; THENCE NORTH 58°23'16" EAST 27.57 FEET; THENCE NORTH 53°23'20" EAST 48.07 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY HAVING A RADIUS OF 944.00 FEET AND TO WHICH POINT A RADIAL LINE BEARS SOUTH 65°04'31" EAST; THENCE 984.66 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 59°45'48" (CHORD BEARING AND DISTANCE OF NORTH 04°57'25" WEST 940.62 FEET; THENCE NORTH 34°50'19" WEST 121.99 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY HAVING A RADIUS OF 176.00 FEET; THENCE 169.44 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF

55°09'41" (CHORD BEARING AND DISTANCE OF NORTH 62°25'10" WEST 162.98 FEET) TO THE POINT OF BEGINNING.
CONTAINS 80.880 ACRES.

**APPENDIX B: ARTICLES OF INCORPORATION FOR WHITAKER FARM OWNERS
ASSOCIATION, INC.**

AUG-15-2019 THU 12:34 PM UT DIV. OF CORP.

FAX NO. 801 530 6438

P. 01



Francine Gianni
Executive Director
Department of Commerce

Gary Herbert
Governor
State of Utah

Jason Sterzer
Director
Division of Corporations
& Commercial Code

**STATE OF UTAH
DEPARTMENT OF COMMERCE
DIVISION OF CORPORATIONS & COMMERCIAL CODE
CERTIFICATE OF REGISTRATION**

DEBRA GRIFFITHS HANDLEY
WHITAKER FARM OWNERS ASSOCIATION, INC.
257 E 200 S #1050
SALT LAKE CITY UT 84111

Access Code
Code: 6188610

State of Utah
Department of Commerce
Division of Corporations & Commercial Code

CERTIFICATE OF REGISTRATION

Corporation - Domestic - Non-Profit

This certifies that WHITAKER FARM OWNERS ASSOCIATION, INC. has been filed and approved on August 12, 2019 and has been issued the registration number 11416251-0140 in the office of the Division and hereby issues this Certification thereof.


JASON STERZER
Division Director

*The Access Code is used for Online Applications used by this Division only.

AUG-15-2019 THU 12:35 PM UT DIV. OF CORP.

FAX NO. 801 530 6438

P. 02

13/19, 5:05 PM To: +1 801-530-6438 From: +1 435-731-9199

State of Utah
 Department of Commerce
 Division of Corporations and Commercial Code
 I hereby certify that the foregoing has been filed
 approved on this 12th day of Aug, 2019
 in the office of this Division and hereby issued
 this Certificate thereof.

EXPEDITE

RECEIVED

AUG 12 2019

8:46 pm

Utah Div of Corp. & Comm. Code

ARTICLES OF INCORPORATION FOR
SWP Date 8-15-19 WHITAKER FARM OWNERS ASSOCIATION

A Utah Nonprofit Corporation

NAME

The name of the corporation hereby created shall be WHITAKER FARM
 OWNERS ASSOCIATION, INC. (the "Association").

ARTICLE II

DURATION

The corporation shall continue in existence perpetually unless dissolved according
 to law.

ARTICLE III

PURPOSES

The Association is organized and shall be operated as a nonprofit corporation for
 the purpose of operating, maintaining, repairing, restoring and administering the common
 areas and facilities, collecting and disbursing the assessments and charges provided for in
 the Declaration of Covenants, Conditions and Restrictions of Whitaker Farm
 ("Declaration"), collecting, maintaining and disbursing a reserve fund required by the
 Declaration and the Utah Community Association Act, otherwise administering,

11416251-0140

AUG-15-2019 THU 12:35 PM UT DIV. OF CORP.

FAX NO. 801 530 6438

P. 03

13/19, 5:05 PM To: +1 801-530-6438 From: +1 435-731-9199

enforcing, and carrying out the terms of the Declaration, and generally providing for and promoting the health, safety and welfare of the Owners, residents and guests of the Whitaker Farm Subdivision located in Wasatch County, Utah (the Project).

ARTICLE IV

INITIAL REGISTERED OFFICE

The location and street address of the initial principal office of the Association are:

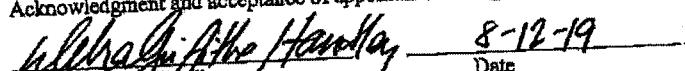
c/o Whitaker Farm Development Company, LLC
143 West Farm Springs Road
Midway, UT 84049

ARTICLE V

INITIAL REGISTERED AGENT AND OFFICE

The initial registered agent of the Association is DEBRA GRIFFITHS HANDLEY and the initial registered office is 257 East 200 South, #1050, Salt Lake City, Utah 84111.

Acknowledgment and acceptance of appointment as registered agent:


Debra Griffiths Handley 8-12-19
Date

The address of the Association's registered agent, or such other location as the Association's Board of Trustees shall designate, shall be the address of the Association's registered office. In the event that the Registered Agent has resigned, the agent's authority has been revoked, or the agent cannot be found or served with the exercise of reasonable diligence, the Association may be served at the Association Designated Office in accordance with the provisions of the Utah Model Registered Agents Act, U.C.A. §16-17-301, et seq., as amended.

