

When Recorded Return to:  
Patterson Construction, Inc.  
11038 N. Highland Blvd. Suite 100  
Highland, UT 84003

ENT 5266 : 2025 PG 1 of 35  
**ANDREA ALLEN**  
**UTAH COUNTY RECORDER**  
2025 Jan 24 10:25 AM FEE 156.00 BY CS  
RECORDED FOR GT Title Services  
ELECTRONICALLY RECORDED

**AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
AUTUMN CREST SUBDIVISION**

This AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR AUTUMN CREST SUBDIVISION ("Amendment") is made and executed this 26<sup>th</sup> day of November, 2024, by Patterson Construction, Inc. ("Declarant" or "Developer").

**Recitals**

- A. Declarant caused that certain Declaration of Covenants, Conditions and Restrictions for Autumn Crest Subdivision to be recorded in the official land records of Utah County on October 12, 2017, as Entry No. 101039:2017 (the "Original Declaration").
- B. Pursuant to Article 1.2 of the Original Declaration, the Declarant intended that land added to the Subdivision by the recording of subdivision plats should become part of the Property or Subdivision subject to the Original Declaration.
- C. To resolve any uncertainty related to the amendment or recording of Autumn Crest Subdivision plats subsequent to the Original Declaration, Declarant wishes to ensure the applicability of the Original Declaration to all Autumn Crest Subdivision Property.

Now, Therefore, to fulfill the purposes and intentions of the Original Declaration as set forth therein, the Declarant hereby declares and reaffirms as follows:

- 1. All Autumn Crest Subdivision Property, as described in **EXHIBIT A** attached hereto, is subject to and governed by the provisions of the Original Declaration and any amendments or supplements thereto.
- 2. The Original Declaration is attached hereto in its entirety in **EXHIBIT B**.
- 3. This Amendment is supplemental to the Original Declaration. Except as expressly amended by this Amendment, the Original Declaration remains in full force and effect and is in no way invalidated by this recording.

LOCAL TITLE RECORDING  
This document is being recorded solely as a courtesy and in accommodation to the parties named herein. GT Title Services hereby expressly disclaims any responsibility or liability for the accuracy or content thereof.

IN WITNESS WHEREOF the Declarant, has executed this Amendment to Declaration of Covenants, Conditions and Restrictions for Autumn Crest Subdivision as of the date first written above.

DECLARANT:

Patterson Construction, Inc.

BY *Blaine Patterson*

NAME: Blaine Patterson

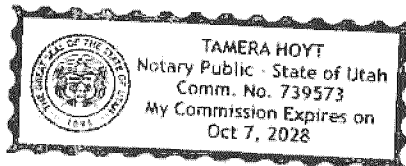
TITLE: Vice President

STATE OF UTAH )

ss.

County of UTAH )

On this 26<sup>th</sup> day of November, 2024, before me personally appeared Blaine Patterson, Vice President of Patterson Construction, Inc. (Declarant herein) and acknowledged to me that he executed the same on behalf of Patterson Construction, Inc. for the purposes intended.



*Tamara Hoyt*

Notary Public

**EXHIBIT A**

**Autumn Crest Subdivision Property**

LOTS 1-17, PLAT "A" AMENDED, AUTUMN CREST PHASE 1, A RESIDENTIAL SUBDIVISION, AMERICAN FORK, UTAH, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE UTAH COUNTY RECORDER.

(For reference: Tax Parcel ID Nos. 34-611-0001 to 0017)

LOTS 19-39, PLAT "B", AUTUMN CREST PHASE 1, A RESIDENTIAL SUBDIVISION, AMERICAN FORK, UTAH, ACCORDING TO THE OFFICAL PLAT THEREOF ON FILE IN THE OFFICE OF THE UTAH COUNTY RECORDER.

(For reference: Tax Parcel ID Nos. 34-550-0019 to 0022, 0024 to 0039, and 0042)

LOTS 40, 41, and 44, PLAT "C", AUTUMN CREST PHASE 1, A RESIDENTIAL SUBDIVISION, AMERICAN FORK, UTAH, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE IN THE OFFICE OF THE UTAH COUNTY RECORDER.

(For reference: Tax Parcel ID Nos. 34-541-0040, 0041, and 0044)

LOTS 45-52, PLAT "D", AUTUMN CREST PHASE 1, A RESIDENTIAL SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE UTAH COUNTY RECORDER.

(For reference: Tax Parcel ID Nos. 34-654-0045, 0047 to 0052, and 0054)

LOTS 53-62, PLAT "E", AUTUMN CREST PHASE 1, A RESIDENTIAL SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE UTAH COUNTY RECORDER.

(For reference: Tax Parcel ID Nos. 34-704-0053 to 0062)

LOTS 63-73, PLAT "F", AUTUMN CREST PHASE 1, A RESIDENTIAL SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE UTAH COUNTY RECORDER.

(For reference: Tax Parcel ID Nos. 34-745-0063 to 0073)

LOT 1, PLAT "G" AUTUMN CREST PHASE 1, A RESIDENTIAL SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE UTAH COUNTY RECORDER.

(For reference: Tax Parcel ID Nos. 34-753-0001)

**EXHIBIT B**

**Declaration of Covenants Conditions and Restrictions for Autumn Crest Subdivision  
Recorded October 12, 2017**

## EXHIBIT "B"

COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR  
AUTUMN CREST SUBDIVISION

(Originally Recorded October 12, 2017, Entry No. 101039:2017)

ARTICLE 1. RECITALS

- 1.1 Declarant is the owner of certain land in Utah County, Utah, which Declarant has or intends to develop as the Autumn Crest Subdivision, Plats A, B and C (hereafter the "Property" or the "Subdivision"). The Property is more particularly described in Exhibit A attached hereto, which by this reference is made a part hereof;
- 1.2 Declarant intends, in the future, to add additional land to the Subdivision in the form of additional lots, plats and/or common areas which, when added, shall be included and become part of the Property or Subdivision;
- 1.3 On December 4, 1992, a written agreement of Covenants, Conditions and Restrictions was executed and filed by parties having an interest in the Property with the Utah County Recorder as Instrument Number 66764, in book 3051, at Page 633 (the "**1992 Declaration**"), which was amended by that certain Amendment to Covenants, Conditions and Restrictions signed by the parties or their successors in interest in early 2000 (the "**2000 Amendment**"), but which was not recorded with the Utah County Recorder until March 7, 2003, as Instrument Number 34058:2003, and which was further amended by that certain 2011 Amendment to Covenants, Conditions and Restrictions signed by the parties or their successors in interest on December 27, 2011 (the "**2011 Amendment**"). The 1992 Declaration, the 2000 Amendment and the 2011 Amendment are referred to herein collectively as the "**1992 Amended Declaration**".
- 1.4 In addition to the covenants, conditions and restrictions set forth in the 1992 Amended Declaration, Declarant desires to subject the Property to the covenants, conditions, restrictions, easements, reservations, limitations and equitable servitudes set forth in this Declaration to (i) provide a general plan for the development of the Property; (ii) establish covenants, conditions and restrictions (in addition to those set forth in the 1992 Amended Declaration) to provide standards for the construction of homes and improvement of within the Subdivision and regulate their appearance and upkeep; (iii) establish an architectural control committee to review and approve (or disapprove) house plans and lot improvements prior to construction activities (or in connection with improvements after any initial construction is completed) to insure conformance thereof to design, materials used and Dwelling standards set forth in this Declaration; (iv) establish an owners association for the Subdivision to enforce the covenants, conditions and restrictions set forth herein; to regulate the affairs of the Subdivision and owners of lots; to own, improve and maintain common areas; and to make and collect assessments from the owners of lots to pay expenses set forth herein; and (iv) enhance and protect the values of the lots and attractiveness of the Subdivision;

- 1.4 The covenants, conditions and restrictions contained in this Declaration and in the Exhibits hereto shall be enforceable equitable servitudes and shall run with the land comprising the Property;

NOW, THEREFORE, for the foregoing purposes, the Declarant adopts the following covenants, conditions and restrictions to govern the development, use, maintenance and management of the Subdivision.

## ARTICLE 2. DECLARATION

Declarant hereby declares that the Property (including all "Common Areas" and as may hereafter be modified) and each lot, tract or parcel thereof (hereafter referred to as a "Lot," unless specified to the contrary), is and shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the covenants, conditions, restrictions, easements, reservations, limitations and equitable servitudes set forth in this Declaration (referred to herein collectively as the "covenants, conditions and restrictions"), all of which are declared and agreed to be made and enforced in furtherance of a general plan for the division, sale, development, improvement, maintenance, regulation and use of the Property and all Lots therein, and to enhance the value, desirability and attractiveness of the Subdivision and the Lots. The covenants, conditions and restrictions set forth herein shall run with the land and each Lot therein and the Common Areas and shall be binding upon all persons having or acquiring any ownership right, title or interest in the Property any Lot therein and Common Areas (each an "Owner" as defined herein); shall inure to the benefit of each Lot in the Subdivision and the Common Areas; and shall inure to the benefit of and be binding upon the Declarant and each Owner, and all successors in interest of Declarant and each Owner, and may be enforced by the Declarant, by the ACC (as defined herein), by the Association (as defined herein); by parties in interest as provided in the 1992 Amended Declaration; and by any Owner.

Notwithstanding the foregoing, no provision of this Declaration shall be construed or enforced to prevent or limit the Declarant's right to complete development of the Property in accordance with any plan developed by Declarant as it may now or hereafter exist or as such plan may be modified from time to time by the Declarant; nor shall any provision of this Declaration prevent normal construction activities of Declarant on the Property during the construction of any Improvement upon any Lot in the Subdivision. No development or construction activities shall be deemed to constitute a nuisance or violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, erection of temporary structures, posting of signs or similar activities, provided that the activities efficiently and expeditiously pursued to completion.

In the event any dispute should arise concerning Declarant's development or construction activities on the Property, a temporary waiver of the applicable provision(s) of this Declaration may be granted by the Architectural Control Committee provided such waiver shall be for a reasonable period of time. Any such waiver need not be recorded and shall not constitute an amendment of this Declaration.

