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WHEN RECORDED RETURN TO:

WEEKLEY HOMES, LLC  
c/o David Weekley Homes  
6243 South Redwood Road, Suite 230  
Taylorsville, UT 84123

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Book - 10507 Pg - 7243-7275  
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RECORDER, SALT LAKE COUNTY, UTAH  
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201 S MAIN #1100  
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BY: CBA; DEPUTY - WI 33 P.

**DECLARATION  
OF  
CONDITIONS, COVENANTS AND RESTRICTIONS**

***(Deer Run Preserve)***

This Declaration of Conditions, Covenants and Restrictions (the "**Declaration**") is made as of the 1<sup>st</sup> day of November 2016, by Weekley Homes, LLC, a Delaware limited liability company (the "**Declarant**"), with respect to that certain real property generally outlined, shown and particularly described in attached **Exhibits A-E** (the "**Subject Property**"), with the acknowledgement and consent of Deer Run Solutions, LLC, a Delaware limited liability company, as the owner of certain portions of the Subject Property. The Declarant has recorded the plats of "Deer Run Preserve Phase 1" (the "**Phase 1 Plat**"), "Deer Run Preserve Phase 2" (the "**Phase 2 Plat**"), "Deer Run Preserve Phase 3" (the "**Phase 3 Plat**"), and "Deer Run Preserve Phase 4" (the "**Phase 4 Plat**," and together with the Phase 1 Plat, Phase 2 Plat, and Phase 3 Plat, collectively, the "**Plat**") in the office of the County Recorder for Salt Lake County, Utah (the "**Official Records**") and, accordingly, this Declaration is subject to the terms, restrictions and notes shown on the Plat. Except as otherwise specified in this Declaration, the Declarant desires to subject the Subject Property to the easements, covenants, conditions, restrictions and charges set forth in this Declaration, to and for the benefit of the Subject Property and all parties having or acquiring any right, title or interest, fee or otherwise, in the Subject Property or any part thereof. By the execution, delivery and recording of this Declaration in the Official Records, the Declarant declares that (a) the Subject Property and the project subject to the terms and conditions of this Declaration (the "**Project**") is not a cooperative and (b) except as may be otherwise specified in this Declaration, the Subject Property and any part thereof shall be held, sold and conveyed subject to the following easements, covenants, conditions, restrictions and charges, which shall run with such property and shall be binding upon, and inure to the benefit of, all parties having or acquiring any right, title or interest, fee or otherwise, in the Subject Property or any part thereof.

**ARTICLE 1. DEFINITIONS**

As used in this Declaration, and except as otherwise defined in this Declaration, capitalized terms used in this Declaration shall be defined as set forth in attached **Exhibit F**.

**ARTICLE 2. PROPERTY SUBJECT TO THIS DECLARATION**

The Declarant hereby declares that all of the Subject Property is, and shall be, owned, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the terms and conditions of this Declaration. The Subject Property contains four phases of development, consisting of (a) seventy-nine (79) single-family units or lots as shown on attached **Exhibits A-E** (individually, a "**Unit**" or a "**Lot**" and, collectively, the "**Units**" or the "**Lots**") and (b) as and to the extent part of each Lot, those common maintenance areas (the "**HOA Maintenance Areas**" or "**Common Areas**"), all as designated and shown on attached **Exhibits A-E**. In addition to the terms and conditions set forth in this Declaration, the Project shall be subject to the rules and

regulations as set forth in attached *Exhibit G* (the “*Rules and Regulations*”) and, further, any amendments or supplements to the Rules and Regulations.

### **ARTICLE 3.HOA MAINTENANCE AREAS**

3.1 Right to Use, Access and Enjoy HOA Maintenance Areas. Subject to the terms and conditions of this Declaration and except for the private sidewalks providing access to each residence as shown on attached *Exhibit A-E*, the Owners of any Lots, and their respective tenants, guests and invitees thereof (individually, a “*User*” and, collectively, the “*Users*”), shall have the right to use and access, in common with others and subject to the Rules and Regulations, the HOA Maintenance Areas, which rights (the “*Common Rights of Access and Use*”) shall be appurtenant to and pass with fee title to every Unit. Notwithstanding the foregoing, unless otherwise approved, in advance and in writing by the Association (a) the “*Private Roads*” designated as part of the HOA Maintenance Areas and shown on attached *Exhibits A-E* shall be used only for purposes of, as and to the extent designed or designated therefor, vehicular and pedestrian access to and from the Lots; and (b) the “*Common Sidewalks and Landscaping Areas*” designated and shown on attached *Exhibits A-E* shall be used only for purposes of, as and to the extent designed or designated therefor, pedestrian access to and from the Lots by Users.