AUG-15-2019 THU 12:36 PM UT DIV. OF CORP.
13/19, 5:05 PM To: +1 801-530-6438 From: +1 435-731-9199

FAX NO. 801 530 6438

P. 04

ARTICLE VI

MEMBERSHIP AND VOTING RIGHTS

1. Membership. Every owner shall be a Member of the Association.

Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Member has the necessary interest, and shall not be separated from the Lot to which it appertains.

2. Voting Rights. The Association shall have two classes of voting membership.

WHITAKER FARM DEVELOPMENT, LLC, the developer of the Project and Declarant under the Project's Declaration, shall be the only Class B Member and entitled to two (2) votes for each Lot owned. All other Members shall hold Class A memberships and be entitled to one (1) vote for each Lot owned.

ARTICLE VII

EVIDENCE OF MEMBERSHIP

The Association shall not issue any shares of stock or other evidence of membership in the Association.

ARTICLE VIII

INCORPORATOR

Pursuant to §§16-6a-201 and 16-6a-202 of the Act and under penalty of perjury, I, Debra Griffiths Handley, doing business at 257 East 200 South, Suite 1050, Salt Lake City, Utah 84111, declare that these Articles of Incorporation for Whitaker Farm Owners Association, Inc., has been adopted by the undersigned incorporator and is, to the best of my knowledge and belief, true, correct and complete.

DATED this 12th day of August, 2019.


By: Debra Griffiths Handley
Its: Incorporator

APPENDIX C: WHITAKER FARM OWNERS ASSOCIATION, INC. BYLAWS

**BYLAWS OF
WHITAKER FARM OWNERS ASSOCIATION, INC.**

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BYLAWS

Pursuant to the provisions of the Utah Revised Nonprofit Corporation Act (Title 16, Chapter 6a, Utah Code Annotated) (the "Act") and the Utah Community Association Act (Title 57, Chapter 8a, Utah Code Annotated), the Board of Directors of Whitaker Farm Owners Association, Inc., and WHITAKER FARM DEVELOPMENT, LLC, as Declarant under the Declaration of Covenants, Conditions and Restrictions of Whitaker Farm, hereby adopts the following Bylaws.

ARTICLE I

NAME AND PRINCIPAL OFFICE

1.1 Name. The name of the nonprofit corporation is "Whitaker Farm Owners Association, Inc." hereinafter referred to as the "Association."

1.2 Principal Office. The initial principal office of the Association shall be situated in Midway City, Wasatch County, State of Utah. The Association may change its principal office to the office of any professional management company retained by the Association to perform some of the duties of the Association arising under the Declaration.

1.3 Application to Project. The provisions of these Bylaws are applicable to the residential housing project known as the Whitaker Farm Subdivision, in Midway City, Utah (the "Project"). All present and future Owners, sometimes referred to as Members, and their tenants, future tenants, guests, employees, Mortgagees and any other persons who might use the facilities of the Project in any manner are subject to the regulations set forth in these Bylaws, in the Articles of Incorporations for the Association, and in the Declaration of Conditions, Covenants and Restrictions for Whitaker Farm Subdivision ("Declaration") recorded or to be recorded in the office of the Wasatch County Recorder and applicable to the Project. The mere acceptance of a Deed to a Lot or rental of Dwelling on a Lot in the Project or the mere act of occupancy of any Dwelling will signify that these Bylaws are accepted, ratified, and will be observed.

ARTICLE II

DEFINITIONS

2.1 Definitions. The words used in these Bylaws shall be given their normal, commonly understood definitions. Capitalized terms herein shall have the same meaning as set forth in Article I of the Declaration, as recorded, and as may be amended and supplemented from time to time unless otherwise defined herein or

under the Act for which these Bylaws shall operate.

ARTICLE III

POWER OF THE ASSOCIATION

3.1 **Powers.** The Association shall have all the powers conferred upon it by the Declaration and all powers allowed by law which are necessary or convenient for accomplishment of any of its purposes, including all powers referred to or described generally in the Act and specifically at Sections 16-6a-302 through 16-6a-304.

3.2 **Limitations.** The Association is not organized for pecuniary profit. Notwithstanding the breadth of the foregoing portion of this Article, (i) no dividend shall be paid to, no part of the Association's funds shall be distributed to, and no part of any net income of the Association shall inure to the benefit of any of its Members, Directors, or Officers or any other Person; and (ii) the powers of the Association shall be subject to all limitations or restrictions contained herein or in the Declaration.

ARTICLE IV

MEMBERSHIP, MEETINGS, AND VOTING RIGHTS

4.1 **Membership and Voting Rights.** Provisions governing Membership in the Association and the voting rights of its Members are set forth in Article III of the Declaration.