## ARTICLE 3. DEFINITIONS

As used in this Declaration, unless the context otherwise specifies or requires, the following capitalized terms shall be defined as follows:

- 3.1 **"ACC"**: The Architectural Control Committee for the Subdivision.
- 3.2 **"ACC Construction Standards"**: The written rules and standards developed and adopted, initially by the Declarant and/or by the ACC pursuant to the powers granted under Article X hereof, as amended from time to time. Such ACC Construction Standards shall be set forth the rules and standards which will govern and regulate home and structure design, materials which may or may not be used in construction, and engineering and Dwelling standards. Home and structure architectural design, theme and compatibility shall be consistent and congruent with a master planned community concept.
- 3.3 **"Assessment"**: Means a payment assessed by the Association to a member to pay and discharge such member's proportionate share of the (a) operating and administrative costs of the Association, (b) repairs and maintenance of the Common Areas, (c) general, special and limited assessments assessed on or to the Property, (d) all other costs incidental to the operations, preservation and protection of the Subdivision and the Owners' rights therein. Provided, each Owner shall be solely responsible for all costs and expenses incurred by him with regard to (i) his Lot and (ii) all Assessments (whether Limited, Regular or Special Assessments) which relate specifically to his Lot and are not assessable or allocated to other Lots. .
- 3.4 **"Association" or "Owners Association"**: Means the Autumn Crest Subdivision Owners Association, a Utah non-profit corporation.
- 3.5 **"Board of Directors", "Director" or "Board"**: Means the duly elected and qualified members of Board of Directors of the Association, or any Director of the Board, duly appointed at any point in time.
- 3.6 **Dwelling**3.6 **"Bylaws"**: Means the Bylaws of the Association, including any amendments thereto duly adopted.
- 3.7 **"Declaration"**: Means this instrument, once filed with the Utah County Recorder, as amended from time to time which shall incorporate by reference the terms and conditions of the 1992 Amended Declaration.
- 3.8 **"Development Activities"**: Means the division, platting, development and improvement of the Property, including additional property later added in Declarant's discretion, as now or hereafter undertaken by the Declarant to create the Subdivision for the purposes enumerated in this Declaration. Such activities shall include, but not be limited to, surveying, excavation, installation of underground utilities, grading, construction of roadways and Common Areas, utility services, amenities, landscaping and other improvements.
- 3.9 **"Dwelling"**: Means a residential structure constructed on a Lot on a temporary or permanent basis and, unless specified to the contrary, shall include all appurtenances and improvements thereto or used in connection therewith.

- 3.10 **"Fines"**: Means a punitive monetary amount levied against an Owner and the Owner's Lot for violations of this Declaration, or the covenants, conditions and restrictions set forth herein, the Bylaws, the Rules and Regulations of the Association, the decisions and actions of the ACC, and for non-payment of any Assessment. Said Fines shall be collectable as Assessments pursuant to Articles VIII and IX of this Declaration.
- 3.11 **"Declarant"**: Means Patterson Construction, Inc., a Utah corporation, and its successors and assigns..
- 3.12 **"Improvements"**: Means all structures and additions and appurtenances thereto of any kind or type, including but not limited to, Dwellings, and all other improvements to the Property, including roads, driveways, parking lots, gutters and sidewalks, walkways, walls, fences, screens, landscaping, poles, signs and lighting. Dwelling
- 3.13 **"Initial Construction"**: Means the first construction of Improvements on a Lot following the sale of that Lot by the Declarant to an Owner (or by an Owner to another Owner).
- 3.14 **"Limited Assessment"**: Means an Assessment levied by the Association upon one or more Lots, but not upon all Lots within the Subdivision, for the purpose of securing payment by the Owner of such Lot amounts expended by the Association to correct an unpermitted or prohibited condition or to cure an Owner's breach of this Declaration, or the covenants, conditions and restrictions set forth herein, or the Bylaws, or the Rules and Regulations of the Association, or the decisions of the ACC, or for non-payment of any Assessment, or to correct a danger or hazard posed by such Lot or its Owner, or (if the Owner fails to do so) to maintain the Lot and Improvements in good and habitable condition or to improve the appearance of such if it fails to conform to standards established by the ACC.
- 3.15 **"Lot"**: Means portion of the Property which is a tract or parcel of land within the Subdivision which bears a definable legal description or which is designated as a Lot on any recorded subdivision plat relating to the Property.
- 3.16 **"Member"**: Means any person or legal entity who is the legal Owner of a Lot within the Subdivision.
- 3.17 **"Mortgage"**: Means a mortgage, deed of trust or other hypothecation of a Lot located within the Subdivision, which was duly recorded in the Utah County Recorder's office, and which is given by the Owner to secure the performance of an obligation in connection with such Lot. Unless specifically provided otherwise, use of the term "Mortgage" in this Declaration shall be limited to a "First Mortgage", or a "First Deed of Trust".
- 3.18 **"Mortgagee"**: Means the holder of a Mortgage or the beneficiary under a Deed of Trust, including an assignee thereof, which Mortgage or Deed of Trust encumbers a Lot in the Subdivision and which was granted by the current or prior Owner..
- 3.19 **"Occupant"**: Means a person or entity who is an Owner, or a member of the Owner's immediate family, or who is an invitee of the Owner, or who has leased or rented the



Lot owned by the Owner, , or who is otherwise legally entitled to occupy and use any Dwelling or Improvement on a Lot, whether or not such right is exercised, and includes an Owner's legal heirs, personal representatives, permitted successors and assigns.

- 3.20 **"Owner"**: Means a person or legal entity, including the Declarant, who holds fee simple title to a Lot in the Subdivision, including contract sellers, but excluding those having an interest in a Lot merely as security for the performance of an obligation. Provided, a Mortgagee shall be deemed an Owner if such Mortgagee is in actual legal possession of a Lot as a result of such Mortgagee's exercise of a power of sale or judicial foreclosure action, and includes any person taking title through such Mortgagee by purchase for value at a foreclosure sale duly noticed and conducted pursuant to applicable law.
- 3.21 **"Plat"**: Means a final subdivision rendering which includes and describes one or more Lots or parcels of real property in the Subdivision, and which is recorded in the office of the County Recorder, Utah County, Utah. Any Plat may be amended by duly recorded amendments thereto in accordance with applicable law and ordinances.
- 3.22 **"Regular Assessment"**: Means an assessment levied by the Association to the Members to provide funds to pay the ordinary estimated expenses of the Association.
- 3.23 **"Rules and Regulations"**: Means all rules and regulations established by the Association and/or the ACC which are promulgated to govern and regulate the Property (including the Lots and Owners) and the affairs of the Association and the ACC.
- 3.24 **"Special Assessment"**: Mean any assessment levied by the Association to the Members other than a Regular Assessment or Limited Assessment.
- 3.25 **"Subdivision"**: The entirety of the Property, including additional land later added, and all Lots, Plats, Common Areas, unimproved and unplatted parcels, easements, underground utilities and improvements, roadways, curbs and gutters, and landscaping, .

#### ARTICLE 4. PURPOSE OF THE DECLARATION

The Property is hereby made subject to the covenants, conditions and restrictions set forth in this Declaration, all of which, by the signing and filing of this Declaration in the office of the Utah County Recorder, State of Utah, shall be imposed upon and run with the land and each and every Lot and parcel thereof, and shall apply to each and every Owner and Occupant thereof and to their respective successors in interest, to insure the proper design, development, improvement, use and maintenance of the Property for the following purposes (collectively, the **"Subdivision Objectives"**):

- 4.1 To provide a general plan for the development of the Property;
- 4.2 To establish covenants, conditions and restrictions (in addition to those set forth in the 1992 Amended Declaration) to provide standards for the construction of

Dwellings and Improvement of within the Subdivision and to regulate their appearance and upkeep;

- 4.3 To establish an architectural control committee to review and approve (or disapprove) Dwelling plans and Lot Improvements prior to the commencement of construction activities (or in connection with improvements after any initial construction is completed) to insure conformance thereof (i) with applicable laws, ordinances, Dwelling codes, set backs, and the appropriate placement and spacing of Dwellings and Improvements; (ii) with permitted architectural and landscaping design, materials used, and Dwelling standards to be complied with, all as set forth in this Declaration;
- 4.4 To establish an owners association for the Subdivision to enforce the covenants, conditions and restrictions set forth herein; to regulate the affairs of the Subdivision and Owners of Lots; to own, improve and maintain Common Areas; and to make and collect Assessments from the Owners of Lots to pay expenses set forth herein;
- 4.5 To enhance and protect the attractiveness, aesthetic beauty and values of the Lots, the Dwellings and Improvements, the Common Areas and all aspects of the Subdivision

#### DwellingARTICLE 5. PERMITTED USES AND PERFORMANCE STANDARDS

- 5.1. Permitted Use of Lots. The Lots shall be used only for the purpose of constructing single-family residential homes and for no other purposes.
- 5.2. Dwellings. Each Lot may have only one (1) single-family dwelling unit. The ACC, at its discretion, may approve or disapprove any proposed Dwelling plan based on whether it conforms to the purposes, architectural design and Dwelling standards provided in Article IV above. The minimum main floor square footage of a single-level-above-ground dwelling unit, excluding garage, basement, porch, and deck, shall be 1,800 square feet. The minimum floor square footage of a multi-level-above-ground dwelling unit, shall be (main floor, 1,700 square feet) and (second floor, 800 square feet). Basement area, garages, porches and eaves are not calculated in the square footage requirements listed above. Homes with larger square footage specifications than the above minimum requirements are encouraged. Any home proposed at or near the minimum square footage will be carefully reviewed to assess how the total square footage is calculated. A dwelling unit shall have fully enclosed garage, attached to the dwelling unit, with adequate square footage and layout to park a minimum of three (3) standard size automobiles.. Accessory structures, not attached to the dwelling unit, that meet American Fork City ("City") Dwelling and zoning guidelines Dwelling will be considered and approved or disapproved by the ACC, in its discretion, on a case by case basis. No split-entry Dwellings. No Dwellings shall exceed the City height ordinance.
- 5.3. Approval of Use and Plans. The overall architectural style, design and detailing for each Dwelling, Improvement, associated landscaping, and site use must be submitted to the ACC for its review and written approval before it may be submitted to the City for a Dwelling permit. Each plan submitted to the City must bear the signature and date signed by a member of the ACC. Extraordinarily stylized or unique Dwelling shapes or architectural styles, such as, but not limited to, geodesic domes, A-Frames,

log cabins or cubic block homes are prohibited and will not be approved by the ACC. The ACC shall, in its sole discretion, determine whether a proposed Dwelling design or style is or is not acceptable. In making such determination, the ACC will consider, in its sole discretion, whether the particular architectural style and appearance of the Dwelling is aesthetically pleasing and conforms to the general style and design of other Dwellings in the Subdivision. Dwelling No Initial Construction, including any site preparation or excavation on the Lot, or other preparatory or actual construction of the Dwelling or Improvements shall be undertaken or commence on any Lot unless and until the written plans, including architectural, engineering, site plan and other specifications requested by the ACC, together with samples of exterior Dwelling materials and colors to be used, have been delivered to, reviewed and approved by the ACC in accordance with the provisions of Article X, below. After Initial Construction has commenced, no deviations from the approved plans may be made in excavation or construction of, or any material alteration to the Dwelling or Improvements on a Lot, without first obtaining written consent of the ACC. Two sets of site, Dwelling (showing all four side elevations), fencing and landscaping plans must be submitted to the ACC for approval. Upon receipt of all required plans and specifications, the ACC shall have a reasonable time to review and respond with its approval or disapproval. The ACC may request a meeting or meetings with the Owner, architect, engineer and/or general contractor to discuss suggested changes to plans submitted as a condition of approval.