3.2 Designation of HOA Maintenance Areas. The Declarant may, but is not obligated to, retain control of the HOA Maintenance Areas until such time as the Declarant has completed the improvements to be constructed thereon (as determined by the Declarant, the “*Improvements*”). Upon completion of the Improvements, free and clear of all liens, restrictions and encumbrances associated with or arising from any such Improvements, the HOA Maintenance Areas shall be, and remain, subject to the terms and conditions of this Declaration (including without limitation any rights of the Users otherwise described in this Declaration).

3.3 Reservations and Easements - HOA Maintenance Areas. The Declarant reserves to itself and grants to the Association for the benefit, and burden, of the Declarant, the Association, and the Owners of Lots perpetual easements under and through the Lots and HOA Maintenance Areas for the installation, continued operation, and maintenance of power, water, communications, and other utility services as may be necessary for the ownership, use and occupancy of the Lots (collectively, the “*Utilities*”), together with an easement for the construction, maintenance and repair, and use of the HOA Maintenance Areas and the Utilities; provided that, except as and to the extent of public record or otherwise in existence as of the date hereof and except for services or utilities to be provided to any improvements situated on the Lots, any such utility easements shall be located near the outside boundaries of the Lots and shall not unreasonably interfere with the use and development of the Lots or any improvements on the Lots, as limited and restricted hereby.

3.4 Designation of HOA Maintenance Areas and City Owned Common Maintenance Areas. The following portions of the Lots within the Subject Property, inclusive of any other “*HOA Maintenance Areas*” shown and designated on attached *Exhibit E*, are HOA Maintenance Areas:

- (a) The Common Sidewalks and Landscaping Areas;
- (b) The Park and Trail Fencing and Landscaping;
- (c) The Private Roads
- (d) The Entry Monument; and
- (e) Such other areas as may be determined, from time to time, by the

Association.

The “*City Owned Common Maintenance Areas*” are as shown and designated on attached *Exhibit E*.

3.5 Reservations - HOA Maintenance Areas. The Declarant, subject to Section 3.3, above, reserves unto itself and grants to the Association an easement over, across, under, and through the HOA Maintenance Areas for the construction, maintenance and repair, and use of fences, retaining walls, project signs, planters, landscaping, and any Utilities. Further, subject to Section 3.3, above, the Declarant or the Association may, and, to the extent required by law, shall have the right to grant easements to municipalities or private utilities performing or providing Utilities to the Subject Property, the HOA Maintenance Areas or any part thereof.

3.6 Special Provisions. The areas designated on attached *Exhibit E* as “*Parcel A*” and “*Parcel B*” are dedicated to the City of Draper, Utah (the “*City*”) for use as a public park and trails (the “*Park and Trail Areas*”). The Park and Trail Fencing and Landscaping, including sprinklers and any lights located within the Park and Trail Areas, shall be maintained by the Association. The Association will also be responsible for removal of snow, litter, or graffiti for the Park and Trail Areas.. All other maintenance obligations relating to the Park and Trail Areas shall be fulfilled by the City.

#### **ARTICLE 4. ASSOCIATION**

4.1 General. The Declarant shall organize an association of the Owners of one or more Lots within the Subject Property. The Association shall be organized under the name “*Deer Run Preserve Homeowners’ Association*” or such similar name as the Declarant shall designate, and shall have such property, powers and obligations as are set forth in this Declaration for the benefit, and burden, of the Subject Property and all Owners and Users.

4.2 Organization. The Declarant, before the first Lot is conveyed to an Owner, shall organize the Association as a nonprofit corporation under the general nonprofit corporation laws of the State of Utah. The Articles of Incorporation of the Association shall provide for its perpetual existence, but, in the event the Association is at any time dissolved, whether voluntarily or involuntarily, by operation of law or otherwise, the Association shall automatically be succeeded by an unincorporated association of the same name. In that event all of the property, powers and obligations of the incorporated Association existing immediately prior to its dissolution shall thereupon automatically vest in the successor unincorporated association, and such vesting shall thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated Association. To the greatest extent possible, any successor unincorporated association shall be governed by the Articles of Incorporation and Bylaws of the Association as if they had been made to constitute the governing documents of the unincorporated association. The Declarant shall cause the Association to register with the Utah Department of Commerce, as prescribed by Utah Code Ann. § 57-8a-105, within ninety (90) days following the recording of this Declaration in the Official Records.

4.3 Membership. Every Owner of one or more Lots within the Subject Property shall, immediately upon creation of the Association and thereafter during the entire period of such Owner’s ownership of one or more Lots within the Subject Property, be a member of the Association. Such membership shall commence, exist and continue simply by virtue of such ownership, shall expire automatically upon termination of such ownership, and need not be confirmed or evidenced by any certificate or acceptance of membership.

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

(a) Class A members shall be all Owners of Lots within the Subject Property, including the Declarant.

