

WHEN RECORDED, RETURN TO  
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NORTH SALT LAKE CITY UT 84054  
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DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
THE COVE AT HERRIMAN SPRINGS  
a Residential Community in Herriman, Utah  
(Phase 10)

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR THE COVE AT HERRIMAN SPRINGS – PHASE 10

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE COVE AT HERRIMAN SPRINGS – PHASE 10 is made this \_\_\_ day of December, 2018, by Herriman Springs Developers, LLC, a Utah limited liability company (the "Declarant").

Recitals:

A. Declarant is the Owner of certain real property located in Salt Lake County, Utah, more particularly described on Exhibit "A" to this Declaration (the "Phase 10 Property"). Declarant has previously recorded certain subdivision plats, which plats subdivided the real property indicated thereon, as part of the development project known as "The Cove at Herriman Springs." Declarant may from time to time by recorded instrument, annex additional property into the Association, in which case the additional property shall become a part of the "Covered Property." This Declaration is being adopted to annex Phase 10 of The Cove at Herriman Springs into the Covered Property and the Association. This Declaration encumbers the Phase 10 Property described in Exhibit "A" hereto.

B. The Declaration of Covenants Conditions and Restrictions for The Cove at Herriman Springs was recorded in the office of the Salt Lake County Recorder as Entry No. 9368813 on May 5, 2005 (the "Declaration"). Following the recording of the Declaration there have been multiple Supplemental Declarations recorded to annex additional property into the Association including: the Supplemental Declaration recorded on May 19, 2006 as Entry No. 9728677 which annexed Phases 4, 4A, 4B, 4C, and 4D of The Cove at Herriman Springs into the Association; the Supplemental Declaration recorded on January 5, 2007 as Entry No. 9962929 which annexed Phases 5, 5A, 5B, 5C, and 5D of The Cove at Herriman Springs into the Association; the Supplemental Declaration recorded on March 27, 2008 as Entry No. 10384311 which annexed The Estates at the Cove – Phase 1 of The Cove at Herriman Springs into the Association; the Supplemental Declaration recorded on August 16, 2012 as Entry No. 11452054 which annexed Phase 6 of The Cove at Herriman Springs into the Association; the Supplemental Declaration recorded on January 8, 2013 as Entry No. 11552482 which annexed Phase 5E of The Cove at Herriman Springs into the Association; the Supplemental Declaration recorded on January 22, 2014 as Entry No. 11793383 which annexed Phases 5F and 5G of The Cove at Herriman Springs into the Association; the Supplemental Declaration recorded on September 30, 2015 as Entry No. 12142635 which annexed Phase 9 of The Cove at Herriman Springs into the Association; the Supplemental Declaration recorded on March 2, 2016 as Entry No. 12232879 which annexed Phase 8 of The Cove at Herriman Springs into the Association; the Supplemental Declaration recorded on April 27, 2017 as Entry No. 12523862. The property subject to the Original Declaration and all of the property annexed into the Association through supplemental declarations, including the Phase 10 Property, shall be considered the "Covered Property."

C. Declarant intends to develop a residential subdivision on the Covered Property and convey all of the lots therein subject to a general plan of development and to the covenants, conditions and restrictions set forth in this Declaration.

NOW THEREFORE, Declarant declares as follows:

All lots within the Phase 10 Property shall be held, sold, conveyed, encumbered, leased, used, occupied and

improved subject to the protective covenants, conditions, restrictions and equitable servitudes set forth in this Declaration. It is the intention of the Declarant in imposing these covenants, conditions and restrictions to create a general plan of development, to protect and enhance the property values and aesthetic values of the Phase 10 Property. The covenants, conditions and restrictions contained herein are intended to and shall run with the title of the land, and be binding upon the successors, assigns, heirs, and any other person holding any ownership or possessory interest in the Phase 10 Property, and shall inure to the benefit of all other lots in the Covered Property.

The covenants, conditions, and restrictions shall be binding upon the Declarant and its successors in interest, and may be enforced by the Declarant or by any Owner, as hereinafter defined. Notwithstanding the foregoing, no provisions of this Declaration shall prevent the Declarant from doing any of the following, which shall be deemed to be among Declarant's reserved rights in addition to such rights as may be described elsewhere in this Declaration: (1) Installation and completion of the Improvements, as hereinafter defined; (2) Use of any Lot owned by the Declarant as a model home, or for the placement of a temporary construction or sales office; (3) Installation and maintenance of signs incidental to sales or construction, subject to applicable laws and ordinances; (4) Assignment of Declarant's rights under this Declaration in whole or part to one or more builders intending to construct homes on the Covered Property; and (5) Addition of additional real property as Covered Property under this Declaration.

Notwithstanding any applicable theory relating to a mortgage, deed of trust or similar instrument, the term Lot Owner, Owner, or Owners shall not mean or include the mortgagee or beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

#### 1.0 ARTICLE I - DEFINITIONS

Unless the context clearly requires otherwise, the following terms used in this Declaration shall have the following meanings:

"Association" shall mean and refer to The Cove at Herriman Springs Owners Association, a Utah non-profit corporation, its successors and assigns. The Association shall act by and through its Board of Directors and officers.

"Board" shall mean the Board of Directors of The Cove at Herriman Springs Owners Association.

"City" shall mean the city of Herriman, Utah and its appropriate departments, officials and boards.

"Committee" shall mean the architectural review committee created under Article VI of this Declaration.

"Covered Property" shall mean all of the real property within the Plats of The Cove at Herriman Springs that have been annexed into the Association pursuant to the Original Declaration and any subsequently recorded Supplemental Declarations.

"Declarant" shall mean Herriman Springs Developers, LLC, a Utah limited liability company, and its successors and assigns.

"Declaration" shall mean this Amended and Restated Declaration of Covenants, Conditions and Restrictions, together with any subsequent amendments or additions.

"Dwelling" shall mean the single-family residence built or to be built on any Lot, including the attached garage.

"First Mortgage" shall mean and refer to any unpaid and outstanding mortgage, deed of trust or other security instrument encumbering a Lot recorded in the records of the Salt Lake County Recorder's Office, having priority of record over all other recorded liens except those governmental liens made superior by statute.

"First Mortgagee" shall mean and refer to any person named as a mortgagee or beneficiary under any First Mortgage, or any successor to the interest of any such person under such First Mortgage.

"Home Plans" shall mean and refer to the design guidelines, architectural design, development, landscaping, and other guidelines, standards, controls, and procedures, including but not limited to application and plan review procedures, adopted pursuant hereto and applicable to the Project. All Homes constructed within Phase 10 of the Project shall be restricted to those home plans shown in that certain annual catalog used by the Builder entitled "Ivory Homes Catalog," a copy of which is available through the Ivory Homes website. It may be updated annually.

"Improvement" shall mean all structures and appurtenances of every type and kind, including but not limited to buildings, dwellings, garages, storage buildings, walkways, retaining walls, sprinklers, pipes, driveways, fences, landscaping, pools, decks, stairs, poles, lighting, signs, satellite dishes or other antennas, and any mechanical equipment located on the exterior of a building.