5.4. Prohibited Dwellings/Uses. No trailer, camper, motor home, vehicle, tent, shack, garage, accessory Dwelling, out-Dwelling or other similar structure or shelter shall be placed, erected or used on any Lot or portion of the Property as a temporary or permanent residence or work station. No Owner or any person acting for Owner shall permit any noxious or offensive activities to be conducted on any Lot or within the Subdivision. No Owner or anyone acting for Owner shall permit any act to be done or use made of any Lot or within the Subdivision which would constitute an unreasonable annoyance or nuisance to the Occupant(s) of the other Lots, including without limitation, any abnormal, excessive or unlawful emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke or noise, or objectionable or unsightly occurrences.

5.5. Set-Backs. For each Lot, the minimum setbacks from roadways and adjoining Lots, Common Areas, and other portions of the Property not a part of any Lot shall comply with the set back standards required by American Fork City.

5.6. Antennae. No exterior radio antennae, television antennae or other antennae, other than a standard-sized residential satellite dish commonly used, shall be erected or maintained on a Lot, Dwelling or Improvement without the prior written approval of the ACC. Approval will not be granted unless such device is not unsightly, as determined by the ACC in its sole discretion, and is in compliance with current Federal Communication Commission (FCC) standards.

5.7. Easements and Access to Utilities. Declarant has installed the following underground utilities for its own use and for the use and benefit of each Lot and the Owner and Occupants thereof, and for the use and benefit of the Association:: 5.7.1 Culinary water, natural gas, electricity, sewer and storm drain. Each Lot Owner shall be responsible to arrange with the applicable

utility provider for the initial hook-ups and cost thereof, as well as for on-going usage and service.

5.7.2 Phone and/or Internet underground transmission cables. These were installed by the phone and/or internet provider and not by Declarant. Each Lot Owner shall be responsible to arrange with the applicable internet provider for the initial hook-ups and cost thereof, as well as for on-going usage and service. .

5.7.3 Other Easements Designated on Plat. Additional easements, if any, are designated on the recorded Plat for the Subdivision.

5.7.4 Care of Easement Areas. The easement areas (excluding any equipment or appurtenances owned by the Declarant, the Association or a utility company located thereon) herein reserved shall be maintained by the Owner of the Lot upon which they are situated.

5.7.5 No Interference with Easements. No Improvements shall be placed on about any easement area located within any Lot which interfere with the intended use of or purpose of such easement(s). No activity shall be undertaken on any Lot which would interfere with the use of and access to such easement or the installation or maintenance of the utilities or facilities associated with such easement.

5.8. Lighting. All exterior lighting (and interior lighting which reflects outside any Dwelling) shall not be placed in any manner which would cause glare or excessive light spillage on a neighboring Lot.

5.9. Animals. No animals, livestock, birds, poultry, reptiles, or insects of any kind shall be raised, bred, or kept on any Lot. Provided, two (but not more than two domesticated dogs or cats ONLY (ie., two dogs or two cats or one dog and one cat), which do not constitute a danger or nuisance to other Owners or Occupants, may be kept on a Lot. No dog or cat may be kept, bred or maintained for any commercial purpose. All dogs and cats must be confined to the Owner's Lot and may not be allowed to run free. Dogs shall be placed on a leash and under the Owner's or Occupant's control at all times when not confined to an Owner's Lot. Owners shall be responsible to clean up after their animals at all times and at all locations within the Subdivision. 5.10. Septic Tanks/Cesspools. No septic tanks or cesspools shall be allowed within the Subdivision.

5.11. Grading and Drainage. A site plan indicating the proposed grading and drainage of a Lot must be approved by the City before any construction is initiated. Lot grading shall be kept to a minimum and Dwellings are to be located for preservation of the approved grade, and any grade, berms or swales shall be an integral part of the grading design. Each Owner is responsible to maintain and control drainage of runoff water on his Lot so as not to adversely affect neighboring lots or permit the excessive and unnecessary use of water.

5.12. Commercial Use Prohibited. No Lot shall be used for commercial or business activity. Provided, Declarant or persons authorized by the Declarant may use a Lot or Lots owned by Declarant as a model home or otherwise for development and sales

activities relating to the Subdivision. As used herein, "commercial or business activity" shall not include the rental by an Owner of a Lot and the Dwelling and Improvements thereon for residential purposes. Furthermore, the incidental use of a Lot and the Dwelling and Improvements thereon by an occupant for purposes incidental to a commercial or business activity shall not be a use in violation of this Section, provided that (i) such Lot is not used for storage of commercial or business items, (ii) employees, customers, clients, patrons and similar persons related to such commercial or business activity do not visit or frequent the Lot on a regular basis and there is no excessive parking or overnight parking of vehicles in front of the Owner's Lot or neighboring Lots, (iii) no exterior signage may be permitted advertising the business or indicating the presence of a business at the Lot, (iv) this section specifically prohibits use of a Lot for commercial storage, repair or sale of any vehicle, equipment, boat or other fuel operated equipment.

5.13. Maintenance and Upkeep of Lots. The following provisions shall govern the maintenance and upkeep of Lots and all Dwellings and Improvements thereon:

1. 5.13.1 Each Owner of a Lot shall maintain all Dwellings and Improvements located thereon in good condition and repair; shall keep the Dwelling and Improvements thereon painted or stained, the lawns mowed regularly, the shrubbery trimmed and flower beds weeded regularly, all broken windows shall be promptly repaired, the yard kept free of rubbish and debris, and the Dwelling, Improvements and yard maintained with an attractive appearance. .
2. 5.13.2 All damages to the Dwelling and any Improvements shall be repaired as promptly as is reasonably possible.
3. 5.13.3 A Dwelling which is vacant for any reason shall be kept locked and the windows glazed in order to prevent entrance by vandals.
4. 5.13.4 Subdivided Lots shall not be exempt from the provisions of this Declaration.
5. 5.13.5 The foregoing provisions shall not apply to subdivided land owned by the Declarant that is used for agriculture, open space, or is in a pre- development status.
6. 5.13.6 All structures, facilities, equipment, objects and conditions determined by the ACC, in its sole discretion, to be offensive or detracts from or degrades the appearance of the Subdivision, shall be enclosed within an approved structure or appropriately screened from public view, as determined by the ACC in its sole discretion. All trash, debris, garbage and refuse shall be kept at all times in a covered container which shall be emptied regularly and removed from the Subdivision.. No articles, goods, machinery, materials or similar items shall be stored, kept or maintained on a Lot in the required set-back area, or along a public or private right-of-way, or otherwise kept in the open or exposed to public view.
7. 5.13.7 Any event or condition on a Lot which the ACC or the Association determines in its sole discretion creates an unsightly appearance shall, upon notification by the ACC or the Association, be promptly corrected, removed or screened from public view, as directed by the ACC or the Association, even though the condition complained of by the ACC or the Association may not be specifically described and/or prohibited in this Declaration.
8. 5.13.8 In the event any Owner shall permit the Dwelling or any Improvement, including any landscaping, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the ACC or the Association, and/or persons or agents designated by them, upon fifteen (15) days prior written notice to the Lot Owner of such condition, shall have the right to correct the condition, and to enter upon said Lot and into any Dwelling or structure thereon, if necessary, for the

purpose of correcting or repairing the condition, and such Owner shall promptly reimburse the Association for the cost thereof.

The Owner of the offending Lot shall be personally liable, and such Owner's Lot may be subject to the filing of a mechanic's lien if repairs or improvements are made to the Lot for all costs and expenses incurred by the Association in taking such corrective action, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor, or the amounts may, at the option of the Board, be levied as a Limited Assessment against said Lot and such Limited Assessment shall be enforceable in the same manner provided for the enforcement of other assessments set forth in Article 8 of this Declaration.

5.14. Mining and Drilling. No Lot shall be used for the purpose of mining, quarrying, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth; provided that the Declarant or the Association retains the right to drill for and extract water and Declarant or the Association may conduct excavation as required for any improvements.

5.15. Boats, Campers and Other Vehicles. Trailers, mobile homes, motor homes, trucks larger than standard pickups, boats, tractors, campers, off-road recreational vehicles, garden or maintenance equipment and vehicles other than automobiles (collectively, "Non-Standard Vehicles"), when not in actual use, shall be kept at all times in an enclosed permitted structure or in a paved and fenced side yard area next to the garage. All fencing must conform to the requirements set forth in Section 5.24, must be of a height sufficient to block view of the Non-Standard Vehicle from adjacent streets and must be approved by the ACC. At no time shall any Non-Standard Vehicle be parked or stored on a public street or private right-of-way within the Subdivision or left over night in the driveway or front yard of any Lot. The parking or storage within the Subdivision of commercial equipment, including, but not limited to, truck trailers or cabs, construction or excavation equipment, etc., is prohibited. The primary purpose of the garage required on each Lot is for the parking and storage of automobiles, pickups, motorcycles, and other similar vehicles (collectively, "automobiles"). No other use of a garage or the conversion of a garage, which prohibits or limits the use of a garage for the parking or storage of the number of automobiles for which it is designed, shall be permitted. The parking of automobiles on the lawn or unpaved portion of a Lot or in a public or private right-of-way within the Subdivision, other than for a temporary purpose (as determined by the ACC), is prohibited. No inoperative vehicle shall be parked or stored at any time on a Lot unless wholly within an enclosed permitted structure. The Association, in its discretion, may enforce the parking restrictions by towing vehicles which are in violation thereof. The costs incurred by the Association to tow a vehicle shall be charged to the Owner of the Lot associated with such parking violation and collected as an Assessment pursuant to Articles VIII and IX herein.