(b) The Class B member shall be the Declarant; provided that the Class B membership shall terminate upon the first to occur of the following:

(i) sixty (60) days after seventy-five percent (75%) of the Lots that may be created are conveyed to Lot Owners other than the Declarant;

(ii) seven (7) years after the Declarant has ceased to offer Lots for sale in the ordinary course of business;

(iii) the day the Declarant, after giving written notice to the Lot Owners, records an instrument voluntarily surrendering all rights to control activities of the Association; or

(iv) 120 days following the termination of the Class B membership in accordance with this Declaration; provided that the Declarant may voluntarily surrender the right to appoint and remove a member of the board before the period of administrative control terminates under this.

Until the Class B membership is terminated as provided above, all voting rights in the Association shall belong to the Class B member, except to the extent otherwise expressly provided herein. Upon termination of the Class B membership, all voting rights in the Association shall belong to the Class A members. On all matters upon which the Class A members are entitled to vote, each Class A member shall have one vote for each Lot owned within the Subject Property; provided that, in the event more than one person holds an interest in any Lot, the vote for such Lot shall be exercised by such persons as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

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

(a) The powers, duties and obligations granted to the Association by this Declaration.

(b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah.

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

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

4.6 Liability. Except as and to the extent resulting from the intentional misconduct or gross negligence of any such person, any individual member of the Association shall not be liable to the Association or any member thereof for any damage, loss or prejudice suffered or claimed on account of any action or failure to act in the performance of the Association's duties. In the event any member of the Association is made a party to any proceeding because the

individual is or was a member, director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law.

4.7 Interim Board; Turnover Meeting. The Declarant shall have the right to appoint an interim board of one (1) to three (3) directors, who shall serve as the board of directors of the Association until replaced by the Declarant or their successors have been elected by the Owners at the turnover meeting described in this section. The board of directors of the Association shall have the right, but not the obligation, to appoint such officer(s) as may be necessary or appropriate to oversee the day-to-day administration of the Association, who shall serve for term, and subject to any limitations, as may be imposed by the board of directors of the Association; provided that, in the event the board of directors of the Association shall not appoint any such officer(s), the board of directors of the Association shall be responsible for the day-to-day administration of the Association. The Declarant shall call a meeting of the Association for the purpose of turning over administrative responsibility for the Subject Property to the Association not later than the first to occur of the following:

- (a) sixty (60) days after seventy-five percent (75%) of the Lots that may be created are conveyed to Lot Owners other than the Declarant;
- (b) seven (7) years after the Declarant has ceased to offer Lots for sale in the ordinary course of business;
- (c) the day the Declarant, after giving written notice to the Lot Owners, records an instrument voluntarily surrendering all rights to control activities of the Association; or
- (d) 120 days following the termination of the Class B membership in accordance with this Declaration; provided that the Declarant may voluntarily surrender the right to appoint and remove a member of the board before the period of administrative control terminates under this Declaration.

At the turnover meeting, any existing directors or officers of the Association shall resign and, concurrently therewith, the Owners shall elect and ratify a board of directors of the Association as provided in this Declaration and the Bylaws of the Association, which board of directors shall consist of an odd number of at least three (3) members, the majority of whom shall be Lot owners, and which board of directors then shall have the right, but not the obligation, to appoint such officer(s) as may be necessary or appropriate to oversee the day-to-day administration of the Association, who, again, shall serve for term, and subject to any limitations, as may be imposed by the board of directors of the Association. If the Declarant fails to call the turnover meeting as required by this section, any Owner of one or more Lots may call the meeting by giving notice as provided in the Bylaws.

4.8 Annual Budget. The Bylaws shall provide for the preparation and approval of an annual budget for the Association, consistent with any and all Applicable Laws.

***ARTICLE 5. MAINTENANCE AND ASSESSMENTS;  
INSURANCE OBLIGATIONS AND RELATED MATTERS***

5.1 Maintenance and Repair Rights, Obligations and Limitations. The Association, subject to the availability of the necessary funds therefor (inclusive of any “*Assessments*” [as defined below] and insurance proceeds therefor), shall have responsibility for (a) the maintenance and repair, including snow removal and storage, of the HOA Maintenance Areas, inclusive of, without limitation, any associated landscaping (regardless of whether located within the HOA Maintenance Areas) and the Park and Trail Fencing and Landscaping; (b) except as and to the

extent any damage or destruction may be caused by the City, the maintenance and repair, including snow removal and storage, of the surface areas, but no more, of the City Owned Common Maintenance Area; (c) any property and facilities, including without limitation any Utilities within the HOA Maintenance Areas (as applicable, "*Common Utilities*"), that the Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and the Users; (d) the maintenance, repair, and provision of electricity to the Entry Monument; and (e) the landscaping, irrigation and utility cost maintenance of the center median located on Deer Preserve Lane. The Declarant shall identify any such property and facilities, including without limitation any Common Utilities, by written notice to the Association, and they shall remain the responsibility of the Association until the Declarant, in its reasonable discretion, revokes such privilege of use and enjoyment by written notice to the Association. No mortgagee shall have the right to participate in determining whether the damage or destruction to the HOA Maintenance Areas or any Common Utilities shall be repaired or reconstructed. If, in the reasonable discretion of the Association, a decision is made not to restore, repair or replace any damaged Improvements, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive landscaped condition consistent with any Applicable Laws and the Standards. The Association shall retain, for the benefit of all of the Owners, any insurance proceeds remaining after paying the costs of repair, replacement, restoration, or reconstruction. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Association may levy special Assessments to cover the shortfall therefor.