4.2 **Membership List.** The Association shall maintain up-to-date records showing the name and address of each person who is a Member, as well as a phone number and email address, and the Lot to which the Membership of such person is appurtenant. The address of a Member shall be deemed to be the address of the Lot situated in the Project unless the Association is otherwise advised.

4.2.1. In the event of any transfer of a fee or undivided fee interest in a Lot, either the transferor or transferee shall furnish a Deed to the Association as evidence establishing that the transfer has occurred and that the Deed is of record in the office of the County Recorder of Wasatch County, Utah.

4.2.2. The Association may for all purposes act and rely on the information concerning Members and Lot ownership which is thus acquired by it or, at its option, the Association may act and rely on current ownership information respecting any Lot which is obtained from the office of the County Recorder of Wasatch County, Utah.

4.3 Annual Meetings. The annual meeting of the Members shall be held any time between October 1 and December 31, at the time designated by the Board of Directors or on such other annual date and time fixed by the Board of Directors, at the Project or some reasonable location in Wasatch County, Utah. The annual meeting of the Members may not be held on a legal holiday. The purpose of the annual meeting shall be the election of Directors and the transaction of such other business as may come before the Members. If election of Directors is not held during the time designated herein for an annual meeting, the Board of Directors shall cause such election to be held at a special meeting of the Members as soon thereafter as is convenient, unless a specific date is required herein.

4.4 Special Meetings. A special meeting of the Members for any purpose or purposes may be called by the Declarant during the period of Declarant control, the President, by the Board of Directors, or upon the written request of Members holding not less than fifty percent (50%) of the votes entitled to be cast by the Members of the Association, such written request to state the purpose or purposes of the meeting and to be delivered to the Board of Directors or the President.

4.5 Place of Meeting. The Board of Directors may designate any place within Wasatch County, Utah, as the place of any annual meeting or for any special meeting called by the Board. If no designation is made, the place of meeting shall be the principal office of the Association. A waiver of notice signed by all Members may designate any place, either within or without the State of Utah, as the place for holding such meeting.

4.6 Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary of the Association or person authorized to call the meeting, at least fifteen (15) days and not more than sixty (60) days before such meeting to each Member entitled to vote thereat, by either (a) mailing a copy of such notice by regular U.S. mail, postage prepaid, addressed to the Member's address last appearing on the records of the Association, or supplied by such Member to the Association for the purpose of notice, or (b) using an electronic method which may include text message, email, facsimile or the association website, if any exists. Any Member may demand, however, that he receive notice by mail. Any notice provided to the Members hereunder shall specify the place, day and hour of the meeting, and include a description of any matter or matters that shall be approved by the Members. In the case of a special meeting, the purpose for which the meeting is being called shall be described.

4.7 Waiver of Notice. Any notice required to be given to a Member may be waived by the Member entitled thereto signing a waiver thereof, whether before or after the time stated therein, and the signing of such waiver shall, for all purposes, be equivalent to the giving of such notice. Each waiver shall be delivered to the Board

of Directors, the Secretary of the Association or the Board's designee so appointed.

4.8 Voting by Proxy. At each meeting of the Members, each Member entitled to vote shall be entitled to vote in person or by proxy; provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Member himself or by his attorney thereunto duly authorized in writing pursuant to Utah Code Ann. section 16-6a-712(2)(a).

4.8.1 If a Membership is jointly held, the instrument authorizing a proxy to act must have been executed by at least one Member holding such Membership or their attorneys thereunto duly authorized in writing.

4.8.2 Such instrument authorizing a proxy to act shall be delivered to the Secretary of the Association or to such other officer or person who may be acting as secretary of the meeting by the deadline cited in the notice of the meeting. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting.

4.8.3 An appointment of proxy shall be valid for eleven (11) months, unless a different period is expressly provided in the authorizing instrument.

4.9 Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast 50% of the votes of the membership (excluding those Lots with voting rights suspended) shall constitute a quorum for any action except as otherwise provided in the Articles, the Declaration, or these Bylaws. If, however, such a quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall adjourn the meeting and postpone it to another date and time within ten (10) days' time so long as it falls within the same fiscal year, without notice other than announcement at the meeting, and those Members that are represented or present for any purpose at the postponed meeting shall constitute a quorum for action on the matters noticed.

4.10 Votes. With respect to each matter, including the election of Directors, submitted to a vote of the Members, each Member entitled to vote at the meeting shall have the right to cast, in person or by proxy, a vote appertaining to the Lot owned by such Member. The affirmative vote of a majority of the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Members, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, the Declaration, or Utah law. The election of Directors shall be by secret ballot. If a Membership is jointly held, all or any holders thereof may attend each meeting of the Members, but such holders must act unanimously to cast the votes relating to their joint membership.

4.11 Waiver of Irregularities. All inaccuracies and/or irregularities in calls or notices of meetings and in the manner of voting, form of proxies, and/or method of ascertaining Members present shall be deemed waived if no objection thereto is made at the meeting.