"Lot" shall mean any numbered building Lot shown on any official plat of all or a portion of the Covered Property.

"Maintenance Area" shall mean the entryways to the Covered Property and signage thereon, landscaped stripgrading situated upon any public right-of-way bordering the boundaries of the Covered Property, landscaped areas and park areas within the Covered Property, but not part of any particular Lot, signs, recreational facilities, including a clubhouse and ancillary facilities, parking facilities, Paths, playground facilities, and the fences and walls constructed on the boundary lines of the Covered Property. The Maintenance Area is owned separately by the Association.

"Member" shall mean and refer to each Owner of a Lot that is subject to assessment hereunder and Declarant. Membership in the Association shall be appurtenant to and may not be separated from, ownership of a Lot.

"Owner" shall mean the person or persons having title to any Lot. Owner shall mean the person holding fee simple title, including the Declarant, and buyers under any contract for deed, but shall exclude any person or entity holding title for purposes of securing performance of an obligation, including the trustee and/or beneficiary under a deed of trust or mortgagee under a mortgage.

"Paths" shall mean the paths established for walking and bicycle travel which are shown on the Plat.

"Plat" shall mean an official ownership plat of any portion of the Covered Property, as approved by the City and recorded in the office of the Salt Lake County Recorder, as such plat may be amended from time to time.

“Period of Declarant Control” shall mean the time during which the Declarant has the sole legal right to appoint the Directors.

“Storm Water Permit” shall mean the UPDES Storm Water General Permit For Construction Activities which the buyer or Owner of each Lot shall be required to obtain from the Division of Water Quality of the Utah Department of Environmental Quality, as set forth in Section 10.5 below.

“Subdivision Improvements” shall mean all improvements and facilities to be installed outside of the boundaries of Lots or within easements for Paths, as identified on the Plat, including those items that are necessary to provide access and utility service to the Lots and items required by the City as a condition of its approval of subdivision of the Covered Property.

## 2.0 ARTICLE II - RESTRICTIONS ON ALL LOTS

- 2.1 Zoning Regulations. The zoning ordinances of the City and any applicable building, fire, and health codes are in full force and effect in the Covered Property, and no Lot may be occupied or used in a manner that is in violation of any such ordinance or Code.
- 2.2 Business or Commercial Uses. No portion of the Covered Property may be used for any commercial, mining, or business use. Nothing in this provision is intended to prevent (a) the Declarant from using one or more Lots for purposes of a construction office or sales office during construction of the Subdivision Improvements or until the Lots are sold, whichever occurs later, or (b) the conduct of a home occupation entirely within a Dwelling. No home occupation will be permitted which requires or encourages clients, customers, patients or others to come to a Dwelling to conduct business, or which requires any employees outside of the Owner's immediate family or household.
- 2.3 Restriction on Signs. No signs will be permitted on any Lot within the Covered Property, except for (a) traffic control signs placed by the City, temporary signs warning of some immediate danger, (b) signs not in excess of six square feet identifying the contractor and/or architect of any Dwelling unit while it is under construction, (c) signs indicating the Lot is for sale, which sign must be placed in accordance with City sign regulations and shall not exceed nine square feet in size, and (d) signs stating the address or the name of the owner of a Lot, subject to the consent of the Committee. Notwithstanding the foregoing, the Declarant may erect and maintain a sign of any size at the entrance to the Covered Property or at any location within the overall project for a period of no more than five years after the recordation of the last Plat within the Covered Property announcing the availability of Lots and giving sales information. Anything herein to the contrary notwithstanding, this signage restriction does not apply to and is not binding upon the Declarant or Ivory Homes, who are expressly authorized to employ and use whatever signs or signage it deems appropriate to market its Lots.
- 2.4 Completion Required Before Occupancy. No Dwelling may be occupied prior to its completion and the issuance of a certificate of occupancy by the City.
- 2.5 Dwelling to be Constructed First. No garage, storage unit, or other out building may be constructed prior to the construction of the Dwelling on a Lot.

- 2.6 Livestock, Poultry and Pets. No animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot, except: Dogs, cats or other household pets may be kept; provided that they are not kept, bred or maintained for any commercial purpose and are restricted to the owner's control; provided further that no more than two such household pets of over six months of age shall be kept on any Lot. "Control" for the above purposes shall only mean on a leash or lead, within a vehicle, within the residence of the owner, or within the fenced confines on the Lot. Fierce, dangerous or vicious animals, or animals that cause a nuisance by barking or other offensive activity shall not be permitted.
- 2.7 Underground Utilities. All gas, electrical, telephone, television, and any other utility lines in the Covered Property are to be underground, including lines within any Lot which service Improvements within that Lot. No propane tanks or oil tanks may be installed on any Lot except for temporary heat during construction.
- 2.8 Service Yards. No clothes lines, service yards, or storage yards shall be permitted. Exterior mechanical equipment must be screened in a manner approved by the Committee so that it is not visible from adjoining Lots, except as provided herein.
- 2.9 Maintenance of Property. All Lots and the Improvements on them shall be maintained in a clean, sanitary, and attractive condition at all times. No unsightliness is permitted on any Lot. This shall include, without limitation, the open storage of any building materials (except during construction of Improvements) open storage or parking of farm or construction equipment, boats, campers, camper shells, trailers, trucks larger than pick-up trucks (except during periods of actual loading and unloading) or inoperable motor vehicles; accumulations of lawn or tree clippings or trimmings; accumulations of construction debris or waste; household refuse or garbage except as stored in tight containers in an enclosure such as a garage; lawn or garden furniture except during the season of use; and the storage or accumulation of any other material, vehicle, or equipment on the Lot in a manner that is visible from any other Lot or any public street.
- 2.10 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried out on any Lot, including the creation of loud or offensive noises or odors that detract from the reasonable enjoyment of nearby Lots.
- 2.11 No Hazardous Activity. No activity may be conducted on any Lot that is, or would be considered by a reasonable person to be unreasonably dangerous or hazardous, which would cause the cancellation of conventional homeowner's insurance policy. This includes, without limitation, the storage of caustic, toxic, flammable, explosive or hazardous materials in excess or those reasonable and customary for household uses, the discharge of firearms or fireworks other than in connection with celebration of the 4th of July and 24th of July holidays, and setting open fires (other than properly supervised and contained barbecues).
- 2.12 Exterior Lighting. Any outdoor lighting shall be subject to approval by the Committee, and no outdoor lighting shall be permitted except for lighting that is designed to aim downward and limit the field of light to the confines of the Lot on which it is installed. This restriction shall not prevent street lighting maintained by the City a front yard post

light or lighting installed on top of a mail box structure.