5.2 Maintenance of Utilities, Storm Sewer Systems, Lots, and Other Private Areas.

Each Owner shall be individually responsible for (a) the installation and on-going maintenance of any Utilities exclusively serving the Owner's Lot; (b) except to the extent part of the HOA Maintenance Areas and, then, except as otherwise specified in this Declaration as the responsibility of the Association, the installation and on-going maintenance (and/or repair) of the hardscape and landscape areas within the Owner's Lot; and (c) litter and graffiti removal when necessary or appropriate, but, in any case, no less frequently than weekly, from the Owner's Lot and any improvements thereon, inclusive of any part of the sidewalk with any such Owner's Lot. As and to the extent any such installation and maintenance shall not be performed by any such Owner, then, upon ten (10) business days advance, written notice to such Owner, the Association shall have the right, but not the obligation, to undertake and perform any such installation and maintenance, the cost and expense for which, together with a management fee in an amount equal to five percent (5%) of any such costs and expenses, shall be the responsibility of the Owner and, then, assessed and paid pursuant to the terms and conditions of Sections 5.3 and 5.8, below, and subject to default terms, including default interest, pursuant to the terms and conditions of Sections 7.2 and 7.5, below.

5.3 Purpose of Assessments. The assessments or charges levied by the Association pursuant to this Declaration shall be used exclusively for the purpose of promoting the recreation, health, safety, and welfare of the residents of Lots within the Subject Property and in particular for the improvement and maintenance of properties, services, and facilities devoted to this purpose and related to the use and enjoyment of the HOA Maintenance Areas and Lots situated upon the Subject Property, including, without limitation, the costs of providing the maintenance required in this Declaration by the Association (including without limitation for the City Owned Common Maintenance Areas), together with the costs of management, accounting and legal services, except that the Association may not incur legal costs in any one year in excess of ONE THOUSAND AND NO/100 DOLLARS (\$1,500.00) without approval of more than sixty-seven percent (67%) of the Owners (excluding for these purposes the Declarant) (as applicable, "*Assessments*"). Further, the Association shall not commence or prosecute any Claim, unless

first approved by more than sixty-seven percent (67%) of the Association, which approval must be accompanied by the approval of a reasonable budget and the approval of a special assessment in an amount equal to the budget, and which budget amount shall be levied equally among the Lots and, then, collected before commencement of any such action.

5.4 Duty of the Association - Assessments. The Association shall fix the amount of the Assessments against each Lot for the purposes set forth above. Subject to the Applicable Laws, the Association shall have the right, but not the obligation, to establish reserves for the purposes set forth above. To the extent the Association determines any such reserves are necessary, the continuation, maintenance and administration of any such reserves will comply with Utah Code Ann. § 57-8a-211 and any other Applicable Laws. The Association shall give each Owner of one or more Lots written notice of such Assessment at least thirty (30) days in advance of the due date of the Assessment and shall cause to be prepared a roster of the Lots showing Assessments applicable to each Lot. The roster shall be kept by the Association and shall be subject to inspection by any Owner of one or more Lots during regular business hours. Upon demand, the Association shall furnish to any Owner of one or more Lots a certificate in writing setting forth whether the Assessments on such Owner's Lot have been paid, any outstanding Assessments and any approved Assessments not yet due and payable, together with such other evidentiary documentation as may be reasonably necessary therefor.

5.5 Amount of Assessments: Working Capital Assessment. The annual Assessment for purposes of this Declaration shall be assessed equally against each Lot, except that no Assessment shall be levied against any such Lot until such time as it is first occupied or sold, transferred or conveyed to a person or entity other than a successor to the Declarant. In addition to the annual Assessment, the Association shall levy a one-time Assessment against each Lot any time such Lot is sold, transferred, or conveyed to a person or entity other than a successor to the Declarant in an amount equal to FIVE HUNDRED AND NO/100 DOLLARS (\$500) for purposes of facilitating maintenance of the Common Areas and the operation of the Association (the "*Working Capital Assessment*").

5.6 Special Assessments. In addition to the Assessments authorized by this Declaration, the Association may levy in any Assessment year a special Assessment, applicable to that year only, for the purpose of defraying all or part of the cost of any construction or reconstruction, unexpected repair, or replacement, repair or maintenance of a described capital improvement upon any Common Areas, or for any other one-time expenditure not to be paid for out of regular annual Assessments. No such Assessment may be levied without the vote or written consent of more than sixty-seven percent (67%) of the voting power of the Owners and, if an owner of any Lot, the Declarant. The special Assessment shall be made equally against each Lot in the Subject Property subject to assessment under this Declaration.