4.12 Informal Action by Members. Any action that is required or permitted to be taken at a meeting of the Members may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by 67% of the Members entitled to vote with respect to the subject matter thereof.

4.13 Action by Written Ballot. Any action that may be taken at any annual, regular or special meeting of the Members may be taken without a meeting if the nonprofit corporation delivers a written ballot to every Member entitled to vote on the matter. A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action.

4.13.1. Quorum for Vote by Written Ballot. Approval by written ballot shall be valid only when the time by which all ballot must be received by the Association has passed so that a quorum can be determined and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. Under this section, the number of votes cast by written ballot constitutes a quorum for action on the matter.

4.13.2. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements, state the percentage of approvals necessary to approve each matter other than election of Directors; specify the time by which a ballot must be received by the Association in order to be counted; and be accompanied by a written information sufficient to permit each person casting the ballot to reach an informed decision on the matter.

4.13.3. No written ballot timely cast by a Member entitled to vote may be revoked.

4.13.4. A written ballot delivered to every Member entitled to vote on the matter may also be used in connection with any annual, regular or special meeting of Members, thereby allowing Members the choice of either voting in person or by written ballot delivered by a Member to the Association in lieu of attendance at such meeting. Any written ballot shall be counted equally with the votes of Members in attendance at any meeting for every purpose, including satisfaction of a quorum requirement.

ARTICLE V

BOARD OF DIRECTORS

5.1 Management. In connection with the Association, the business, property and affairs of the project shall be managed, operated and maintained by the Owners or Members and in particular by a Board of Directors as agent for the Owners or Members.

5.2 Initial Board. The initial three (3) member Board of Directors shall be appointed by the Declarant and shall serve until the first meeting of the Association after the Period of Declarant Control expires as described in Section 3.3.2 of the Declaration, at which time an election of all of the members of the Board shall be conducted. The Declaration establishes a Period of Declarant Control of the Association during which the Declarant or persons designated by it have authority to appoint and remove Directors and officers on the Board. Within sixty (60) days after the Period of Declarant Control expires, the Owners shall elect a Board of three (3) or five (5) Directors. The Board members shall take office upon election. Thereafter, at each annual meeting, the Association shall elect the Directors to fill those positions becoming vacant at such meeting pursuant to this section.

5.3 Number, Tenure, and Qualifications. The Board of Directors shall be composed of at least three (3) and not more than five (5) Members. Each Director of the Board shall be a Lot Owner. Directors shall serve for terms of one (1) year beginning immediately upon their election by the Association. Directors shall serve until their respective successors are elected, or until death, resignation or removal. In the event a Lot is owned by a corporation, partnership, trust or other legal entity other than a natural person, then any shareholder, officer or director of such corporation, partner of such partnership, beneficiary or individual Director of such trust, or manager of such other legal entity, shall be eligible to serve as a Director of the Board. Any change in the number of Directors may be made only by amendment of the Declaration.

5.4 Regular Meetings. The regular annual meeting of the Board of Directors shall be held without notice, other than this Bylaw, immediately after and at the same place as the annual meeting of the Members. The Board of Directors may provide by resolution the time and place, within Wasatch County, State of Utah, for the holding of such additional regular meetings without notice other than such resolution. Directors may participate in and/or conduct the meeting by any means of communication by which all Directors participating may hear each other during the meeting. No regular meeting shall be held on a legal holiday.

5.5 Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two (2) Directors, after

not less than forty-eight (48) hours' notice to each Director, unless all Directors waive notice in writing. If notice be given by electronic mail, such notice shall be deemed to be delivered when the Director acknowledges receipt to the individual sending notice. The person or persons authorized to call special meetings of the Board of Directors may fix any place, within Wasatch County, State of Utah, as the place for holding any special meeting of the Board of Directors called by such person or persons. Directors may participate in and/or conduct the meeting by any means of communication by which all Directors participating may hear each other during the meeting.

5.6 Quorum and Manner of Acting. A majority of the Directors in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. The act of a majority of the Directors present at any meeting at which a quorum is present shall be the act of the Board of Directors. The Directors shall act only as a Board, and individual Directors shall have no powers as such.

5.7 Compensation. No Director of the Association shall be compensated as a Director; provided, however, that Directors may be reimbursed for expenses incurred in performance of their duties as Directors and, except as otherwise provided in these Bylaws, may be compensated for services rendered to the Association other than in their capacities as Directors.

5.8 Resignation and Removal. A Director may resign at any time by delivering a written resignation to either the President or the Board of Directors. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Director may be removed at any time for or without cause, upon a unilateral action of the Declarant before the Period of Declarant Control expires and thereafter, by the affirmative vote of sixty percent (60%) of the votes entitled to be cast by the Members at a special meeting of the Members duly called for such purpose.

5.9. Vacancies. If vacancies shall occur in the Board of Directors, the Directors then in office shall continue to act, and such vacancies, though less than a quorum, in any way approved by such Directors at the meeting. Any vacancies in the Board of Directors occurring by reason of the Members' removal of a Director may be filled by election by the Members at the meeting at which such Director is removed. Any Director elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his predecessor or for the term of the newly created Directorship, as the case may be.