- 2.13 **Annoying Sounds.** No speakers, wind-bells, wind chimes, or other noise making devices may be used or maintained on any Lot which create noise that might reasonably be expected to be unreasonably or annoyingly loud to adjoining Lots, except for security or fire alarms.
- 2.14 **Fuel Storage.** No fuel oil, gasoline, propane, or other fuel storage tanks may be installed or maintained on the property. Dwellings shall be heated with natural gas, solar, or electric heat. Propane or other such containerized fuels may be used only during construction of the Dwelling until the permanent heating system is installed and operational.
- 2.15 **Transient Lodging Prohibited.** Lots are to be used for residential housing purposes only, and shall not be rented in whole or in part for transient lodging purposes, boarding house, "bed and breakfast," or other uses for providing commercial accommodations. No lease of any Dwelling shall be for a period of less than 30 days. No Dwelling on a Lot shall be subjected to time interval ownership.
- 2.16 **Re-Subdivision.** No Lot may be re-subdivided without the consent of the Committee, and no re-subdivision of any Lot may result in the construction of any additional Dwellings within the Lot.
- 2.17 **Recontouring.** No lot shall be recontoured, excluding grading for purposes of basement construction, without the prior written approval of the Committee. Among other matters, the Committee's approval may be conditioned on the requirement that the proposed grading conform to the general grading plan applicable to the Covered Property (the "General Grading Plan").
- 2.18 **Drainage.** No Owner shall alter the direction of natural drainage from his Lot, nor permit accelerated storm run-off to leave his Lot without first using reasonable means to dissipate the flow energy. Each Owner shall require its builder to deliver finished grades to streets and other common water carriers, as set forth on the General Grading Plan, such as trails, paths, creeks, canals, swales or ditches.
- 2.19 **Sewer Connection Required.** All Lots are served by sanitary sewer service, and no cesspools, septic tanks, or other types of waste disposal systems are permitted on any Lot. All Dwelling units must be connected to the sanitary sewer system.
- 2.20 **Trash and Rubbish.** All Lots (improved or unimproved) shall be kept free of rubbish, weeds, and other unsightly items, and shall be maintained in such a manner as not to detract from the residential quality of the Covered Property. Trash, rubbish, garbage or other waste shall not be kept except in covered containers. Garbage and trash receptacles shall be permitted when kept in a visually screened enclosure.
- 2.21 **Vehicles Restricted to Roadways.** No motor vehicle will be operated on the Covered Property except on improved roads and driveways. No snowmobiles or motorcycles will be operated on any Lot except for ingress and egress or while loading the equipment for lawful transport on public streets. No vehicle parking shall be permitted in front or visible

side yards other than on designated driveways.

2.22 Overnight Parking and Storage of Vehicles. The storage of any automobiles, trucks, buses, tractors, trailers, camping vehicles, boats, boat trailers, snowmobiles, mobile homes, two and three wheeled motor vehicles, or other wheeled motor vehicles shall be prohibited unless such vehicles are kept from the view of the general public.

2.23 Kennels. No kennel or dog run may be placed or maintained closer than 50 feet to any Dwelling other than the Dwelling on the Lot where the kennel or dog run is maintained.

2.24 Paths. Paths are located throughout the Covered Property as marked on the Plat. Paths are available for homeowners' enjoyment by foot and bicycle. Motor vehicles are prohibited from the Paths. Parking is prohibited on the Paths. Declarant may, at its election, deed the Paths to the City, by granting an easement or by conveyance of fee ownership thereto. In any event, use of the Paths shall be subject to the limitations set forth in this Declaration.

### 3.0 ARTICLE III - PROPERTY RIGHTS IN THE MAINTENANCE AREA

3.1 Owners' Right of Enjoyment. Subject to the provisions of this Section, every Owner shall have a nonexclusive right to enjoy and use the facilities, if any, within the Maintenance Area and such right shall be appurtenant to and shall pass with the title to every Lot.

3.2 Extent of Owners' Right. The right of enjoyment created hereby shall be subject to the following:

3.2.1 The right of the Association to promulgate and publish rules and regulations with which each Member shall strictly comply; and

3.2.2 The right of the Association, as provided in its Articles and Bylaws, to suspend the voting rights of a Member and/or the right to use any of the recreational facilities within the Maintenance Area for any period during which any assessment against his Lot remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of its published rules and regulations; and

3.2.3 The right of the Association to close or limit the use of the Maintenance Area while maintaining, repairing and making replacements in the Maintenance Area.

3.3 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Maintenance Area to the members of his family, his tenants, or contract purchasers who reside on his Lot.

3.4 Use of Maintenance Area.

3.4.1 No use shall be made of the Maintenance Area which will in any manner violate the statutes, rules, or regulations of any governmental authority having jurisdiction over the Maintenance Area.

3.4.2 No Owner shall engage in any activity which will temporarily or permanently deny free access to any part of the Maintenance Area to all Members, nor shall any Owner place any structure or fence, except those installed by Declarant or the Undersigned, whatsoever upon the Maintenance Area.



3.4.3 The use of the Maintenance Area shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Association.

3.5 Association Ownership of Maintenance Area. The Maintenance Area is owned and controlled by the Association.

#### 4.0 ARTICLE IV - MEMBERSHIP AND VOTING RIGHTS: THE ASSOCIATION

4.1 Membership. Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Each Lot shall be entitled to one vote and the vote for such Lot shall be exercised by the Owner or Owners as they determine.

4.2 Directors of the Association. During the period of Declarant's control, the affairs of the Association shall be managed by a board of at least three (3) and no more than five (5) directors (the "Board"). When Declarant relinquishes control of the Board to the Owners pursuant to Section 4.3 below, the Board shall be managed by at least three (3) and no more than five (5) directors or as otherwise set forth in the Bylaws of the Association. Directors shall meet the qualifications described in the Articles of Incorporation and Bylaws of the Association.

4.3 Management of the Association. From the date of formation of the Association until the termination of Declarant's control as provided below, Declarant shall have the right to appoint and remove any and all members of the Board and all officers of the Association. The period of Declarant's control of the Association shall terminate upon the last to occur of sixty (60) days after conveyance of 75% of the Lots to Owners other than Declarant, two (2) years after the last conveyance of a Lot by Declarant in the ordinary course of business, or two (2) years after any right to add new Lots was last exercised. Declarant may voluntarily surrender the right to appoint and remove officers of the Association and members of the Board before termination of the period of Declarant's control, but in that event Declarant may require, for the duration of the period of Declarant's control, that specified actions of the Association or Board, as described in an instrument executed and to be recorded by Declarant, be approved by Declarant before they become effective.

4.4 Officers of the Association. The officers of this Association shall be as set forth in the Bylaws of the Association.

4.5 Association Right to Enforce Covenants. The Association shall have the right, separate and apart from any individual Owner's right, to enforce any of the covenants, conditions and restrictions contained in this Declaration.