5.7 Benefited Assessments. The Association may levy Assessments against a particular Lot, as follows:

(a) To cover the costs, including overhead and administrative costs, of providing services to one or more Lots, upon request of an Owner pursuant to any menu of special services which the Association may, but shall not be obligated to, offer, including, without limitation, the (i) repair of pavements, utilities and retaining structures associated with the Common Areas; (ii) removal of snow and other services deemed necessary for the upkeep of the Common Areas; and (iii) landscape maintenance, pest control service, cable television service, internet access, security, caretaker, transportation, fire protection, utilities, trash collection and recycling, and similar services and facilities.

Nothing in this Section shall be construed as a representation by the Declarant or the Association as to what, if any, services shall be provided. In addition, the Board may enter into, modify or cancel contracts for services in its discretion, unless the services are otherwise required by the Association's Articles of Incorporation or Bylaws. The Board may charge use or service fees for any such services and facilities, or may include the costs in the Association's budget as a common expense which shall be assessed equally against each Lot pursuant to this Declaration (non-use of services provided to all Owners of one or more Lots or Lots as a common expense shall not exempt any Owner of one or more Lots from the obligation to pay Assessments for such services).

5.8 Creation of Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a conveyance thereof, whether or not so expressed in any such conveyance, shall be deemed to covenant to pay to the Association all Assessments as may be fixed, established and collected from time to time in the manner provided in this Declaration. Such Assessments, together with any interest, expenses or attorneys' fees imposed pursuant to this Declaration, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Such Assessments, together with together with any interest, expenses or attorneys' fees imposed pursuant to this Declaration, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment or other charges and costs fell due. Such liens and personal obligations shall be enforced in the manner set forth in this Declaration.

5.9 Exempt Property. The following property shall be exempt from payment of Assessments of any kind or nature under this Declaration:

- (a) All portions of the Subject Property, including without limitation any Common Areas, owned by the Declarant or the Association or, further, for which the Declarant or the Association shall have the obligation to maintain or repair; and
- (b) Any property owned by, dedicated to and accepted by a government authority, municipality or public utility provider.

In addition, the Association may, by resolution, grant exemptions to certain entities qualifying for tax-exempt status under Section 501(c) of the Internal Revenue Code of 1986, as amended (the "*Code*"), so long as such entities own property subject to this Declaration for purposes listed in Section 501(c) of the Code.

5.10 Responsibility for Repair and Replacement. Unless otherwise specifically approved, in advance and in writing, by the Association, each Owner shall carry property insurance for the full replacement cost of all insurable improvements on the Owner's Lot, less a reasonable deductible. Within ninety (90) days after damage to or destruction of a structure on a Lot, the Owner shall (a) promptly repair or reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved by the Association, unless the Association, in its discretion, agrees to extend such period, or (b) clear the Lot of debris and maintain it in a neat and attractive landscaped condition consistent with the Standards. The Owner shall pay any costs that insurance proceeds do not cover. Additional recorded covenants applicable to any Subject Property may establish additional insurance requirements and more stringent standards for rebuilding or reconstructing structures on Lots and for clearing and maintaining the Lots in the event the structures are not rebuilt or reconstructed.

5.11 Owner Responsibility. Notwithstanding any other term or condition of this Declaration, as and to the extent arising or resulting from activities on or about, or the use of, the



Common Areas by or at the direction or invitation of any Owner, or caused by, directly or indirectly, any act, omission or negligence of any such person, that Owner shall, and hereby agrees to, indemnify, defend, and save harmless the Association, the Declarant and the other Owners and Users, together with, as applicable, the officers, agents, employees, and representatives thereof, from and against any and all claims, liens, encumbrances, demands, liabilities, suits, actions, proceedings, costs (including litigation costs), fines, fees (including attorneys' fees), orders, decrees, judgments, and losses of any kind or nature resulting from or related to the death or injury of any person or any damage to the Common Areas (for which the Owner shall be responsible, cost or otherwise). In the event of an such damage or destruction to any part of the Common Areas, then, upon written demand from the Association, which shall delineate any repair and restoration reasonably required by reason of any such damage to the Common Areas, the Owner shall promptly and diligently (in any case not later than, subject to "*force majeure*" (as defined below), ninety [90] days following the date of any such notice) repair and restore the Common Areas so damaged or destroyed to the condition existing immediately before any such damage or destruction. In the event the Owner shall fail to so repair and/or restore the Common Areas, the Association shall have the right, and option, to so repair and restore the Common Areas and, in the event, and to the extent, the Owner does not reimburse the Association (together with a management fee in an amount equal to five percent [5%] of any such costs and expenses) within ten (10) business days following written demand for the costs and expenses of any such repairs (together with reasonably satisfactory evidentiary documentation thereof), the Association shall have the right, and option, to assess the Owner and the Owners Lot(s) for the costs and expenses of any such repairs and/or restoration, together with a management fee in an amount equal to five percent [5%] of any such costs and expenses (in addition to, and not in lieu of any other rights or remedies to which the Association may be entitled at law or in equity). For these purposes, "*force majeure*" means any reasonable delay caused by acts of nature, strikes, lockouts, other labor troubles, riots, civil commotion, insurrection, war or other reason not the fault of the party delayed (financial inability excepted), in which case performance of the action in question shall be excused for the period of delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay.