5.10. Informal Action by Directors. Any action that is required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting, if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors.

5.11. Waiver of Notice. Any notice required to be given to a Director may be waived by the Director entitled thereto signing a waiver thereof, whether before or after the time stated therein, and the signing of such waiver shall, for all purposes, be equivalent to the giving of such notice. Attendance of a Director at any meeting shall constitute a waiver of notice of such meeting unless such Director is attending the meeting for the sole and express purpose of objecting to the transaction of any business at the meeting because the meeting was not lawfully called or convened.

5.12. Authority to Act. The Board of Directors shall have, and is hereby granted, the following authority and powers:

5.12.1. The authority to execute and record, on behalf of all Lot Owners, any amendment to the Declaration or exhibits therein, which has been approved by the vote or consent necessary to authorize such amendment;

5.12.2. The authority to enter into contracts which in any way concerns the project, so long as any vote or consent of the Lot Owners necessitated by the subject matter of the agreement has been obtained;

5.12.3. The power and authority to convey or transfer any interest in real property, so long as any vote or consent necessary under the circumstances has been obtained;

5.12.4. The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as such action has been authorized by any vote or consent which is necessary under the circumstances;

5.12.5. The authority to promulgate such reasonable rules, regulations, and procedures as maybe necessary or desirable to aid the Board in carrying out any of its functions or to ensure that the Project is maintained and used in a manner consistent with the interests of the Owners;

5.12.6. The power and authority to perform any other acts and enter into any other transactions which may be reasonably necessary for the Board to perform its functions as agents for the Owners; and

5.12.7. The power to bring, prosecute and settle litigation for itself, the Association and the property, provided that it shall make no settlement which results in an uninsured liability against the Association, or the Property in excess of \$10,000.00 without prior approval of a majority of Lot Owners.

5.13. Manager. The Board may carry out its obligations through a project manager. It is to the discretion of the Board whether any manager so engaged shall be either an independent contractor and or employee of the Association.

5.14. Board Determination Binding on Owners. In the event of any dispute or disagreement between any Owners relating to the Property, or any question of interpretation or application of the provisions hereof, the determination thereof by the Board shall be final and binding on each and all of the Owners.

5.15. After the election of the Directors of the first Board of Directors following the Turnover, Declarant may execute, acknowledge and record a declaration stating the names of the newly elected Board. Thereafter, any two (2) persons who are designated of record as being members of the most recent Board, whether or not they are still members, may execute, acknowledge and record a declaration stating the names of all of the members of the then current Board of Directors. The most recently recorded evidence or copy of such declaration shall be *prima facie* evidence that the persons named therein are of the incumbent members of the Board and shall be conclusive evidence thereof in favor of all persons who rely thereon in good faith.

ARTICLE VI

OFFICERS

6.1. Number. The officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer.

6.2. Election, Tenure, and Qualifications. The officers of the Association shall be chosen by the Board of Directors annually at the regular annual meeting of the Board of Directors. In the event of failure to choose officers at such regular annual meeting of the Board of Directors, officers may be chosen at any regular or special meeting of the Board of Directors. Each such officer (whether chosen at a regular annual meeting of the Board of Directors or otherwise) shall hold his office until the next ensuing regular annual meeting of the Board of Directors and until his successor shall have been chosen and qualified, or until his death, or until his resignation or removal in the manner provided in these Bylaws, whichever first occurs. Any one person may hold any two or more of such offices, except that the President may not also be the Secretary or the Treasurer. No person holding two or more offices shall act in or execute any instrument in the capacity of more than one office. The President, the Vice President, the Secretary and the Treasurer shall be and remain Members of the Association during the entire term of their respective offices and shall be a Director.

6.3. Subordinate Officers. The Board of Directors may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board of Directors may from time to time determine. The Board of

Directors may from time to time delegate to any officer or agent the power to appoint any such subordinate officers or agents and to prescribe their respective titles, terms of office, authorities, and duties. Subordinate officers need not be Members or Directors of the Association.

6.4. Resignation and Removal. Any officer may resign at any time by delivering a written resignation to the President or the Board of Directors. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed by the Board of Directors at any time, for or without cause.

6.5. Vacancies and Newly Created Offices. If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification, or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board of Directors at any regular or special meeting.

6.6. The President. In the inaugural year of the Association, the Declarant shall serve as the President. The President shall preside at meetings of the Board of Directors at meetings of the Members. He shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things that the Board of Directors may require of him.

6.7. The Vice President. In the event of the President's absence or inability to act, the Vice President shall have the powers of the President. He shall perform such other duties as the Board of Directors may impose upon him.

6.8. The Secretary. The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, or any resolution of the Board of Directors may require him to keep. He shall be the custodian of the seal of the Association, if any, and shall affix such seal, if any, to all papers and instruments requiring the same. He shall perform such other duties as the Board of Directors may require of him.