5.16. Garage Doors. Operable garage doors are required on each garage stall opening. Open carports and storage are prohibited. Garage doors shall be kept closed except when opened for a temporary purpose.

- 5.17. Exterior Dwelling Materials and Colors. All exterior Dwelling materials and colors shall be pre-approved by the ACC prior to their installation. Roofs of bright colors shall be prohibited. No gravel roofs shall be permitted.
- 5.18. External Energy Devices. No energy producing devices including, but not limited to, generators of any kind shall be constructed or maintained on any Lot without the prior written approval of the ACC, except for heat pumps or similar appliances shown on the plans approved by the ACC. Solar panel use shall be permitted provided the ACC has reviewed and pre-approved the size, placement, and nature of the solar panels prior to installation.
- 5.20. Mailboxes. No free-standing mailbox shall be constructed or installed on any Lot without the prior written approval of the mailbox plans by the ACC and shall be prohibited if the United State Postal Service refuses to deliver mail to them. Community mailboxes have been or will be placed within the Subdivision at locations determined by United States Post Master.
- 5.21. Signs. No commercial billboard or advertising shall be erected or displayed to the public view on or from any Lot. Owners may advertise a dwelling and Lot for rent or for sale by displaying a single, attractive, reasonably sized "For Rent" or "For Sale" on the Lot. During the construction of a Dwelling on a Lot, signs advertising the name of the builder and/or the institution providing financing may be displayed on a Lot. Lighted, moving or flashing signs for any purposes are prohibited. Directional or identification signs may be used to give directions to traffic or pedestrians or to give special instructions provided they are approved by the ACC prior to installation. The ACC may promulgate sign guidelines to regulate project and builder signage.
- 5.23. Subdividing. No Lot which has been platted and approved as a final Dwelling or residential Lot (whether for single-family Dwellings or otherwise as permitted) may be further subdivided or partitioned. Nor may any easement or other interest Lot, less than the whole interest, be conveyed by the Owner thereof without the prior written consent of the ACC. Provided, an Owner may transfer or sell any Lot to more than one person which may owned and held by them as tenants in common, joint tenants, or tenants by the entirety. In addition, the conveyance of an insignificant portion of a Lot to the Owner of the Lot which abuts the conveyed portion for the purpose of correcting a common boundary or other similar purpose, shall not be deemed to be a subdividing of a Lot within the prohibition contained herein.
- 5.24. Fences. No fence, wall, hedge, high planting, obstruction or other visual or privacy barrier (hereafter collectively "fence") of any kind shall be constructed on a Lot unless the plans and specifications therefor, including the location, design, height, materials and color thereof have been approved in writing by the ACC prior to the construction or installation. OWNERS SHOULD NOT ORDER FENCE MATERIALS PRIOR TO ACC APPROVAL. Vinyl, cedar and chain-link fences are prohibited. It is the intent of the Declarant to create a harmonious landscaped appearance throughout the Subdivision, and all decisions with respect to fences shall be governed and approved or disapproved by the ACC in its discretion. Fences shall be Precast concrete, concrete appearance, or synthetic fence with appearance of

masonry or slate. All fences constructed on a Lot shall be in compliance with the applicable ordinances of the City of American Fork, Utah.

All fences constructed on a Lot shall be subject to the following restrictions:

5.24.1 Fences shall not project forward beyond the front yard setback or the principal Dwelling (whichever distance is greater) on the Lot. No fence higher than six feet (6') shall be allowed without the prior approval of the ACC.

5.24.2 All fences shall be constructed and installed and maintained in good appearance and condition at the expense of the Owner of the Lot on which they are located and all damaged or deteriorated fences shall be repaired or replaced to their original design, materials and color within a reasonable time after said damage or deterioration occurs.

5.24.3 No fence shall interfere with the use and enjoyment of any easement reserved in this Master Declaration or shown on the recorded Subdivision or any Plat within the Subdivision.

5.24.4 All fences, including fences constructed or installed on the interior of a Lot, e.g. dog runs, swimming pool, etc., whether or not they are visible from an adjoining Lot or from a street within the Subdivision, shall be subject to prior approval by the ACC.

SECTION 5.25. Landscaping. The following provisions shall govern the landscaping of Lots within the Subdivision:

5.25.1 Prior to the installation of any landscaping on any Lot, the Owner shall prepare a landscape plan and submit two (2) copies of the same to the ACC as provided in Article X below. The ACC shall review such plan and respond to the Owner with its approval or disapproval in a timely manner. If a plan is disapproved, the Owner may request a meeting with the ACC to discuss and try to resolve any differences. Landscaping of any Lot must be in accordance with a plan approved by the ACC.

5.25.2 The minimum landscaping requirements shall be as follows:

(i) Innovative landscape designs are encouraged, including sculptured planting areas, berms or other features with screening or bordering of foundations, fences (if any), curbs and other similar elements of the improvements on the Lot.

(ii) The initial landscaping shall include, as a minimum, the following: Sod or hydroseed in the front, two (2) trees of at least two inch (2") caliper in the front yard and two trees of at least two inch (2") caliper in the back yard. Any required street trees per American Fork City ordinance.

(iii) All yards shall be irrigated with an automatic underground sprinkler system.

(iv) All required landscaping on a Lot shall be installed within one hundred-eighty (180) days after the earlier of the following: (a) substantial completion of the Dwelling



on the Lot, or (b) occupancy of the Dwelling by an Occupant, with a reasonable extension for winter weather.

- 5.26. ACC Construction Standards. The Declarant, or in the event of the Declarant's failure to do so, the ACC, shall have the power to promulgate ACC Construction Standards as defined in Section 3.2 of this Declaration relating to the planning, construction, alteration, modification, removal or destruction of Improvements within the Property deemed necessary or desirable by the Declarant, or the ACC, as the case may be, to carry out the purposes of this Declaration. All Owners (and builders engaged by Owners) to build on and improve Lots shall be required to observe and comply with the Construction Standards. Failure to do so will subject the Owner to money damages and injunctive relief by the ACC, the Association and the other Owners.
- 5.27. Exemption Of Declarant from ACC Construction Standards. Nothing herein contained shall limit the right of the Declarant to subdivide or re-subdivide any Lot or portion of the Property or to grant licenses, reservations, rights-of-way or easements with respect to Common Areas to utility companies, public agencies or others; or to complete excavation, grading and Development Activities to or on any Lot or other portion of the Property owned or controlled by the Declarant, or to revise its plans to do any the foregoing, or to change its Development Activities, plans and designs, or to construct additional Improvements as the Declarant deems advisable in the course of its Development Activities conducted in the Subdivision. This Master Declaration shall not limit the right of the Declarant at any time prior to acquisition of title to a Lot by an Owner to establish on that Lot additional licenses, restrictions, reservations, rights- of-way and easements to itself, to utility companies and to others, as may from time to time it may deem reasonably necessary or desirable. The Declarant need not seek or obtain ACC approval of any Improvements constructed on or placed within the Property by the Declarant in connection with the Development Activities of the Subdivision, but this exemption shall not apply to any Dwelling constructed by the Declarant on a Lot owned by the Declarant.
- 5.28. Renting and Leasing. Any agreement by an Owner for renting, leasing, or permitting the non-Owner occupancy of a Lot (collectively, a "Lease") to another party (collectively, a "Tenant") shall be in writing and Owner shall deliver a copy of the written Lease, dated and signed by the parties, to the Association before the term of the Lease commences. Every Lease shall provide (and every Tenant shall agree) that the terms of such Lease shall comply with and be subject in all respects to the provisions of this Declaration, the Bylaws, Construction Standards, and the rules and regulations promulgated from time to time by the Association (collectively the "Governing Documents") and that any failure by a Tenant to comply with the terms of the Governing Documents shall be and constitute a material default under the Lease. In such case, the Declarant or the Association shall be deemed a third-party beneficiary under such Lease and may exercise all rights and remedies of the Owner as landlord to enforce the provisions of the Governing Documents.

No Owner shall be permitted to lease his/her Lot for transient, hotel, seasonal, corporate, or executive use purposes, or for periods of less than one (1) year. Daily or weekly rentals are prohibited. No Owner may lease individual rooms to separate persons or less than his/her entire Lot.

Any Owner who leases his/her Lot shall be responsible for assuring compliance by the Tenants with the Governing Documents. Failure of an Owner to take legal action, including without limitation the institution of eviction proceedings against a Tenant who is in violation of the Governing Document, within 10 days after receipt of written demand from the Association shall entitle the Association to take any and all such action including the institution of unlawful detained or eviction proceedings for and on behalf of such Owner against said Tenant. Neither the Association nor any person, entity or agent retained by the Association to manage the Subdivision and affairs of the Association shall be liable to the Owner or Tenant for any unlawful detainer or eviction action undertaken under this Section that is made in good faith.

Any expenses incurred by the Association pursuant to this section, including attorney's fees and costs of suit, shall be repaid to it by such Owner and shall be a debt of the Owner owed to the Association at the time the Limited Assessment is made and the Association shall be entitled to collect the Limited Assessment and enforce its rights with respect thereto as provided in this Declaration.