#### ***ARTICLE 6. ARCHITECTURAL REVIEW AND CONFIRMATION***

6.1 Architectural Review Required. No Improvement shall be commenced, erected, placed or altered on any Lot until the construction plans and specifications showing the nature, shape, heights, materials, colors and proposed location of the Improvement have been submitted to and approved in writing by the Association. It is the intent and purpose of this Declaration to assure quality of workmanship and materials, to assure harmony of external design with the existing Improvements and as to location with respect to topography and finished grade elevations, and to avoid plan repetition. Further, the nature, shape, heights, materials, colors, and location of the Improvements first constructed on the Lots shall, generally, establish the guidelines for future design and construction within the Subject Property (the "*Design and Construction Guidelines*"). In order to be approved by the Association, any such proposed Improvement shall be aesthetically consistent with the Design and Construction Guidelines. The Association, in its reasonable discretion, may charge a reasonable fee to cover the cost of processing the application.

6.2 Association Decision. The Association shall render its decision with respect to the construction proposal within thirty (30) working days after it has received all material required by it with respect to the application. In the event the Association fails to render its approval or disapproval within forty-five (45) working days after the Association has received all

material required by it with respect to the proposal, or if no suit to enforce this Declaration has been commenced within one year after completion thereof, approval will not be required and the related provisions of this Declaration shall be deemed to have been fully complied with.

6.3 Association Discretion. The Association may, at its sole discretion, withhold consent to any proposed work if the Association finds the proposed work would be inappropriate for the particular Lot or incompatible with the Design and Construction Guidelines. Considerations such as siting, shape, size, color, design, height, solar access, impairment of the view from other Lots, or other effect on the enjoyment of other Lots or the Common Areas, disturbance of existing terrain and vegetation and any other factors which the Association reasonably believes to be relevant, may be taken into account by the Association in determining whether or not to consent to any proposed work.

6.4 Liability; Nonwaiver. The Association shall not be liable to any Owner, occupant, builder or developer for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Association, provided only that the Association has, in accordance with the actual knowledge possessed by the Association (as determined by the officer or director charged with knowledge thereof), acted in good faith. Consent by the Association to any matter proposed or within its jurisdiction shall not be deemed to constitute a precedent or waiver impairing the Association's right to withhold approval as to any similar matter thereafter proposed or submitted for consent.

6.5 Appeal. Any Owner adversely affected by action of the Association may appeal such action. Appeals shall be made in writing within ten (10) days of the Association's action and shall contain specific objections or mitigating circumstances justifying the appeal. A final, conclusive decision shall be made by the Association within thirty (30) working days after receipt of such notification.

6.6 Effective Period of Consent. The Association's consent to any proposed work shall automatically be revoked one year after issuance unless construction of the work has been commenced or the Owner has applied for and received an extension of time from the Association.

6.7 Estoppel Certificate. Within thirty (30) working days after written request is delivered to the Association by any Owner, and upon payment to the Association of a reasonable fee fixed by the Association to cover costs, the Association shall provide such Owner with an estoppel certificate executed by the Association and acknowledged, certifying with respect to any Lot owned by the Owner, that as of the date thereof, either: (a) all Improvements made or done upon or within such Lot by the Owner comply with this Declaration, or (b) such Improvements do not so comply, in which event the certificate shall also identify the noncomplying Improvements and set forth with particularity the nature of such noncompliance. Any purchaser from the Owner, and any mortgagee or other encumbrancer, shall be entitled to rely on such certificate with respect to the matters set forth therein, such matters being conclusive as between the Declarant, the Association, the Association and all Owners, and such purchaser or mortgagee.

6.8 Declarant's Exemption. The Declarant is exempt from the review process requirements set forth in Sections 6.1, 6.2, and 6.3 of this Declaration, however all Improvements made by the Declarant shall conform to the Design Guidelines.