#### 5.0 ARTICLE V - COVENANT FOR MAINTENANCE ASSESSMENTS

5.1 Creation of the Lien and Personal Obligation of Assessments. Each owner of any Lot, including Declarant, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1)

annual assessments or charges, and (2) special assessments. The annual and special assessments, together with interest, late charges, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. The obligation for such payments by each Owner to the Association is an independent covenant, with all amounts due from time to time payable in full without notice (except as otherwise expressly provided in this Declaration) or demand, and without setoff or deduction. The lien may be enforced by foreclosure of the defaulting Owner's Lot by the Association in like manner as a mortgage on real property. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including reasonable attorney's fees. The Board of Directors or managing agent of the Association may prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Lot and a description of the Lot. Such a notice shall be signed by one of the Board of Directors or by the managing agent of the Association and may be recorded in the county recorder's office in the county where the applicable Lot is located. The lien for each unpaid assessment attaches to each Lot at the beginning of each assessment period and shall continue to be a lien against such Lot until paid. The costs and expenses for filing any notice of lien shall be added to the assessment for the Lot against which it is filed and collected as part and parcel thereof. Each assessment, together with interest, late charges, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass from them. The Association's lien on a Lot for assessment shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Utah or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed to land subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien.

**5.2** Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents of the Covered Property and, to the extent not performed by the applicable governmental entity, for the maintenance and insurance of the Maintenance Area.

**5.3** Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within ten (10) days after the due date thereof shall bear interest from the due date at the rate of eighteen percent (18%) per annum, or at such lesser rate as may be set from time to time by the Association, and the Association may also assess a monthly late charge thereon. The Association may bring an action at law against the Owner personally obligated to pay the same, and may foreclose the lien against such Owner's Lot, and in the event a judgment is obtained, such judgment shall include interest on the assessment and a reasonable attorney's fee to be fixed by the court, together with the costs of the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Maintenance Area or abandonment of his Lot. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessments, charges, costs or fees, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the Association votes appurtenant to ownership thereof, convey or otherwise deal with the same. In any action

brought by the Association (or counterclaim or cross claim brought by the Association) to collect assessments or to foreclose a lien for unpaid assessments, the Association shall be entitled to have a receiver of the Owner to collect all sums alleged to be due from the Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's assessments of any kind or nature permitted hereunder.

5.4 Successor's Liability for Assessments. Notwithstanding any terms and provisions of this Declaration to the contrary, the sale or transfer of any Lot shall not affect the lien for assessments, charges, costs or fees levied hereunder, except that sale or transfer of a Lot pursuant to foreclosure of a First Mortgage or any proceeding in lieu thereof, shall extinguish the lien of Association assessments, but not the personal obligation of the Owner for the payment of assessments, which became due after the recording of the First Mortgage and prior to any such sale or transfer or foreclosure, or any proceeding in lieu thereof except to the extent the lien of the Association has priority over the First Mortgage under Section 11 herein; provided, however, that any such assessments, charges, costs or fees which are extinguished as provided herein may be reallocated and assessed to all Lots. A First Mortgagee may be personally liable for any unpaid assessments, charges, costs or fees, or portion thereof, accruing against a Lot prior to the time such First Mortgagee takes title to such Lot, but only to the extent that the lien of the Association has priority over the First Mortgage under Section 11 herein. No such sale, transfer, foreclosure or any proceeding in lieu thereof, shall relieve any Owner from liability for any assessments, charges, costs or fees, or any portion thereof, thereafter becoming due, nor such Owner's Lot from the lien for such subsequent assessments, charges, costs and fees.

5.5 Statement Regarding Assessments. The Association shall furnish to an Owner or such Owner's designee or to a holder of a Security Interest or its designee upon written request, delivered personally or by certified mail, first class, postage prepaid, return receipt requested, to the Association's registered agent, a statement setting forth the amount of any unpaid assessments currently levied against such Owner's Lot. The statement shall be furnished within fourteen (14) business days after receipt of the request and is binding on the Association, the Board and every Owner. If no statement is furnished to the Owner or holder of a Security Interest or their designee, delivered personally or by certified mail, first class postage prepaid, return receipt requested, to the inquiring party, then the Association shall have no right to assert a priority lien upon the Lot for unpaid assessments which were due as of the date of the request. "Security Interest" as used herein shall mean an interest in real estate or personal property created by contract or conveyance which secures payment or performance of an obligation. The term includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for deed, land sales contract, lease intended as security, assignment of lease or rents intended as security, pledge of an ownership interest in an association, and any other consensual lien or title retention contract intended as security for an obligation.

## 6.0 ARTICLE VI - COMMITTEE

It is the intention and purpose of this Declaration to impose architectural standards on the Improvements to any Lot of a type and nature that result in buildings which are architecturally compatible in terms of lot coverage, proportion, materials, colors and general appearance, while at the same time allowing for

appropriate diversity in style and design. To accomplish this goal, the Declarant hereby establishes the Committee, which is empowered to oversee and enforce the Architectural Design Standards set forth in this Declaration.

6.1 Committee Composition. The architectural control committee (the "Committee") will consist of three members, who may or may not be Owners. The initial Committee shall be appointed by the Declarant or its successor. Following the termination of Declarant's control of the Association pursuant to Section 4.3 above, or at such earlier date as is selected by Declarant in its sole discretion, the Owners (the Owners of each Lot having one vote) shall elect the membership of the Committee. Prior to the date on which the Owners shall elect the membership of the Committee, Declarant shall have the right to elect the membership. The right to elect the membership of the Committee also includes the right to remove one or more members of the Committee and to fill vacancies. The Committee shall act by a majority vote of those present in any meeting duly called for conducting official business.

6.2 Approval by Committee Required. No Improvements of any kind, including without limitation the construction of any Dwelling, garage, deck, porch, gazebo, guest house, outbuilding, parking enclosure, driveway, tennis court, walkway, or other hard surfaced area in excess of 100 square feet, swimming pool, outdoor hot tub or spa, fence, wall, curb, trampoline, satellite dish or antenna, solar panel, or any other permanent or temporary structure may be constructed, erected, or installed in the Covered Property without the prior consent and approval of the Committee. No excavation, grading, filling, draining, landscaping, shall be made without the advance written consent of the Committee. Approval of the Committee will be sought in the following manner:

6.2.1 Plans Submitted. Plans for the construction of any new Dwelling must be submitted to the Committee for review. It is recommended that a preliminary plan be submitted before the expense of final construction drawings is incurred. The plan must be in sufficient detail to show the location on the Lot of the exterior walls of the Dwelling and all other structures to be built with it; detailed drawings of all elevations of all buildings showing locations of windows, doors, roof pitches, decks and other exterior elements; a list of exterior materials and roofing materials and/or a sample, including color samples; fences (including fence design), driveways, walkways, patios, decks and other hard surfaced or irrigated areas. In the case of an addition or modification of an existing Dwelling, the Committee may waive any of the forgoing it determines to be unnecessary for its review. Notwithstanding any review and approval of plans by the Committee, each Owner shall be responsible for the design and placement of improvements on Lots to avoid damage from ground and drainage water, and neither the Committee nor the Developer shall have any responsibility or liability with respect thereto.

6.2.2 Review Fee. The applicant will pay a review fee to the Committee in an amount reasonably necessary to cover the costs of review and the administration of the program in an amount to be established from time to time by the Architectural Committee. For homes in the Ivory Homes' Mainline Catalog of Homes, no review fee is required.