#### ARTICLE 6. AUTUMN CREST OWNERS ASSOCIATION.

- 6.1. Organization of Association. The Association shall be organized by the Declarant as a Utah non-profit corporation and shall be charged with the duties and vested with the powers prescribed by law and set forth in its Articles of Incorporation, its Bylaws and this Declaration. Neither the Articles of Incorporation nor the By-Laws shall be amended or changed so as to be inconsistent with this Declaration.
- 6.2. Members.. Each Owner shall be entitled and required to be a member of the Association. There shall be two (2) classes of membership in the Association, as set forth in Section 7.1. Membership will begin when a person or entity becomes an Owner of a Lot and shall terminate when a person or entity ceases to be an Owner of a Lot. If title to a Lot is held by more than one person or entity, membership appurtenant to that Lot shall be in proportion to the undivided interest such person or entity holds in the Lot (if held as tenants in common) or if held in joint tenancy, each joint tenant's membership interest percentage shall be equal to each other joint tenant's membership interest percentage. An Owner shall be entitled to one membership for each Lot owned. Each membership shall be appurtenant to the Lot to which it relates and shall be transferred automatically upon conveyance of that Lot to the successor Owner of such Lot. Ownership of a Lot within the Subdivision shall not be separated from the Association membership appurtenant thereto, and any devise, encumbrance, conveyance or other disposition of a Lot shall constitute a devise, encumbrance, conveyance or other disposition, respectively, of such Owner's membership in the Association and the rights appurtenant thereto. No person or entity other than an Owner may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Lot to a successor Owner. No Mortgagee, beneficiary of a trust deed or other person or entity holding a lien on a Lot may become a member of the Association or be entitled to vote in any Association matter unless and until such person or entity acquires fee title ownership of such Lot.

6.3. Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers or managers as the Directors may elect or appoint, in accordance with the Articles and Bylaws, as the same may be amended from time to time.

6.4. Powers of Association. The Association shall have all powers of a non-profit corporation organized under the laws of the State of Utah subject only to such limitations, if any, as are expressly set forth in the Articles of Incorporation, the Bylaws or this Declaration. The Association shall have the powers which are authorized, required or permitted to be done under its Articles of Incorporation, Bylaws and this Declaration, and to do and perform any and all acts which may be necessary or proper for, or incident to, the management and operation of the Association and the performance of its duties and responsibilities including, but not limited to, the following:

6.4.1 Assessments. The power to levy Regular, Special and Limited Assessments on the Owners and/or Lots and to enforce payment thereof in accordance with the provisions of this Declaration.

6.4.2 Right of Enforcement. The power and authority to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of its Articles of Incorporation, Bylaws, this Declaration and ACC Construction Standards, any other rules and regulations promulgated by the Association, and to enforce by injunctive relief or otherwise, all provisions of the foregoing.

6.4.3 Delegation of Powers. The authority to delegate its powers and duties to committees, officers, managers, employees, or to any person or entity to act as a representative or agent of the Association in the conduct of its business and affairs.

6.4.4 Liability of Directors, Officers and Agents. No Director, officer or manager of the Association, or other person or entity duly appointed to act for the Association, shall be personally liable to any Owner or other party, for any damage, loss or prejudice suffered or claimed on account of act, error, or omission of such person or entity acting for or on behalf of the Association, the Board, or the ACC, provided that such person or entity acted in good faith without willful or intentional misconduct.

6.4.5 Association Rules and Regulations. The Association shall be authorized and empowered to adopt rules and regulations ("Rules and Regulations"), and to amend, and repeal the same (including appropriate fines for violations thereof) as the Association deems necessary and advisable to govern and regulate the affairs of the Association, the Subdivision, the Owners (as owners of Lots and members of the Association, and Occupants of Lots. Such rules shall set forth standards and restrictions to govern the use by Owners, Occupants and other persons of Common Areas, the Lots and all other property comprising the Subdivision; provided, however, Association rules and

regulations shall not discriminate among Owners and shall be in compliance with the Association's Articles of Incorporation, Bylaws or this Declaration. A copy of Association rules and regulations as they may from time to time be adopted, amended or repealed, shall be mailed or delivered to each Owner and to each known Occupant. Upon such mailing or delivery, the Association's rules and regulations shall have the same force and binding effect as if they were set forth in this Declaration. In the event of any conflict between an Association rules and regulations or any provision of the Association's Articles of Incorporation, Bylaws or this Declaration, the conflicting provisions of the Association's rules and regulations shall be deemed superseded to the extent of any such inconsistency.

6.4.6 Emergency Power. Any Director, officer, manager or other person authorized by the Association, may (without prior notice) enter onto any Lot or into any Dwelling or other structure on a Lot in the event of any emergency involving, but not limited to, illness of an Owner or Occupant, potential danger to life or property, or under other exigent circumstances, or when deemed necessary in connection with any maintenance or construction for which it is responsible. Such entry shall be made with as little inconvenience to the Owner or Occupants as practicable and any damage caused by the Association's entry shall be repaired by the Association at its cost, if such entry was unwarranted, but the Association shall not be responsible for damages if its entry was necessitated by a condition caused by the Owner or Occupant.

6.4.7 Licenses, Easements and Rights-of-Way. The power to grant and convey to any third party such licenses, easements, rights-of-way or fee title in, on, through, under or of the Property as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment thereof and for the preservation of health, safety, convenience and welfare of the Owners and Occupants, for the purpose of constructing, erecting, operating or maintaining:

(i) Underground lines, cables, wires, conduits and other devices for the transmission of any utility or other service.

(ii) Public sewers, storm drains, water drains and pipes, water systems, sprinkling and irrigation water systems, water, heating and gas lines or pipes.

(iii) Any similar public or quasi-public improvements or facilities including but not limited to parks, pathways, streets, nature trails, recreational facilities, pools, ponds, entrances, waterways, open spaces, clubhouses, game rooms, craft and handicraft facilities, greenhouses, hobby facilities and all other common amenities pertaining to the Development Activities, providing that the particular feature or facility has been deeded by the Declarant to the Association.

6.4.8 Fiscal Year. The Board shall have the right, in its discretion, to elect a fiscal year for the Association instead of a calendar year for budget, Assessment and accounting purposes.

6.4.9 Fines. The Board shall have the right to levy fines against Owners and Lots for violations by the Owners or their Occupants of the provisions of this Declaration, the Bylaws, Construction Standards, or rules and regulations. The amount of the fines shall be determined by a Board and shall be published in a Schedule of Fines. The Board shall have the right to amend the Schedule of Fines from time to time as it sees fit. Fines shall be considered an Assessment against the Lot and shall be collectible as an assessment pursuant to Articles VIII and IX herein.

6.5. Duties of Association. In addition to the powers delegated to it by its Articles of Incorporation, Bylaws and this Declaration, and without limiting the generality thereof, the Association, its Directors, officers, managers and authorized agents shall conduct all Association affairs in the common interest of all Owners and shall undertake and perform the following duties:

6.5.1 Identification Signs. Maintain, repair and replace all permanent entry and special identification signs for the Subdivision, whether they are located within or outside the boundaries of the Subdivision.

6.5.2 Rule Making and Enforcement. Make, establish, promulgate, amend and repeal Association rules and regulations and enforce such rules and regulations.

6.5.3 Architectural Control Committee. Appoint and remove members of the Architectural Control Committee, subject to the provisions of this Declaration.

6.5.4 Other Acts; Enforcement of Declaration. Perform such other acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce any of the provisions of this Declaration .

7.6. Budgets and Financial Statements. In advance of each fiscal year, the Association shall prepare budgets of expected receipts and disbursements for the coming fiscal year to be distributed at the Association's annual meeting. The Association's financial statements for each past fiscal year shall be prepared and distributed to members at the Association's annual meeting or at another time as follows:

6.6.1 A pro forma operating statement (budget) for the coming fiscal year.

6.6.2 Within ninety (90) days after the close of each fiscal year, the Association shall cause to be prepared a balance sheet as of the last day of the Association's prior fiscal year and an annual operating statement for such prior fiscal year which reflects the receipts and expenditures of the Association for that fiscal year.

## ARTICLE 7. CLASSES OF MEMBERS AND VOTING

7.1. Classes of Members and Voting. The Association shall have two (2) classes of membership, each of which shall be entitled to the following voting rights:

7.1.1 Class A. Each Owner of a Lot, which is an Assessable Lot, shall be a Class A Member of the Association, and each Owner shall be entitled to one (1) vote for each Lot owned. If a Class A Member is comprised of multiple persons or entities, such Class A Member vote shall be determined and cast by the joint owners in proportion to their percentage ownership interest in the appurtenant Lot as determined in Section 7.2 above.

7.1.2 Class B. Declarant shall be a Class B Member of the Association and shall be entitled to three (3) votes for each Lot owned by Declarant as an Owner or as a designated representative of the Owner of a Lot. Declarant shall be entitled to cast three (3) votes for each such Lot.

7.2 At any meeting of the Association, each Owner of a Unit (including Class A and Class B Members of the Association), either in person or by proxy, shall be entitled to cast the number of votes pertaining to their representative Units for any matter submitted to the Association for a vote by Members.

## ARTICLE 8. ASSESSMENTS

8.1. Covenant to Pay Assessments. Each Owner, by its acceptance of a deed to and ownership of a Lot, covenants and agrees to pay when due all Regular, Special and Limited Assessments or charges, including Fines, made and assessed by the Association (collectively referred to as "Assessment").

All such Assessments, together with interest, costs, Fines (if any) and reasonable attorneys' fees which may be incurred in collecting the same, shall be a charge on the Lot owned by the Owner to which the Assessment was made and shall be a continuing lien upon such Lot, and shall also be the personal obligation of the Owner of such Lot at the time when the Assessment, Fine and other associated costs become due and payable, provided, however, that all such Assessments shall be junior and subordinate to the lien of a First Mortgage or First Deed of Trust encumbering the Lot. Though Assessments, Fines or other amounts shall become a lien upon the Lot and paid from the proceeds of closing on the sale of the Lot (if not paid sooner), the personal obligation of an Owner for delinquent Assessments shall continue as a personal obligation of Owner after his sale of the Lot, such personal obligation of the Owner shall not pass to an Owner's successors in title unless expressly assumed by them. No Owner may waive or otherwise avoid liability for any Assessment by abandonment of his Lot.

8.2. Regular Assessments. Regular Assessments shall be assessed on a calendar year basis unless otherwise determined by the Board. The Regular Assessments shall be based upon advance estimates of annual cash requirements of the Association as determined by the Board for the maintenance and operation of the Common Areas and all easement areas, if any, owned and/or controlled by the Association and for the performance by the Association of its other duties and responsibilities. Such estimates may include, but shall not be limited to, expenses of management, administration and ACC activities, taxes and special assessments of local governmental units, premiums for all insurance which the Association is required or permitted to maintain under this Declaration or otherwise, landscaping and care of grounds, lighting, water charges, trash collection, sewerage charges, repair and

maintenance, legal and accounting fees, and any operating deficits remaining from previous periods, the creation of a reserve, surplus and/or sinking fund(s), and other expenses or obligations incurred or expected as they may be required by the Association in compliance with this Declaration.