6.9. The Treasurer. The Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Board of Directors, and shall, when requested by the President to do so, report the state of the finances of the Association at each annual meeting of the Members and at any meeting of the Board of Directors. He shall perform such other duties as the Board of Directors may require of him.

6.10. Compensation. No officer shall receive compensation for any services that he may render to the Association as an officer, except for expenses incurred. Officers may be compensated for services rendered to the Association other than in their capacities as officers.

ARTICLE VII

COMMITTEES

7.1. Designation of Committees. The Board of Directors may from time to time by resolution designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. The Membership of each such committee designated hereunder shall include at least one (1) Director. No committee Member shall receive compensation for services that he may render to the Association as a committee Member; provided, however, that committee Members may be reimbursed for expenses incurred in performance of their duties as committee Members and (except as otherwise provided in these Bylaws) may be compensated for services rendered to the Association other than in their capacities as committee Members.

7.2. Proceedings of Committees. Each committee designated hereunder by the Board of Directors may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may from time to time determine. Each such committee shall keep record of its proceedings and shall regularly report such proceedings to the Board of Directors.

7.3. Quorum and Manner of Acting. At each meeting of any committee designated hereunder by the Board of Directors, the presence of committee Members constituting at least two-thirds of the authorized Membership of such committee shall constitute a quorum for the transaction of business, and the act of a majority of the committee Members present at any meeting at which a quorum is present shall be the act of such committee. The Members of any committee designated by the Board of Directors hereunder shall act only as a committee, and the individual Members thereof shall have no powers as such.

7.4. Resignation and Removal. Any Member of any committee designated hereunder by the Board of Directors may resign at any time by delivering a written resignation either to the President, the Board of Directors, or the presiding officer of the committee of which he is a Member. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board of Directors may at any time, for or without cause, remove any Member of any committee designated by it hereunder.

7.5. Vacancies. If any vacancy shall occur in any committee designated by the Board of Directors hereunder, due to disqualification, death, resignation, removal, or otherwise, the remaining committee Members shall, until the filling of such vacancy, constitute the then total authorized Membership of the committee and, provided that two or more committee Members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board of Directors.

ARTICLE VIII

INDEMNIFICATION

8.1. Indemnification Against Third Party Actions. The Association shall have the power to indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Association) by reason of the fact that he is or was a Director, officer, employee, manager or agent of the Association, or is or was serving at the request of the Association as a Director, officer, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit, or proceeding, if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association, and, with respect to any criminal action or proceeding, has no reasonable cause to believe his conduct was unlawful. The termination of any action, suit, or proceeding by an adverse Judgment, order, or settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

8.2. Insurance. The Association shall purchase and maintain insurance on behalf of any person who was or is a Director, officer, employee, manager or agent of the Association, or who was or is serving at the request of the Association as a Director, Director, officer, employee, or agent of another corporation, entity, or enterprise (whether for profit or not for profit), against any liability asserted against him or incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the laws of the State of Utah, as the same may hereafter be amended or modified.

8.3. Payments and Premiums. All indemnification payments made, and all insurance premiums for insurance maintained, pursuant to this Article shall constitute expenses of the Association and shall be paid with funds from the Common Expense Fund referred to in the Declaration.

ARTICLE IX

COMMON EXPENSES / ASSESSMENTS

9.1. All Common Expenses shall be assessed in accordance with the Declaration.

9.2. No Owner shall be exempt from liability for Common Expenses by waiver of the use or enjoyment of any of the Project or by abandonment of his or her Lot.

9.3. The Treasurer shall keep detailed records of all receipts and expenditures, including expenditures affecting the Project, specifying and itemizing the maintenance, repair and replacement expenses of the Project and any other expenses incurred. Such records shall be available for examination by the Owners during regular business hours. In accordance with the actions of the Board of Directors in assessing Common Expenses against the Lots, the Treasurer shall keep an accurate record of such Assessments and of the payments thereof by each Owner.

9.4. All Assessments shall be a separate, distinct and personal liability of the Owner at the time each Assessment is made. The Board of Directors shall have the right and remedies contained in the Act and in the Declaration to enforce the collection of Assessments.

9.5. Any Person who shall have entered into a written agreement to purchase a Lot, by written request directed to the Association, shall be entitled to obtain a written statement from the Treasurer, or a manager if one has been so retained, setting forth the amount of the monthly, quarterly, annual or other periodic Assessments and the amount of unpaid Assessments charged against such Lot or its Owner(s), and if such statement does not reveal the full amount of the unpaid Assessments as of the date it is rendered, neither the purchaser nor the Lot shall be liable for the payment of an amount in excess of the unpaid Assessments shown thereon, provided that the former Owner shall remain so liable. The Association shall provide the written statement required herein within fifteen (15) calendar days, unless the Association seeks to enforce a Lien it has recorded against the Lot which will require the Association to provide the statement within five (5) business days.