6.2.3 Review. Within 15 days from receipt of a complete submission, the Committee will review plans and make an initial determination whether or not the plans comply with the conditions imposed by the Declaration. If they do not, the plans will be rejected. If they are in compliance, the Committee will approve the plans. The Committee may also approve the plans subject to specific modifications or conditions. Owners may desire to submit preliminary plans for review. The committee will review preliminary plans, without fee, and make its comments known to the Owner provided, however, that no preliminary approval is to be considered a final approval, and no final approval will be granted on less than a complete submission. Upon approval, the Committee and the Owner will each sign a copy of the plans, which shall be left with the Committee. Construction that is not in strict compliance with the approved plans will not be permitted.

6.2.4 Written Record. The Committee will maintain a written record of its actions, and maintain in its files a copy of all plans approved or rejected for a period of two years.

6.2.5 Failure to Act. If the Committee has not approved or rejected any submission within 15 days after payment of the review fee and submission of complete plans, the submission is deemed to have been disapproved.

6.3 Variances. Variances to the design standards contained in this Declaration may be granted in the sole discretion of the Committee, but only if strict application of the design standards would create an unreasonable hardship to the Owner of any Lot. The Board has the ability to grant a variance to the design standards for any reason. The Board or Committee cannot grant any variance that has the effect of modifying applicable zoning or building code regulations. The Committee and Board are strongly encouraged to consider granting variances for roof pitch, window area versus masonry coverage, size of the home and height of the home when dealing with steeply sloped lots due to the difficulty of building viable homes on these lots.

6.4 General Design Review. The Committee will use its best efforts to provide a consistent pattern of development, and consistent application of standards of this Declaration. These standards are, of necessity, general in nature, and it is the Committee's responsibility to apply them in a manner that results in a high quality, attractive, and well-designed community. It is not the intent of this Declaration to tie the development to outdated styles. The intent of the Declaration with regard to architectural restrictions is to provide some continuity between phases and within the development overall while both embracing current mainstream design trends.

6.5 Declarant and Committee Not Liable. There shall be no liability imposed directly or indirectly on any member of the Committee for any loss, damage, or injury arising out of or in any way connected with the performance of the duties of the Committee unless due to the willful misconduct or bad faith of such member. In reviewing any matter, the Committee shall not be responsible for reviewing, nor shall its approval of any building, structure, or other item be deemed approval of, the building, structure, or other item from the standpoint of safety, whether structural or otherwise, or conformance with building codes or other governmental laws or regulations.

6.6 Limitations on Review. The Committee's review is limited to those matters expressly granted in this Declaration. The Committee shall have no responsibility to enforce building codes, zoning ordinances, or other statutes, laws, or ordinances affecting the development or improvement of real property and shall have no liability to any Owner whose plans were approved in a manner that included any such violation. Corrections or changes in previously approved plans to bring them into conformity with applicable codes must be approved by the Committee prior to construction. Such approval shall not be unreasonably withheld.

6.7 Appeal. The applicant may appeal to the Board, in writing, within three weeks of the Committee's decision. The Board, in its sole discretion, may reject, approve, or approve with limitation and conditions the application. The appeal is automatically denied if, within three weeks of receipt of the appeal, the Board has not granted approval.

## 7.0 ARTICLE VII - ARCHITECTURAL RESTRICTIONS

All Improvements on any Lot within the Phase 10 Property shall be subject to the following restrictions and design standards:

7.1 Number of Dwellings. Only one single family residence may be constructed on any Lot. All Dwellings shall have an attached garage for at least two cars side by side.

7.2 Guest Houses, Barns and Out Buildings. Guest houses, barns, out buildings and all other storage buildings must conform to the Dwelling on the Lot in style and materials, including roof material.

7.3 Dwelling Size. Dwelling size requirements are as follows:

7.3.1 A Rambler, One-story home shall be not less than 1,800 square feet above grade.

7.3.2 A two-story home shall have not less than 1,100 square feet on the main floor, and not less than 2,100 square feet of finished living area above grade.

7.4 Dwelling Height and Width. No structure shall exceed two stories above the main floor or ground level for living space or be more than thirty-five feet above a point representing the average grade at the front setback line, without prior written approval of the Committee. No structure shall be more than thirty-five feet above a point representing the average grade at the front setback line, without prior written approval of the Committee. Minimum building length on all lots shall be the lesser of 60 feet or 60% of the frontage, as measured at the setback line. For steeply sloped uphill lots, the maximum height shall be measured from the average grade at the rear of the house. For steeply sloped downhill lots, the maximum height shall be measured from the average grade at the front of the house.

7.5 Dwelling Setback and Placement. No building shall be erected upon any residential site so that any part thereof, excluding eaves and overhangs, shall be:

7.5.1 Closer than 25 feet to any rear boundary line;

7.5.2 Closer than 25 feet to the front boundary line of said premises which extends along a platted street in the subdivisions; and

7.5.3 Closer than eight feet to any side boundary line. The total of both side setbacks shall be at least 20 feet in width;

7.6 Exterior Requirement. No structure shall be built with less than 100% of all the faces of the structure of either brick, stone, cementitious siding, wood resin siding (LP SmartSide or approved equivalent) or stucco. No structure shall be built with more than 50% of the front and 75% of main floor sides being stucco.

The front shall have no less than 25% masonry coverage. The front masonry requirement is to be calculated up to the top wall plate on the uppermost floor and shall include all front facing surfaces parallel to the front of the house. Masonry coverage on the front to meet this requirement shall be calculated by including the coverage on front wall returns and front column sides and all front facing surfaces parallel to the front of the house.

The color of all exterior elements used shall be disclosed to the Committee. The use of plastic soffit or fascia sections is not allowed. Vinyl siding is not allowed. Wood exteriors are not permitted beyond limited accents.

7.7 Roof Design. Roof pitches must be within a range of 7/12 to 12/12 slope with flatter pitches to 4/12 for architectural accents of no more than 35% of the overall roof area. All roofs shall be pitched. All roofing materials must be of architectural grade asphalt shingles or better, i.e. tile, etc., as approved by the Committee. Mansard, fake mansard, A frame, gambrel, flat, curve-linear, and domed roof designs are prohibited. All roof metal such as flashing, vent stacks, gutters, and chimney caps shall be made of anodized aluminum or galvanized metal painted to match the adjoining roof color. Wood roofing materials are prohibited.

7.8 Windows. Any trapezoidal window must follow the shape of the walls or roofs surrounding them, with the top parallel to the roof above, and the bottom horizontal or parallel to the roof structure below it. No mirrored or reflective glass may be used.

7.9 Chimney, Vents. Chimneys must be enclosed in an approved material. Vent stacks must be combined to the extent possible to minimize the number of roof penetrations, and should generally not be visible from the street.

7.10 Antennas. All antennas must be enclosed within the Dwelling. Satellite dishes shall not exceed three feet in height and must be located and screened in a manner approved in advance by the Committee so that they are not (as much as possible) directly visible from adjoining Lots. No satellite dishes shall be located in front or visible side yards. Solar panels will be permitted only with the consent of the Committee, and if permitted at all, must lie flat against the roof and may not differ in pitch or color from the roof surface on which they are mounted. No antenna of any sort is allowed if it is visible from the front of neighboring properties.