- 8.3. Special Assessments. In addition to Regular Assessments and Limited Assessments, the Association may levy at any time a Special Assessment payable over such period as the Board may deem appropriate for the following purposes:

8.3.1 To defray, in whole or in part, the cost of any construction or reconstruction of additions of or improvements to Common Areas or easements, the furnishing of special services (other than those assessed as a Limited Assessment), or for any other expenses which may be incurred as provided or contemplated in this Declaration.

8.3.2 To cure a deficit in the common and ordinary expenses of the Association for which Regular Assessments for a given calendar or fiscal year are or will be inadequate, as determined by the Board.

- 8.4. Limited Assessments. In addition to Regular and Special Assessments, Owners shall pay Limited Assessments as follows:

8.4.1 Maintenance and Repair. The Association shall have the power to incur expenses for maintenance and repair of any Lot or any Dwelling or Improvements or landscaping on a Lot, if such maintenance and repair is necessary, in the opinion of the Board, to maintain the upkeep and appearance and to protect any portion of the Subdivision, and if the Owner of said Lot has failed or refused to maintain or repair such Dwelling or Improvement of landscaping within a reasonable time after written notice has been delivered by the Board to said Owner. The Board shall levy a Limited Assessment against the Owner of a Lot to pay for the cost of such maintenance and repair, and any other cost or expense, including attorneys' fees, arising out of or incident to such maintenance and repair and the Assessment therefor.

8.4.2 Correction of Violations. In addition to maintenance and repair, the Board, upon certification from the ACC of the failure or refusal of an Owner to correct a violation of this Declaration or the ACC Construction Standards, shall have the power to correct any such violation on a Lot, Dwelling or Improvement on a Lot, and incur and collect from the Owner costs necessary in connection therewith. The cost of such corrective action, together with interest, related expenses and attorneys' fees shall be assessed and collected as set forth in Articles VIII and IX of this Declaration.

8.4.3 Limited Purpose. The Association shall have the power to levy a Limited Assessment against Owners and Lots for any limited special purpose which the Board believes is necessary with respect to such Lots but not an appropriate expense for payment by the Association. Such Limited Assessment shall not be made until the Owners of said Lots subject thereto have been given an opportunity, after notice, to participate in a hearing with respect to said Limited Assessment.

- 8.5. Commencement of Regular Assessments. Regular Assessments of the Association against each Lot shall commence on the date the Declarant (or other Owner as

applicable) conveys title to the Lot to an Owner or successor Owner. If the Declarant pays all or any portion of the expenses of the Association in excess of the amount assessed to Lots owned by the Declarant, such excess amounts so paid shall constitute a prepayment of Assessments (Regular and Special) which shall become due and payable on the Lots owned by the Declarant within the Subdivision; provided that unless such excess amounts so paid by the Declarant are paid pursuant to a written agreement with the Association which provides for reimbursement to the Declarant, the Declarant shall not be entitled to reimbursement for any excess Assessment nor shall such excess Assessment accrue to or become the obligation of the Owner purchasing a Lot from the Declarant, unless such person is the successor to substantially all of the interest of the Declarant in the Property. 8.6. Uniform Rate Of Assessment. Except as expressly provided to the contrary in this Declaration, Regular and Special Assessments of the Association shall be filed at a uniform rate for all Lots; provided, if any Lots have a fair market value which is disproportionately greater or lesser than the average Lot, the Association may weight the Regular and Special Assessments in accordance with such disproportionate valuations.

- 8.7. Assessment Due Date. The due dates for Regular and Special Assessments and Fines shall be the first day of the first month of the second calendar quarter, unless some other due date is established by the Board. Limited Assessments and Fines may be assessed at any time once they are determined upon written notice to the Lot Owner. Each installment of an Assessment shall be delinquent if not paid within fifteen (15) days after the due date thereof. Nothing herein contained shall prohibit the Board from requiring that Special or Limited Assessments be paid in a lump sum instead of installments.
- 8.8. Interest and Penalties. Any Regular, Special or Limited Assessment, or fines levied by the Association on Lots, if not paid when due, shall bear interest at an annual rate as shall be set by the Board from time to time, or if no interest rate is set, at an annual rate of twelve percent ( 12%). Such interest shall commence on the date the Assessment becomes due and payable. In addition to the interest charge the Board may, in accordance with rules and regulations promulgated by it, impose additional Fines or charges for the failure of an Owner to timely pay any Assessment when due. The right of the Board to charge interest or impose additional Fines or charges shall be in addition to, and not in lieu of, any other rights and remedies of enforcement or sanction available to the Board in the event of non-payment of an Assessment.
- 8.9. Estoppel Certificate. The Association, upon not less than twenty (20) business days prior written request, shall execute and deliver to a party making a request (and having a valid right to receive such request) a written response ("estoppel certificate") stating whether or not to the knowledge of the Association, a particular Owner is in default under the provisions of this Declaration, and further stating the dates which Assessments have been paid by said Owner, it being intended that any such estoppel certificate delivered pursuant to this Section may be relied upon by any prospective purchaser or Mortgagee of said Lot. Provided, the purpose of such certificate shall not extend to any default as to which the Association shall have had no actual knowledge, nor to any architectural or structural warranty or representation.



Plans and specifications reviewed by the ACC shall not be deemed approved for engineering or structural design or quality of materials, and any approval by the ACC of such plans and specifications shall be for the purposes of maintaining the integrity and harmony of design and aesthetic appearance of the Subdivision only, , and neither the ACC nor the Association assumes liability or responsibility for any defect in any Dwelling, Improvement or structure constructed based on such plans and specifications.

The Association shall have the right to charge a reasonable fee for the certification herein provided.

- 8.10. **Certificate of Compliance Upon Sale.** At least fourteen (14) days prior to the sale or transfer of any Lot, Dwelling or Improvement, the Owner selling or transferring such improved Lot shall notify the ACC in writing of the proposed sale or transfer and shall request the ACC to issue a Certificate of Compliance affirming that the improved Lot is in compliance with this Declaration. The ACC shall within five (5) business days of it's receipt of the request, inspect the improved Lot and any improvements constructed erected, placed thereon to make sure they are in compliance with the architectural control provisions of this Declaration.

If the ACC finds the improvements on the Lot to be in compliance with the architectural control provisions of this Declaration, the ACC shall issue a Certificate of Compliance to the selling or transferring Owner within five (5) business days following the ACC's receipt of the written request for such certificate. The purchaser or transferee of such improved Lot shall be entitled to rely on this Certificate of Compliance as evidence of the non-existence of violations, except any violations which the purchaser has actual knowledge and notice of at the time of it acquires the improved Lot.

If the ACC finds the improved Lot to be in violation of the architectural control provisions, the ACC shall issue a Certificate of Non-Compliance to the Owner of the improved Lot within five (5) business days of the ACC's receipt of the written request for such certificate. The Certificate of Non-Compliance shall, with particularity, describe the violations and actions to be taken which are necessary to bring the improved Lot into compliance. The selling or transferring Owner shall then have the earlier of ten (10) days or the date of the proposed sale or transfer of the Property to remedy the violations and request a Certificate of Compliance from the ACC as provided herein.

If the ACC fails to issue either a Certificate of Compliance or of Non-Compliance within this five (5) day period, the Owner shall notify the ACC in writing of the ACC's failure to timely respond to the request for the certificate. The ACC shall then issue a Certificate of Compliance or Non-Compliance within two (2) business days from the ACC's receipt of such written notice. If the ACC fails to issue either a Certificate of Compliance or a Certificate of Non-Compliance within such two (2) day period, a Certificate of Compliance by the ACC shall be deemed given. If an improved Lot is sold or transferred without compliance with the provisions of this Section, the purchaser shall be jointly and severally responsible with the selling or transferring Owner for the violations and shall be bound by any and all remedies available to the Association and/or the ACC for the violations, including but not

limited to, the Association's power to impose Fines to require the selling or transferring Owner and/or the purchasing Owner to remedy the violations. Alternatively, the Association may remedy the violations on its own initiative and assess the costs thereof to the selling or transferring Owner and/or the purchasing Owner.

The Association or the ACC may charge reasonable fees to cover the costs associated with the issuance of Certificates of Compliance or Non-Compliance, or reinspections to issue same.

#### ARTICLE 9. ENFORCEMENT OF ASSESSMENTS

9.1. Right to Enforce. The Association shall have the rights and remedies to collect and enforce payment of the Assessments, including Fines and costs associated therewith, made by the Association. Each Owner of a Lot consents to the Association's right to enforce payment by the Owner of all Assessments in the manner provided in this Declaration. In the event an attorney is retained to collect an Assessment, whether by written demand or lawsuit, or to enforce compliance with or the specific performance of any of the terms and conditions of this Declaration, the Owner against whom such enforcement is sought shall pay reasonable attorneys' fees in connection therewith.

9.2. Creation of Assessment Liens. There is hereby created a continuing claim of lien with power of sale on each and every Lot to secure payment of any and all Assessments levied against any and all Lots in the Subdivision pursuant to this Declaration, together with interest thereon and all cost of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees.

Said lien shall be prior and superior to all other liens or claims created subsequent to the recordation of this Declaration except only for: (i) valid tax and special assessment liens on Lots in favor of any governmental unit assessing authority; (ii) a lien for all sums unpaid and secured by a first Mortgage or first Deed of Trust, duly recorded in Utah County Recorder's office, including all unpaid obligatory advances to be made pursuant thereto; and (iii) labor or materialman's liens, if the same are filed at a time and in a manner which gives them priority under applicable law.

All other lien holders acquiring liens on any Lot after recordation of this Declaration shall be deemed to consent that such liens shall be inferior liens to the lien for Assessments levied by the Association, whether or not such consent is specifically set forth in the instruments creating such other liens.

9.3. Notice of Assessment. If an Owner fails to pay an Assessment within thirty (30) days of its due date, the Association shall prepare a written Notice of Assessment setting forth the type of Assessment, the amount of the Assessment, the due date thereof, including the amount and due date of installments (if permitted), the amount remaining unpaid at the time of filing, the name of the record Owner of the Lot and a legal description of the Lot. Such Notice shall be signed by the an authorized representative of the Association, acknowledged by a Notary Public and recorded in the office of the Utah County Recorder. At such time as a delinquent Assessment is paid in full together with all associated Fines and costs, the Association shall prepare and record a Notice of Satisfaction with respect thereto.