9.5.1. All requests under this section shall be made in writing to the Association's primary contact for these types of requests or Manager is one has been retained, contain the name, telephone number and address of the person making the request, and the facsimile number or email address for delivery of the payoff information. The request shall also be accompanied by a written consent for the release of the information which identifies the person requesting the information as a person to whom the payoff information may be released and signed and dated by

the Owner of the Lot for which the payoff information is requested. The Board of Directors is authorized to require a \$50.00 fee for furnishing such statements, but may not demand that the fee be paid before the closing of the sales transaction.

9.5.2. Any such excess which cannot be promptly collected from the former Owner shall be reassessed by the Board of Directors as a Common Expense to be collected from Owners, including without limitation the purchaser of such Lot, his or her successors and assigns. The new Owner shall, and the former Owner shall not, be liable for any Assessments made after the date of transfer of title, even though the Common Expenses incurred or the advances made by the Board of Directors for the Assessment is made relating in whole or in part to any period to that date.

9.6. In addition to the statements issuable to purchasers, the Board of Directors shall, upon fifteen (15) days' prior written request, provide to any Owner, to any Person who shall have entered into a binding agreement to purchase a Lot and to any Mortgagee, on request at reasonable intervals a current statement of unpaid Assessments for Common Expenses with respect to a Lot. The Board of Directors is authorized to require a reasonable fee up to \$25.00 for furnishing such statements.

9.7. In any case where all or part of any Assessment for Common Expenses and capital contributions and for any expenses of and advances by the Board of Directors cannot be promptly collected from the Persons or entities liable therefor under the Declaration or these Bylaws, the Board of Directors shall reassess the same as a Common Expense without prejudice to its right to collection against such Persons or entities, or without prejudice to its lien for such Common Assessments.

ARTICLE X

LITIGATION

10.1. If any action is brought by a member of the Board of Directors on behalf of the Association, the expenses of suit, including reasonable attorney's fees, shall be a Common Expense. Except as otherwise provided, if any action is brought against the Owners or against the Board of Directors or the officers, employees, managers or agents thereof in their capacities as such, with the result that the ultimate liability asserted would, if proved, be borne by all the Owners, the expenses of suit, including attorney's fees, shall be a Common Expense. If any action is brought against one or more, but less than all Owners, with the result that the ultimate liability would, if proved, be borne solely by such Owners, the expenses of suit, including attorney's fees, shall not be charged to or borne by the other Owners as a Common Expense or otherwise.

10.2. Except as otherwise provided by the Act, any action brought against the Association, the Board of Directors, or the officers, employees, managers or agents thereof, in their respective capacities as such, or the Project as a whole, shall be directed to the Board of Directors, and shall be defended by the Board of Directors; and the Owners or Mortgagees shall have no right to participate in such defense other than through the Board of Directors. Actions against one or more, but less than all Owners, shall be directed to such Owners, who shall promptly give written notice thereof to the Board of Directors, and shall be defended by such Owners.

ARTICLE XI

RULES, REGULATIONS AND DESIGN CRITEREON / ABATEMENT AND ENJOYMENT OF VIOLATIONS BY OWNERS

11.1. Rules and Regulations. The Board of Directors may from time to time adopt, amend, repeal, and enforce reasonable rules and regulations governing the use and operation of the Project, to the extent that such rules and regulations are not inconsistent with the rights and duties set forth in the Articles of Incorporation, the Declaration, or these Bylaws.

11.1.1. During the period of Declarant control, the Declarant may unilaterally adopt, amend and/or repeal any rule, regulation or design criterion as permitted under the Declaration.

11.1.2. Once the period of Declarant control expires, Members (a) shall be provided with copies of all proposed changes to rules, regulations and Design Guidelines in the same manner notice for a meeting is given at least fifteen (15) days before the Board of Directors will meet to consider a change; (b) be provided an opportunity to be heard at a Board meeting before the Board takes action on the proposed changes; and (c) be provided copies of the changes once approved by the Board in the same manner as notice to a meeting is given within fifteen (15) days after the date of the Board meeting. A violation of such rules, regulations or design criterion shall be deemed a violation of the terms hereof.

11.1.3. The Board of Directors may adopt a rule or change to a rule, regulation or design criterion without first giving notice to the Members if there is an imminent risk of harm to a Common Area, a Limited Common Area, an Owner, Occupant of a Lot, a Lot or a Dwelling. In these circumstances, the Board shall provide notice of the rule, regulation or design criterion within fifteen (15) days of its adoption.

11.2. The violation of any rules or regulations adopted by the Board of Directors, the breach of any provision contained herein or the breach of any provision of the Declaration shall give the Board of Directors the right, in addition to

any other rights set forth in these Bylaws:

11.2.1. To enter the Lot in which or as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner(s), any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board of Directors shall not thereby be deemed guilty in any manner of trespass provided that items of construction may not be altered or demolished without proper judicial proceedings; and/or

11.2.2. To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

11.3. These remedies are cumulative to other remedies provided in the Declaration and these Bylaws, any rules and regulations adopted by the Management Committee, or in any other applicable laws.