- 7.11 No Used or Temporary Structures. No previously erected, used, or temporary structure, mobile home, trailer house, or any other non-permanent structure may be installed or maintained on any Lot. No metal building or metal storage sheds are allowed.
- 7.12 Balconies and Decks. Any balcony or deck above the natural grade must be approved in advance by the Committee with respect to the design, materials and appearance of the balcony or deck. All posts or pillars supporting any deck must be at least eight inches in width measured in either direction. The area under any deck must be either be landscaped or screened from view so that the view from adjoining Lots or streets is not of the unfinished underside of the deck. The area under any deck shall not be used for storage of equipment, firewood, building material, or similar material.
- 7.13 Driveways. Every garage shall be serviced by a driveway, which shall be of sufficient width and depth so as to park two vehicles side by side completely out of the street right of way. All driveways are to be constructed only of concrete, or, as approved by the Committee in the case of very long winding uphill or downhill driveways, asphalt may be used if bordered on the sides by a concrete border.
- 7.14 Ground Water. In the event the Declarant or any other party installs a ground water drainage system for any portion of the Covered Property, Owners shall be required to obtain the approval of the Committee prior to diverting water in to such system.
- 7.15 Exceptions. The board, upon review and consideration of an application, may, in its sole discretion, allow an additional 100 square foot exception to the minimum house size requirements.
- 7.16 Ivory Homes Catalogue. Notwithstanding anything to the contrary herein, any and every home design, plan or specification contained within the Ivory Homes Catalogue, as the same may be amended, shall be considered approved and qualify for construction, and no other consent shall be required. Any and all deviations from the Ivory Homes Catalogue, including by way of illustration but not limitation, design, construction materials and coloration, must be expressly approved in writing by the ARC: The approval of the Ivory Homes Sales staff and/or construction personnel is insufficient.

## 8.0 ARTICLE VIII - CONSTRUCTION COVENANTS

In order to minimize the inconvenience to neighboring Owners during periods of construction within the Covered Property, the following construction regulations shall be enforced. These regulations shall be made a part of the construction contract between the Owner and the Builder of each Dwelling or other Improvements on a Lot. The Owner shall be bound by these regulations, and violations committed by the Builder or its employees, subcontractors or others shall be deemed a violation by the Owner for which Owner is liable.

- 8.1 Portable Office or Trailer. A builder or general contractor constructing a home on a Lot may utilize a portable office or trailer during the construction period only. The portable office must be located within the Owner's Lot. The temporary office may not be installed prior to the commencement of construction, and must be removed upon the first to occur of: (1) the issuance of a Certificate of Occupancy, (2) the termination, expiration, or



cancellation of the Building Permit, (3) the suspension of construction activities for a period of 60 days, or (4) one year after the commencement of construction.

- 8.2** Construction Debris Removal. The Builder must comply with City ordinances requiring the placement and maintenance of a trash container or dumpster on the Lot. The Builder shall collect trash at the end of each work day and deposit construction trash, packing material, unusable scraps, and other debris in a suitable container, protected from the wind, and regularly serviced. No trash may be burned, buried, or otherwise disposed of within the Covered Property. No concrete trucks may be cleaned out on the Lot or elsewhere within the Covered Property.
- 8.3** Construction Area Appearance. The Lot must be maintained in a reasonably organized and neat condition at all times during the construction of a Dwelling or other Improvements. Once the Dwelling is enclosed, materials shall be stored inside, and out of sight, whenever practical and possible.
- 8.4** Sanitary Facilities. The Builder is responsible for the installation and maintenance of an approved portable toilet facility during construction.
- 8.5** Construction Sign. During periods of actual construction on the Dwelling, the Owner or Builder may install a sign not to exceed sixteen square feet in area identifying the Lot and the Builder. The sign must be removed upon completion or abandonment of construction.
- 8.6** Hours of Work. Daily working hours on the site shall be limited to the period beginning at 7:00 AM and ending at 9:00 PM, or such lesser period as is allowed by City ordinances. The Builder is responsible for controlling noise emanating from the site.
- 8.7** Removal of Mud. The Builder is responsible for cleaning up and removing mud that is deposited on the roadways of the Covered Property by their construction operation at least once each week.
- 8.8** Duration of Construction. No construction shall be undertaken without a building permit and all other necessary permits from the City and any other governmental entity having jurisdiction over the construction. No materials, tools, temporary offices or portable toilets, excavation or construction equipment, or similar materials or equipment may be delivered to this site prior to the issuance of the building permit. It is the obligation of the Owner to construction with all reasonable speed once construction has commenced, and in any event, all exterior surfaces of the building shall be substantially completed within a period of six months from the date of the foundation is complete. All landscaping and soil stabilization work must be completed as soon as possible after completion of the exterior of the Dwelling, but in no event later than the summer following completion of the exterior of the Dwelling.

## **9.0** ARTICLE IX - LANDSCAPE STANDARDS

It is the intent of the Declaration to require appropriate landscaping of Lots following construction of any Improvements, and to encourage the use of appropriate plant materials. The use and Improvement of each Lot is subject to the following Landscape Standards:

- 9.1 Lawn and Landscaping Required. Front yard and visible side yard lawns are to be installed in accordance with the timing specified by Herriman City's code noting that CCR minimums for size and quantity must still be met. In no case shall the required landscaping remain uncompleted beyond 9 months after home closing. Owner is required to fully landscape his or her Lot no later than the summer immediately following completion of construction. Notwithstanding any other provision to the contrary herein, Ivory Homes may extend the timeline for completion of the rear yard installation for a period of up to ten months following completion of the last lot in Phase 10. In the event the Owner or its contractor does not install the required landscaping in accordance with the time allowed above, the Committee shall be entitled to levy fines on a monthly basis against the Owner in an amount not to exceed \$300 per month with the first month's fine equal to \$150 which amounts may be adjusted from time to time by the Board. Neither the Committee, the Association, or any of its officers or agents shall be liable in any manner in connection with the exercise of the remedies set forth in this paragraph in the event the Owner fails to install landscaping as provided herein. The Committee shall not be required to use any of the Association's own funds for such purpose. The Owner may plant lawns and gardens, plant shrubbery, trees or other ornamental plantings or replace natural species. Front and visible side yard lawn areas must be provided with sod and not grown from seed or power mulching. Trees, lawns, shrubbery and other plantings provided by each lot owner shall be properly nurtured and maintained at the Owner's sole expense, including replacement of the same upon the request of the Committee.
- 9.2 Placement of Trees and Shrubs. Planting of a minimum of six trees and a minimum of 12 two-gallon shrubs in the front and/or visible side yard within each Lot is required. Conifers shall be a height of at least four feet and deciduous trees shall be at least a one and one-half inch caliper, except on the parking strip, where deciduous trees shall be at least a two-inch caliper. The lot Owner is required to plant and maintain at least two trees in the parking strip between the back of the curb and the sidewalk in front of his or her Lot. Only sod and trees will be permitted in the parking strip unless a variance is granted by the Board.
- 9.3 Sprinkler System. All landscape and lawn areas, including those in the landscape strip, shall be provided with permanent underground sprinkler systems.
- 9.4 Fences. Fencing shall be permitted in the Covered Property only in accordance with applicable City ordinances and must be decorative in nature. No fences may be constructed without the prior approval of the Committee, which may include in its approval criteria considerations of style, material, height, and effect on neighboring properties. Fencing of front yards shall not be permitted. Barb wire and field fence on posts are prohibited. No chain link is permitted as cross-fencing or in back and side yards where it is visible from roads. The Committee may approve wood fences, provided provisions for proper maintenance of such fences are made.
- 9.5 Controlled Surfaces. No concrete, cement or masonry products, pavers, brick, stone, cobblestone, gravel, tile terrazzo, slabs, slate, rocks, pebbles, artificial turf, permeable pavements and so forth or other artificial or impermeable surfaces (collectively "controlled surfaces") may be installed or constructed as landscaping in the front, side or rear yards of a Lot without the express prior written consent of the committee. Park strips, front, side or