- 9.4. Enforcement. Upon the failure of an Owner of a Lot to pay an Assessment levied against such Lot in accordance with its terms, the lien for Assessment herein created on such Lot may be enforced by the Association's foreclosure of such lien and sale of such Lot, pursuant to either a power of sale or judicial foreclosure and sale, as provided under Utah law . In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including all reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire the foreclosed Lot and thereafter to hold, convey, lease, rent, encumber, use and otherwise deal with said Lot as the Owner thereof.
- 9.5. Suspension of Voting Rights. During any period of time in which a Regular, Special or Limited Assessments remains unpaid, the Owner's voting rights shall be suspended on any matter requiring a vote of the Association's member at any meeting of the Association, including Board meetings if the delinquent Owner is a Board member.
- 9.6. Notice Required. Notwithstanding anything to the contrary contained in this Declaration, no action may be brought to foreclose the lien for any Assessment and sell the Lot, whether by power of sale or judicial action, until the expiration of thirty (30) days after written notice of default has been deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed to the Owner of the Lot described in such Notice at the last known address of the Owner as shown on the books and records of the Association. Said written notice shall specify the amount and due date of the unpaid Assessment and the legal description of the Lot.
- 9.7. Reporting. The Association shall provide a Mortgagee with a copy of a notice of default served on an Owner under Section 9.5, above. The duty to give such Notice shall arise only after said Mortgagee furnishes to the Association written notice of a Mortgage (or Deed of Trust) which shall contain the following:
- (a) The name and address of said Mortgagee;
  - (b) A legal description of the Lot subject to the lien of the Mortgage by Lot, Block and Subdivision;
  - (c) The name and address of the Owner;
  - (d) The date the lien of the Mortgage was filed of record in American Fork, Utah, and the instrument number thereof;
  - (e) The maturity date of the obligation secured by said Mortgage lien;
  - (f) A copy of a title insurance report evidencing that the Mortgagee is the holder of a first Mortgage or the beneficiary of a first Deed of Trust;
  - (g) The signature of the Mortgagee or authorized agent.

In the event the Association shall be required to notify a Mortgagee as herein provided, the Association shall assess the Owner who is delinquent the sum of \$25.00 as a reasonable charge for such notification and such charge shall be a cost of collection secured by the Assessment lien described in Section 9.2, above. The charge for such notification shall be subject to change by the Board.

9.8. Term of Assessment. Unless sooner satisfied and released or the enforcement thereof initiated as provided in this Article, the lien for any Assessment levied under this Declaration shall expire and be of no further force or effect after a period of five (5) years from the later of (i) the date of said Assessment, or (ii) the date the last installment thereof is due and payable. Provided that the expiration of the lien as provided herein shall not release an Owner from the personal obligation to pay any Assessment.

9.9. Non-Exclusive Remedy. The remedies set forth in this Article or elsewhere in this Declaration shall not be deemed to be the exclusive remedies and the Association may pursue all other remedies available at law or in equity.

#### ARTICLE 10. ARCHITECTURAL CONTROL COMMITTEE

10.1. Members of the Committee. The Architectural Control Committee ("ACC") shall be comprised of at least three (3) persons, all of whom shall be appointed by the Association as herein provided. A member of the ACC shall hold office until he has resigned or has been removed, but in any event, until said member's successor has been appointed. Members of the ACC may be removed at any time, with or without cause.

10.2. Appointment. So long as the Declarant owns any Lot or parcel within the Property, the Declarant shall have the sole right to appoint and remove all members of the ACC. Thereafter, all members of the ACC shall be appointed or removed by the Board.

The ACC shall have the right by a resolution in writing unanimously adopted, to designate one (1) of its members to take any action or perform any duties for and on behalf of the ACC. In the absence of such designation, the vote of any two (2) members of the ACC shall constitute an authorized act of the ACC.

10.3. Compensation. The members of the ACC may receive compensation for services rendered upon execution of an agreement with the Board relative to such compensation, and shall be reimbursed for actual expenses incurred by them in the performance of their duties hereunder.

10.4. Limitation on Liability. Neither the ACC, or any member thereof, or the Declarant or any director, officer, employee, agent, successor or assignee thereof, shall be liable to the Association, any Owner or any other person for any loss, damage or injury arising out of or connected with the performance by the ACC (or on behalf of the ACC) of its duties and responsibilities by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve an any Dwelling plans and specifications, or any other matter presented to it for its response or action.

Every person who submits an plans and specifications to the ACC for approval agrees, by submission of such plans and specifications, and every Owner or Occupant of any Lot agrees, by acquiring title thereto or an interest therein, not to bring any action or suit against the Association, the ACC, or any member thereof, or the Declarant or any officer, partner, employee, agent, successor or assignee thereof to recover any damages.

- 10.5. Approval Required. No construction, improvement, alteration, modification, removal or demolition of any Dwelling or Improvements on any Lot of any nature whatsoever, whether real or personal in nature, shall be initiated or be permitted to continue or exist within the Subdivision without the prior express written approval of the ACC.
- 10.6. Variances. The ACC may authorize variances from compliance with the requirements of any covenants, conditions and restrictions contained in this Declaration, the ACC Construction Standards, or any prior approval when, in the sole discretion of the ACC, circumstances such as topography, natural obstructions, aesthetics or environmental considerations or hardship may dictate or require. Such variances must be applied for by the Owner in writing and be approved in a writing signed by at least two (2) members of the ACC.

If a variance is granted as provided herein, no violation of this Declaration, ACC Construction Standards or prior approval shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or the ACC Construction Standards for any purpose except as to the particular subject matter of the variance thereof and the specific Lot covered thereby. The ACC shall have the right to consider and grant a variance as herein provided either with or without notice to other Owners or a hearing of Owners thereon.

The granting of a variance by the ACC pursuant to this Section shall not relieve the Owner from the obligation to fully comply with the applicable Dwelling ordinances of American Fork City, Utah County, and State of Utah.

- 10.7. Application. To request ACC approval for the construction, alteration, modification, removal or demolition of any Dwelling or Improvements on any Lot, the Owner shall submit a written application in a form required by the ACC which must be signed by the Owner and contain all information requested and be accompanied by all other material to be submitted as hereafter provided.

All applications for approval of Dwelling plans and specifications must contain, or have submitted therewith, two (2) copies of each of the following (collectively called "plans and specifications") prepared in accordance with acceptable architectural standards and submitted with the application form, if any, approved by the ACC:

- 10.7.1 Site Plan. A site plan showing the location of the DwellingDwelling and all other structures and Improvements including fences and walls on the Lot, Lot drainage and all set backs, curb cuts, driveways, parking areas and other pertinent information relating to the Improvements.

10.7.2 Dwelling Dwelling Plan. Dwelling Dwelling elevation drawings of each side of the Dwelling, and detailed specifications which shall indicate, by sample if required by the ACC, all exterior colors, construction materials and finishes, including roof, to be used.

10.7.3 Landscape Plan. A landscape plan for portions of the Lot to be landscaped which shall show the location, type and size of trees, plants, ground cover, shrubs, berming and mounding, grading, drainage, sprinkler system, fences, freestanding exterior lights, driveways, parking areas and walkways. Builders of more than one home may submit prototypical plans for ACC approval. Such plans to be approved and installed to comply with the provisions of Section 5 of this Declaration.

The ACC may, in its discretion, require the Owner to furnish additional specifications, drawings, material samples or such other information as the ACC, in its sole discretion, shall deem necessary or desirable for the purpose of assisting the ACC in reviewing and processing the Dwelling plans and specifications.

The ACC may, in its discretion, require the Owner to pay a review fee prior to reviewing any plans.

- 10.8. Decision by ACC. In reviewing the application, the Dwelling plans and specifications, and the materials submitted therewith and in reaching a decision thereon, the ACC shall use its reasonable efforts and judgment to assure that all Improvements shall produce and contribute to an orderly and aesthetically complementary design and appearance and be of the quality required to maintain the Subdivision as a quality residential development.

Unless extended by mutual consent of the Owner and the ACC, the ACC shall render its decision with respect to an application within thirty (30) days after the receipt of a properly submitted and complete application. The decision of the ACC may be in the form of an approval, a conditional approval or denial.

The decision of the ACC shall be in writing, signed by a member of the ACC, dated, and a copy thereof mailed to the Owner at the address shown on the application. If required by the City of American Fork, and if approved by the ACC, a member of the ACC shall date and sign the Dwelling plans and specifications which are to be submitted to the City for its approval.

A conditional approval shall set forth with particularity the conditions upon which the application is approved and the Owner shall be required to affix a copy of said conditions to the working drawings or blueprints which are to be kept on the job site during the entire course of the work to which said plans relate.

A denial of an application shall state with particularity the reasons for such denial.

- 10.9. Inspection and Complaints. The ACC is empowered to inspect all work in progress on any Lot at any time. Such inspection shall be for the purpose of determining whether the Owner is proceeding in accordance with the approved application or is deviating

therefrom or is violating this Declaration or the ACC Construction Standards or the approved plans and specifications.

Each Owner or builder shall instruct its respective employees, contractors and sub-contractors to proceed with construction only in accordance with ACC approved plans. Any modifications or deviations from approved plans must be reapproved by the ACC prior to construction or installation.

The ACC is authorized to receive from other Owners ("Complaining Owners") complaints in writing involving deviations from approved applications or violations of this Declaration or any applicable ACC Construction Standards. In the event the ACC receives such a complaint from a Complaining Owner, it shall first determine the validity of such complaint by inspection and inquiry.

Should the ACC determine that there has been a significant deviation or violation, it shall promptly issue a notice in writing thereof to the Owner and to the Complaining Owner, which notice shall specify the particulars of the deviation or violation and shall demand that the Owner conform to either or both of the following directives:

- (a) The Owner shall immediately cease the activity which constitutes a deviation or violation, or
- (b) The Owner shall adhere to the corrective measures set forth in the written notice.

Should the ACC determine there has been no significant deviation or violation, it shall promptly issue a written notice of such determination to the Owner and the Complaining Owner. Notwithstanding any other remedy available to the ACC or the Board, the Board may levy Fines for deviations or violations of the ACC Construction Standards of the Association.