## *ARTICLE 7. ENFORCEMENT*

7.1 Nonqualifying Improvements and Violation of General Protective Covenants. In the event any Owner constructs or permits to be constructed on the Owner's Lot, or within the Common Areas, an Improvement contrary to the provisions of this Declaration, or causes or permits any Improvement, activity, condition or nuisance contrary to the provisions of this Declaration to remain uncorrected or unabated, then the Association shall notify the Owner in writing of any such specific violations of this Declaration and shall require the Owner to remedy or abate the same. If the Owner is unable, unwilling or refuses to comply with the Association's specific directives for remedy or abatement, or the Owner and the Association cannot agree to a mutually acceptable solution within the framework and intent of this Declaration, after notice and opportunity to be heard and within sixty (60) days of written notice to the Owner, then the Association shall have the right to do any or all of the following:

- (a) Impose reasonable fines against such Owner in the manner and amount the Association deems appropriate in relation to the violation.
- (b) Enter the offending Lot and remove the cause of such violation, or alter, repair or change the item which is in violation of this Declaration in such a manner as to make it conform thereto, in which case the Association may assess such Owner for the entire cost of the work done, provided that no items of construction shall be altered or demolished in the absence of judicial proceedings.
- (c) Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration.

7.2 Default in Payment of Assessments; Enforcement of Lien. If an Assessment or other charge levied under this Declaration is not paid within thirty (30) days of its due date, such Assessment or charge shall become delinquent and shall bear interest from the due date at the rate set forth below. In such event the Association may exercise any or all of the following remedies:

- (a) The Association may suspend such Owner's voting rights and right to use any Common Areas until such Assessments, together with any other charges assessed under this Declaration, are paid in full and may declare all remaining periodic installments of any annual assessment immediately due and payable. In no event, however, shall the Association deprive any Owner of access to and from the Owner's Lot.
- (b) The Association shall have a lien against each Lot for any Assessment levied against the Lot, and any fines or other charges imposed under this Declaration or the Bylaws, against the Owner of the Lot from the date of recording of a notice thereof in the Official Records. Such lien may be enforced by judicial foreclosure in the same manner in which mortgages on real property may be foreclosed under the laws of the State of Utah. In any such judicial foreclosure, the delinquent Owner shall be required to pay the costs and expenses of the proceeding (including reasonable attorneys' fees), and such costs and expenses shall be secured by the lien being foreclosed. The delinquent Owner shall also be required to pay any costs, fines, charges or assessments which shall become due during the period of foreclosure, and all such costs, fines, charges or assessments shall be secured by the lien being foreclosed. The Association, through its duly authorized agents, may bid on the Lot at such foreclosure sale, and may acquire and hold, lease, mortgage and convey the Lot.
- (c) The Association may bring an action to recover a money judgment for unpaid Assessments, and any other fines and charges imposed under this Declaration, without foreclosing or waiving the lien described in this Declaration. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

7.3 Notification of First Mortgagee. The Association shall notify any first mortgagee of any individual Lot of any default in performance of this Declaration by the Lot Owner which is not cured within sixty (60) days.

7.4 Subordination of Lien to Mortgages. The lien of the Assessments or charges provided for in this Declaration shall be subordinate to the lien of any mortgage or deed of trust on such Lot which was made in good faith and for value and which was recorded prior to the recordation of the notice of lien. Sale or transfer of any Lot shall not affect the Assessment (or associated charges) lien, but the sale or transfer of any Lot which is subject to any mortgage or deed of trust pursuant to a decree of foreclosure thereunder or any deed or proceeding, deed or assignment in lieu of foreclosure shall extinguish any lien of an Assessment (or other charges) notice of which was recorded after the recording of the mortgage or trust deed. Such sale or transfer, however, shall not release the Lot from liability for any Assessments or charges thereafter becoming due or from the lien of such Assessments or charges.

7.5 Interest, Expenses and Attorneys' Fees. Any amount not paid to the Association when due in accordance with this Declaration shall bear interest at the rate of eighteen percent (18%) per annum, from the due date until paid. A late charge may be charged for each delinquent Assessment in an amount established from time to time by resolution of the Association not to exceed thirty percent (30%) of such assessment. In the event the Association shall file a notice of lien, the lien amount shall also include the recording fees associated with filing the notice, and a fee for preparing the notice of lien established from time to time by resolution of the Association. In the event the Association shall bring any suit or action to enforce this Declaration, or to collect any money due hereunder or to foreclose a lien, the Owner-defendant shall pay to the Association all costs and expenses incurred by it in connection with such suit or action, including a foreclosure title report, and the prevailing party in such suit or action shall recover such amount as the court may determine to be reasonable as attorneys' fees at trial and upon any appeal or petition for review thereof.

7.6 Nonexclusiveness and Accumulation of Remedies. An election by the Association to pursue any remedy provided for violation of this Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted hereunder. The remedies provided in this Declaration are not exclusive but shall be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law to the Association. In addition, any aggrieved Owner may bring an action against another Owner or the Association to recover damages or to enjoin, abate or remedy any violation of this Declaration by appropriate legal proceedings.

7.7 Appointment of Trustee. The Declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-20 and 57-8a-302 to Bonneville Superior Title Company, having an address at 7050 Union Park Center, Suite 110, Midvale, Utah 84047, with power of sale, the Lots and all improvements to the Lots for the purpose of securing payment of assessments under the terms of this Declaration.