rear yards constructed primarily or substantially of controlled surfaces are prohibited.

9.6 Fires. No exterior fires whatsoever, except barbecue fires contained in receptacles provided therefor, shall be allowed.

9.7 Compaction. Each Owner shall be responsible to ensure a minimum of 95% compaction of soil and fill materials under all footings, structural, and flat concrete areas and to ensure a minimum compaction of 90% under all lawn and landscaped areas.

10.0 ARTICLE X - OWNERS' MAINTENANCE AND PERMIT OBLIGATIONS.

10.1 Duty to Maintain. The Owner of each Lot shall maintain his or her Lot and the Improvements thereon in a good state of repair and an attractive, safe, and health condition.

10.2 Repair by Committee. In the event that an Owner permits his Lot or Improvements to fall into a state of disrepair that is in a dangerous, unsafe, unsanitary, or unsightly condition or fails to comply with any other covenant or restriction in violation of this Declaration, the Committee or any Owner may give written notice to the Owner describing the condition complained of and demanding that the Owner correct the condition within 30 days. If the Owner fails to take corrective action, the Committee or any Owner shall have the right, but not the obligation, to enter upon the offending Owner's Lot and take corrective action to abate the condition. All costs of abatement shall be charged to the Owner, who agrees to promptly pay the reasonable costs of any work performed under this provision. In addition, each Owner hereby grants to the Committee a lien on the Lot and any Improvements to secure repayment of any sums advanced pursuant to this section, which lien may be foreclosed at any time by the Committee in the manner prescribed in Utah for the foreclosure of mortgages. Alternatively, without requiring foreclosure, the Committee may seek collection of sums advanced directly from the Owner of the Lot in question. In order to claim such a lien, the Committee shall record a notice of lien in the office of the Salt Lake County Recorder, setting forth the amount claimed and the work performed for which such lien is asserted. Unpaid amounts will bear interest from the date advanced at the lawful pre-judgment rate under state law.

10.3 Alteration of Exterior Appearance. The Owners will maintain their Lots and Improvements in substantially the same condition and appearance as that approved by the Committee. No subsequent exterior alterations, improvements or remodeling, whether structural or changes in landscaping, paint color or materials will be made without the advance consent of the Committee.

10.4 Repair Following Damage. In the event of casualty loss or damage to the Improvements, the Owner will be entitled to reconstruct the Improvements as they existed prior to the damage or loss without review by the Committee, provided however that alterations or deviations from the original approved plans will require review. Nothing in this Declaration is intended to prevent an Owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent further damage, or to prevent injury or dangerous conditions following loss or damage, before reconstruction begins. Such temporary measures may be taken without the consent or approval of the Committee, provided that any such measures must be of a temporary nature, and repair or

reconstruction must begin as soon as circumstances will permit. No damaged structure will be permitted to remain on any Lot for more than 90 days without repairs commencing, and any damaged structure which remains unrepaired after 90 days following the occurrence of damage shall be deemed a nuisance.

10.5 Storm Water Permits. All Owners who acquire title to a Lot (whether the Owner is a builder, individual person, entity or otherwise) shall obtain their own Storm Water Permits (as defined in Article I above) from the Division of Water Quality (Utah Department of Environmental Quality) prior to commencing any construction-related activities for which a Storm Water Permit is required (including, without limitation, excavating, grading, or otherwise disturbing the surface materials or vegetation on the Lot). The Storm Water Permit may be obtained by filling out an application form online at [www.waterquality.utah.gov/updes/stormwater.htm](http://www.waterquality.utah.gov/updes/stormwater.htm) or contacting the Division by telephone at (801) 538-6146. All Owners who seek to engage in any construction-related activities requiring a Storm Water Permit covenant and agree to comply with the Storm Water Permit requirements, including, without limitation, the requirement to develop and implement a Storm Water Pollution Prevention Plan. Owners shall be fully and solely responsible for preventing rain and snowmelt from carrying sediment or pollutants into the streets or any storm drain facilities from any un-landscaped areas of their Lots. Owners covenant and agree not to stockpile any landscaping materials, dirt, gravel or other such materials in the streets. Owners other than Declarant, following their purchase of a Lot, hereby indemnify and hold Declarant harmless from and against any and all claims, liabilities, fines, costs, fees, expenses, judgments, losses and damages resulting from or relating to any failure to comply with the Storm Water Permit requirements for the Owner's Lot or from any storm water drainage or run-off from Owner's Lot, including, without limitation, any and all claims, fines, costs of remediation or clean up, or other expenses imposed by the Division or required or incurred as a result of any action or orders of the Division.

## 11.0 ARTICLE XI - FIRST MORTGAGEES

11.1 First Mortgagee Protection. The breach of any of the foregoing covenants shall not defeat or render invalid the lien of any mortgage or deed of trust lien on the Covered Property that is made in good faith and for value; provided, however, that all of the covenants contained herein shall be binding upon and effective against any owner of a Lot whose title thereto is acquired by foreclosure, trustee's sale or other foreclosure proceeding, from and after the date of such foreclosure, trustee's sale or other foreclosure proceeding. The lien provided for in Section 5.1 hereof shall be subordinate to the lien of any first mortgage or deed of trust which was recorded before any Notice of Lien became recorded.

11.2 Notice of Action. Upon written request to the Association, identifying the name and address of the First Mortgagee or insurer or guarantor of the First Mortgage and the residence address of the property which is subject to such First Mortgage, each such First Mortgagee or insurer or guarantor of such a First Mortgage, shall be entitled to timely written notice of:

11.2.1 any condemnation loss or casualty loss which affects a material portion of the Property or any Lot subject to a First Mortgage held, insured or guaranteed by such

First Mortgagee, insurer or guarantor of a First Mortgage;

11.2.2 any delinquency in the payment of assessments or charges owed to the Association by the Owner of the Lot subject to a First Mortgage held, insured or guaranteed by such First Mortgagee, insurer or guarantor, or any default by such Owner in any obligation under the Declaration, Articles of Incorporation or Bylaws of the Association and the Board of Directors of the Association has actual knowledge of such default, when such delinquency and/or default remains uncured for a period of sixty (60) days;

11.2.3 any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

11.3 Financial Statement. The Association shall provide a financial statement for the immediately preceding fiscal year free of charge to any First Mortgagee, insurer or guarantor of a First Mortgage within a reasonable time after written request therefor.