- 10.10. Hearing. An Owner submitting an application for approval of Dwelling plans and specifications under Section 10.7, above, or served with a written notice of deviation or violation, or a Complaining Owner shall have the right to request and be heard at a hearing held by the ACC for the purpose of presenting facts and information to the ACC. Such hearing must be requested by such party within ten (10) days from the date the written notice of the decision of the ACC is mailed to the Owner (and Complaining Owner) as evidenced by the records of the ACC. The hearing shall be held within ten (10) days following receipt by the ACC of the request for a hearing, unless the ACC shall extend said period of time because of the unavailability of ACC members.

A hearing may be continued by the ACC for the purpose of further investigation or to receive additional evidence. Upon completion of the hearing, the ACC shall issue a written opinion to the involved parties within ten (10) business days thereafter which opinion shall set forth the findings of the ACC with respect to the matters at issue and shall affirm, modify or rescind its previous decision as contained in the original written notice. If the ACC incurs any costs or expenses in connection with the investigation, processing or hearing on a matter involving a deviation or violation, including the costs of retaining a consultants) to advise the ACC and legal fees, such

costs shall be paid by the Complaining Owner unless an Owner is found to be in violation in which event such Owner shall pay all such costs. The payment of such costs shall be enforceable as provided in Section 10.12, below.

- 10.11. Appeal. Either an Owner or a Complaining Owner shall have the right to appeal to the Board a decision of the ACC on an application with respect to the conditions imposed thereon or a denial thereof, or a decision of the ACC adverse to the Owner or the Complaining Owner reached following a hearing held pursuant to Section 10.10, above, provided, however, that neither an Owner nor a Complaining Owner shall be entitled to such an appeal with respect to deviations or violations unless said Owner or Complaining Owner, or their authorized representatives, have participated in the ACC hearing.

A notice of appeal shall be in writing and shall be delivered by mail to the Board within ten (10) days from the date of the decision by the ACC. Said notice of appeal shall be dated and shall contain the name of the Owner and the Complaining Owner, if any, and a copy of the written decision or determination of the ACC. The failure of an Owner or Complaining Owner to appeal a decision of the ACC in the manner and within the time herein provided shall terminate all rights of said Owner or Complaining Owner to appeal said decision and it shall be binding and enforceable.

The Board shall fix a date for the hearing of such an appeal which date shall be no later than ten (10) days from the date of receipt of a notice of appeal unless extended by the Board because of the unavailability of Board members. The Owner and Complaining Owner, if any, shall be advised of the time and place of the hearing by a mailed written notice. Written notice of time and place for hearing shall also be served by mail upon each member of the ACC.

The Board may require the Owner or Complaining Owner to provide additional information to facilitate the Board's decision and the failure of such party to comply promptly with such a request shall entitle the Board to deny the appeal, in which event the decision by the ACC shall be considered final and not subject to further appeal. At the hearing the Owner, Complaining Owner, if any, and the ACC, together with their representatives and other witnesses, shall present their position to the Board.

The order of presentation and the evidence to be admitted shall be solely within the discretion of the Board provided, however, that the Owner, the Complaining Owner, if any, and the ACC shall have the opportunity to question and cross-examine witnesses presented by the other. The Owner, the Complaining Owner, if any, and the ACC will have the opportunity to present final argument consistent with rules adopted by the Board for such hearing process. Any party may be represented by an attorney at any hearing by the ACC or the Board.

Upon receiving all of the evidence, oral and documentary, and following the conclusion of the hearing, the Board shall retire to deliberate and shall reconvene at a time and place determined by the Board, at which time the Board shall cast its official ballot and the decision shall be duly recorded in the minutes of the meeting. The Owner, the Complaining Owner, if any, and the ACC members shall be given



written notice of the decision which shall be deemed given when deposited in the United States mail, postage prepaid and properly addressed.

If the Board incurs any costs or expenses in connection with the investigation, processing or hearing on an appeal, including the costs of retaining a consultant(s) to advise the Board and legal fees, such costs shall be paid by the party(s) filing the appeal unless the decision by the Board constitutes a substantial reversal of the decision of the ACC, in which event such costs shall be paid by the Association. If the party filing the appeal is obligated to pay such costs, payment of the same shall be enforceable as provided in Section 10.12, below.

A decision of the Board of an appeal shall be final and shall not be subject to reconsideration or further appeal.

- 10.12. Enforcement. The ACC, upon approval by the Board, shall be authorized on behalf and in the name of the Association to levy a Fine, commence such legal or equitable proceedings as are determined by it to be necessary or proper to correct or enjoin any activity or condition existing within the Property, the continuation of which violates the provisions of this Declaration, the ACC Construction Standards or the approved plans and specifications.

The ACC shall not commence such legal or equitable proceedings until a written notice of the deviation or violation has been appropriately prepared and given to the Owner but thereafter the ACC shall have the sole discretion to commence such proceedings.

The authority of the ACC as herein provided shall include the power to retain legal counsel and expert witnesses, pay filing fees, deposition costs, witness fees and all other ordinary and necessary expenses incurred in commencing and carrying out said legal or equitable proceedings, all of which costs shall be paid by the Association.

In the event the ACC and/or Association shall prevail in any such legal or equitable proceedings, the Board may elect to require that all costs and expenses incurred in connection therewith including, but not limited to, attorneys' fees shall be reimbursed to the Association by the Owner against whom said proceedings are filed and upon the failure of said Owner to reimburse the Association within five (5) days after written demand therefor is mailed to the Owner, the Association shall have the right to levy a Limited Assessment against the Owner and the Lot owned by the Owner which Assessment shall be equal to said costs and expenses incurred plus any additional costs and expenses incurred in levying the Assessment. Said Limited Assessment shall be due and payable at such time or in such installments as may be determined by the Board, in its sole discretion.

The failure of the Owner to pay said assessments or any installment thereof when due, shall be enforceable in the manner provided in Article IX, above.

- 10.13. Additional Damages. In addition to the costs and expenses to be reimbursed by the Owner or the Complaining Owner, all other costs, expenses and damages determined by the Board to be proximately caused by the deviation or violation or the costs and expenses incurred by the Association to correct the same shall be assessed as a

Limited Assessment against the Owner and the Lot owned by said Owner, or the Complaining Owner and the Lot owned by the Complaining Owner, as the case may be, which Limited Assessment shall be due and payable at such time or in such installments as determined by the Board, in its sole discretion. The right of the Board to enforce said Limited Assessment shall be the same as provided in Article IX, above.

- 10.14. **Non-Exclusive Remedy.** The right of the Association to levy a Limited Assessment as described in Sections 10.12 and 10.13, above, shall not be deemed to be an exclusive remedy of the Association and it may, in its sole discretion, without waiver of any other legal or equitable remedy, pursue enforcement of the lien of said Limited Assessments, proceed to collect any amount due directly from the Owner, levy fines against the Owner, and/or pursue any other remedies available at law or in equity.
- 10.15. **Private Rights.** The Association shall not have the right to mediate or litigate private disputes between Owners where there is a legal or equitable remedy available to resolve said dispute when, in the sole discretion of the Board, the interests of the Association or a substantial number of the Owners would not be benefited thereby.

## ARTICLE 11. MISCELLANEOUS

- 11.1. **Term.** This Declaration and all covenants, conditions and restrictions contained herein shall run until December 31, 2050, unless amended as hereafter provided. After December 31, 2050, said covenants, conditions, restrictions and easements shall be automatically extended for successive period often (10) years each, unless extinguished by a written instrument executed by the Owners of at least three-fourth (3/4) of the Lots covered by this Declaration and such written instrument is recorded with the Utah County Recorder.

SECTION 11.2. **Amendment.** This Declaration may be amended as follows:

- 11.2.1 **By Declarant.** Until title to a Lot within the Subdivision is conveyed by the Declarant to an Owner, this Declaration may be amended or terminated by the Declarant by recordation of a written instrument signed by the Declarant and acknowledged setting forth such amendment or termination.
- 11.2.2 **By Owners.** Except where a greater percentage is required by an express provision in this Declaration, the provisions of this Declaration, may be amended by an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such amendment has been approved by a vote or written consent of 66% (2/3) of the votes of all Members of the Association, and such amendment shall be effective upon its recordation with the Utah County Recorder.
- 11.3. **Books and Records.** All books, records and minutes of the Board and all other books and records maintained by the Association shall be made available for inspection and copying by any Owner or by his duly authorized representative, at any reasonable time and for a purpose reasonably related to his interest as a member in the Association, or at such other place and time as the Board shall prescribe.

- 11.4. **Non-Waiver.** The failure of the Declarant, the Board or any Owner in any one or more instances to insist upon the strict performance of any of the covenants, conditions, restrictions, easements or other provisions of this Declaration or to exercise any right or option contained herein, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment for the future of such covenant, condition, restriction, easement or other provision, but the same shall remain in full force and effect.
- 11.5. **Acceptance.** Each Owner of a Lot, each purchaser of a Lot under a contract or agreement of sale and each holder of an option to purchase a Lot, by accepting a deed, contract of sale or agreement or option, accepts the same subject to all of the covenants, conditions and restrictions and other provisions set forth in this Declaration and agrees to be bound by the same.
- 11.6. **Indemnification of Board Members.** Each Director and member of the Board and each member of the ACC shall be indemnified by each Owner of a Lot against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which said person may be a party or in which such person may become involved, by reason of being or having been a member of the Board or the ACC, or any settlement thereof, whether or not said person is a member of the Board or ACC at the time such expenses or liabilities are incurred, except in such cases wherein said person is adjudged guilty by a court of competent jurisdiction of willful misfeasance or malfeasance in the performance of his or her duties; provided that in the event of a settlement, the indemnification shall apply only when the Board or the ACC approves such settlement and reimbursement as being in the best interest of the Association or Owners. This Section shall extend to and apply also for the indemnification of the Declarant during the initial period of operation of the Association or prior thereto during the period the Declarant is exercising the powers of the Association.
- 11.7. **Notices.** Any notice permitted or required to be delivered as provided in this Declaration shall be in writing and shall be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after the same has been deposited in the United States mail, postage prepaid, properly addressed.

**SECTION 11.8. Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate the Subdivision Objectives set forth in Article 4, above, and shall be construed and governed by the laws of the State of Utah. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine feminine or neuter shall include the masculine, feminine or neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

**SECTION 11.9. Severability.** Notwithstanding the provisions of the preceding Sections, each of the provisions hereof shall be deemed independent and severable and the invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.