ARTICLE XII

FISCAL YEAR AND SEAL

12.1. Fiscal Year. The fiscal year of the Association shall begin on the 1st day of January of each year and shall end on the 31st day of December next following, except that the first fiscal year shall begin on the date of incorporation.

12.2. Seal. The Board of Directors may by resolution provide a corporate seal which shall be circular in form and shall have inscribed thereon the name of the Association, the State of incorporation, and the words "Corporate Seal".

ARTICLE XIII

ACCOUNTING / RESERVE FUND FOR REPAIR, REPLACEMENT AND RESTORATION OF THE COMMON AREAS AND FACILITIES

13.1. The books and accounting of the Association shall be kept in accordance with the generally accepted accounting procedures under the direction of the Treasurer.

13.2. A budget for each fiscal year shall be adopted by the Board of Directors and distributed to the Members of the Association at least thirty (30) days prior to the annual meeting.

13.3. The Board of Directors shall conduct a reserve analysis study consistent

with the requirements of the Act to determine the need for a reserve fund to cover the cost of repairing, replacing, or restoring Common Areas and Facilities that have a useful life of no fewer than three (3) years but less than thirty (30) years, when the cost cannot reasonably be funded from the general budget or other funds of the Association.

13.3.1. The Board of Directors shall include a reserve fund line item in its annual budget. The amount of the reserve fund line item shall be set by the Board of Directors based upon the reserve analysis and the amount the Board determines is prudent under the circumstances.

13.3.2. Within forty-five (45) days after the day on which the Association adopts its annual budget, the Lot Owners may veto the reserve fund line item by a vote of 51% vote of the allocated voting interests in the Association at a special meeting called by the Lot Owners for the purpose of voting whether to veto a reserve fund line item. If the Owners veto the reserve fund line item and a reserve fund line item exists in a previously approved annual budget of the Association that was not vetoed, the Association shall fund the reserve account in accordance with that prior reserve fund line item.

ARTICLE IV

AMENDMENTS

14.1. By Declarant. So long as the Class B Membership exists, Declarant may unilaterally amend these Bylaws for any purpose. Prior to the date the Period of Declarant Control ends, the Declarant may unilaterally amend these Bylaws, and notwithstanding anything contained in these Bylaws to the contrary, these Bylaws may be amended unilaterally at any time and from time to time by Declarant or the Association (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation, or judicial determination which shall be in conflict therewith to make technical correction to fix mistakes or remove/clarify ambiguities; or (b) if such amendment is reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to the Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's property unless any such Owner shall consent thereto in writing.

14.2. By the Board of Directors. The Board of Directors may amend these Bylaws at any time to add, change, or delete a provision unless restricted by these Bylaws, the Utah Revised Nonprofit Act, the Articles of Incorporation or the Declaration.

14.3. By the Members Generally. Except as otherwise provided by law, by

the Articles of Incorporation, by the Declaration, or by these Bylaws, these Bylaws may be amended, altered, or repealed and new bylaws may be made and adopted by the Members holding at least sixty-seven percent (67%) of the majority of the votes entitled to be cast by the Members in the Association consenting and agreeing to such amendment by an instrument or instruments duly recorded in the offices of the County Recorder for Wasatch County, State of Utah.

ARTICLE XIV

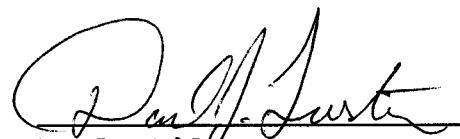
INTERPRETATION

15.1. **Interpretation.** The captions which precede the various portions of these Bylaws 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, any gender shall include both other genders. The invalidity or unenforceability of any provision contained in these Bylaws shall not affect the validity or enforceability of the remainder hereof. These Bylaws have been prepared in conjunction with the Declaration and should be read and construed in light of that fact and liberally so as to affect all of the purposes of both instruments. To the extent the provisions of the Utah Revised Nonprofit Corporation [U.C.A. section 16-6a-101, et seq. (2013)], the Utah Condominium Association Act [U.C.A. section 57-a-101, et seq. (2013)] and any modifications, amendments, and additions thereto are consistent with these Bylaws, the Articles of Incorporation and the Declaration, such legislation shall supplement the terms hereof.

15.2. **Waiver.** The waiver of the Board of Directors to insist upon strict performance of any provisions hereof shall not be construed for future purposes with respect to any such provision or option. No provision of these Bylaws shall be deemed to have been waived unless such waiver is in writing and signed by the President of the Association.

IN WITNESS WHEREOF and pursuant to Utah Code Ann. section 16-6a-206, these Bylaws have been adopted by the Whitaker Farm Owners Association, Inc. as of the 29 day of August, 2019.

WHITAKER FARM OWNERS ASSOCIATION, INC.



By: Daniel Lester
Its: President