## 12.0 ARTICLE XII - ANNEXATION OF ADDITIONAL PROPERTY

12.1 Annexation. Declarant shall be entitled to annex, from time to time, additional real property to the Covered Property and cause such additional real property to become subject to the Original Declaration and subject to the jurisdiction of the Association without the approval, assent or vote of the Association or its Members, provided that a Supplementary Declaration covering the real property to be annexed, shall be executed and recorded by Declarant. The recordation of said Supplementary Declaration shall constitute and effectuate the annexation of the real property described therein, making said real property subject to the Original Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter said annexed real property shall be part of the Covered Property and all of the Owners of Lots in said annexed real property shall automatically be Members of the Association.

12.2 Development of the Project. Declarant intends to develop the Covered Property and additional property to be annexed to the Covered Property from time to time (collectively, the "Project") sequentially on a multi-phased basis. However, Declarant may elect not to develop all or any part of any phase, to develop the Project in increments of any size whatsoever, or to develop more than one phase at any given time and in any given order. Moreover, Declarant reserves the right to subject all or any portion of a phase or phases to the plan of the Original Declaration. Although Declarant shall have the ability to annex additional real property as provided above, Declarant shall not be obligated to annex any additional property and no such property shall not become subject to the Original Declaration unless and until a Supplementary Declaration shall have been so executed and recorded.

12.3 Supplementary Declarations. The annexations authorized under this Article shall be made by filing of record a Supplementary Declaration of Covenants, Conditions and Restrictions, or similar instrument, with respect to the additional property which shall extend the plan of the Original Declaration to such property. Such Supplementary Declarations

contemplated above may contain such additions and modifications of the covenants, conditions and restrictions contained in the Original Declaration as may be determined by Declarant to be necessary or desirable with regard to the additional real property being annexed. In no event, however, shall any such Supplementary Declaration or any merger or consolidation revoke, modify or add to the covenants established by the Original Declaration or the prior recorded Supplementary Declarations within the Covered Property, except as hereinafter otherwise provided.

12.4 Mergers or Consolidations. Upon a merger or consolidation of the Association with another association, the Association's properties, rights and obligations may, by operation of law, be transferred to the surviving or consolidated association, or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer covenants, conditions and restrictions established by this Declaration within the Covered Property, together with the covenants and restrictions established upon any other property as one plan.

### 13.0 ARTICLE XIII - GENERAL PROVISIONS

13.1 Violation Deemed a Nuisance. Any violation of these Covenants which is permitted to remain on the property is deemed a nuisance, and is subject to abatement by the Association or by any other Owner.

13.2 Remedies.

13.2.1 Any single or continuing violation of the Covenants contained in this Declaration may be enjoined in an action brought by the Declarant (for so long as the Declarant is the Owner of any Lot), by any other Owner, by the Committee in its own name, or by the Association. In any action brought to enforce these Covenants, the prevailing party shall be entitled to recover as part of its judgment the reasonable costs of enforcement, including attorneys' fees and costs of court.

13.2.2 Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state or local laws and ordinances for the abatement of nuisances, health and safety, or other matters. These covenants, conditions and restrictions are to be construed as being in addition to those remedies available at law.

13.2.3 The remedies available under this Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.

13.2.4 The failure to take enforcement action shall not be construed as a waiver of the Covenants contained in this Declaration in the future or against other similar violations.

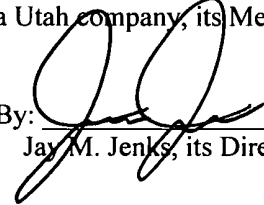
13.3 Severability. Each of the covenants, conditions and restrictions contained in this Declaration shall be independent of the others, and in the event that any one is found to be invalid, unenforceable, or illegal by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

- 13.4 **Limited Liability.** Neither the Declarant, the Committee or its individual members, nor any other Owner shall have personal liability to any other Owner for actions or inactions taken under these Covenants, provided that any such action or inaction is the result of the good faith exercise of their judgment or authority, under these Covenants, and without malice.
- 13.5 **Amendment.** At any time while this Declaration is in effect, the Owners of 67% of the Lots may amend the provisions of this Declaration, provided that so long as Declarant owns any portion of the Covered Property, Declarant's approval to any amendment shall be required. Any amendment must be in writing. No such amendment will be binding upon the holder of any mortgage or trust deed unless the holder joins in the amendment.
- 13.6 **Rights Assignable.** All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment.
- 13.7 **Constructive Notice.** Every person who owns, occupies, or acquires any right, title or interest in any Lot in the Covered Property is conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of each of the covenants, conditions, and restrictions contained herein against his Lot, whether or not there is any reference to this Declaration in the instrument by which he acquires his interest in any Lot.
- 13.8 **Notices.** All notices under this Declaration are deemed effective 72 hours after mailing, whether delivery is proved or not, provided that any mailed notice must have postage prepaid and be sent to the last known address of the party to receive notice. Notices delivered by hand are effective upon delivery.
- 13.9 **Interpretation.** The provisions of this Declaration shall be interpreted liberally to further the goal of creating a uniform plan for the development of the Covered Property. Paragraph headings are inserted for convenience only and shall not be considered an interpretation of the provisions. The singular will include plural, and gender is intended to include masculine, feminine and neuter as well.

Executed on the date stated above.

Herriman Springs Developers, LLC,  
a Utah limited liability company

By: Oakridge Development, Inc  
a Utah company, its Member/Manager

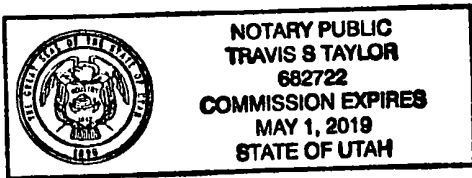
By:   
Jay M. Jenks, its Director

STATE OF UTAH                    )  
  :SS.  
COUNTY OF DAVIS    )

The foregoing instrument was acknowledged before me this 19 of December, 2018, by Jay M. Jenks, in his capacity as Director of Oakridge Development, Inc., which is the Member/Manager of Herriman Springs Developers, LLC.

  
\_\_\_\_\_  
NOTARY PUBLIC

SEAL:





**EXHIBIT "A"**

[LEGAL DESCRIPTION OF THE COVE AT HERRIMAN SPRINGS PHASE 10]

**Lots 1001 through 1019 of The Cove at Herriman Springs, Phase 10 plat as recorded in the office of the Salt Lake County Recorder as Entry Number 12901836 on 12/12/2018.**