## ***ARTICLE 8.DISPUTE RESOLUTION***

8.1 Disputes between Owners. Any disputes between Owners, the Declarant or the Association concerning the interpretation, compliance or enforcement of the provisions of this Declaration shall be submitted to a mutually agreeable mediator or mediator service prior to the institution of any action. The mediation shall be nonbinding, and the parties to the mediation shall bear the costs equally.

8.2 Arbitration. Unless any disputes are otherwise resolved pursuant to Section 8.1, above, of this Declaration, any such disputes shall be resolved by binding arbitration, before a single arbitrator reasonably designated by the Declarant or, if the Declarant no longer owns any part of the Subject Property, by the Association, or such neutral, independent arbitration service that the Declarant or the Association, as the case may be, shall designate (in any case, the “*Arbitrator*”), in Salt Lake City, Utah. If an Owner objects to the Arbitrator, the Owner must inform the Declarant in writing within ten (10) days of Owner’s receipt of written notice informing Owner of the appointed Arbitrator and, then, if the parties are unable to agree on another arbitrator, then either party may, pursuant to the applicable provisions of the Utah Uniform Arbitration Act, U.C.A. Section 78B-11-101, et seq., as amended, apply to a court of competent jurisdiction to designate an arbitration service provider, which designation shall be binding upon the parties. Selection of the arbitrator shall be the responsibility of Arbitrator or the appointed arbitration service, as applicable. The rules and procedures of the arbitration service that are in effect at the time the request for arbitration is submitted will be followed unless the parties expressly agree otherwise, and the applicable discovery and other time periods thereunder may be adjusted, as determined by the arbitrator, in order to permit the prompt conclusion of the arbitration proceeding. The arbitration service designated or finally appointed as aforesaid shall administer the arbitration or any and all Disputes required to be joined under the law.

(a) These arbitration provisions shall be governed by and interpreted under Utah law pursuant to the Utah Uniform Arbitration Act, U.C.A. Section 78B-11-101, et seq., now in effect and as it may be hereafter amended, and in accordance with the Utah Rules of Civil Procedure, Rules 16, 26, 30, 33, 34, 36, and 56, unless the parties mutually agree to alternative arbitration procedures, and the applicable discovery and other time periods thereunder may be adjusted, as determined by the arbitrator, in order to permit the prompt conclusion of the arbitration proceeding. The parties to the arbitration shall share equally in the arbitrator’s fees and expenses. The award of the arbitrator shall be final and may be entered as a judgment in a court of competent jurisdiction. Unless otherwise recoverable by law or statute, each party shall bear its own costs (including expert’s costs) and expenses, including attorneys’ fees and paraprofessional fees for any arbitration. Notwithstanding the foregoing, if a party unsuccessfully contests the validity or scope of arbitration in a court of law or equity, the non-contesting party shall be awarded reasonable attorneys’ fees and paraprofessional fees and expenses incurred in defending such contest, including such fees and costs associated with any appellate proceedings. In addition, if a party fails to abide by the terms of a settlement or arbitration award, the other party shall be awarded reasonable attorneys’ fees, paraprofessional fees and expenses incurred in enforcing such settlement or award.

(b) These arbitration provisions are a self-executing arbitration agreement. Any dispute concerning the interpretation or the enforceability of these arbitration provisions, including, without limitation, its revocability or voidability for any cause, any challenges to the enforcement or the validity hereof, or these alternative dispute resolution provisions, or the scope of arbitrable issues thereunder, and any defense relating to the enforcement of these alternative dispute resolution provisions, including, without limitation, waiver, estoppel, or laches, shall be decided by an arbitrator in accordance with these arbitration provisions and not by a court of law.

(c) The parties to this Declaration expressly consent and agree that arbitration of any Dispute may, at the option of the Declarant, include consolidation, joinder, or any other means to provide for joint participation of all parties involved in the Dispute and who are necessary in order to provide for the complete resolution of such Dispute.

8.3 Waiver of Litigation Rights. All persons bound and subject to the provisions of this Declaration acknowledge and agree that by being bound to binding arbitration as provided

herein: (a) such person, including each Owner, is giving up any rights it might possess to have a dispute litigated in a court or jury trial; (b) such person's discovery and appeal rights will be limited; (c) an Owner's election to purchase a Lot to this Declaration and these arbitration provisions is voluntary and the Owner understands its provisions; (d) the Declarant and each Owner and will take all actions reasonably necessary to secure participation by such other necessary and proper parties in the dispute resolution procedures set forth herein; and (e) the Declarant would not have sold the Lots without each Owner being bound to these arbitration provisions.

8.4 Choice of Law and Scope of Arbitrator's Authority. All disputes shall be governed, interpreted and enforced according to the Utah Uniform Arbitration Act, U.C.A. Section 78B-11-101, et seq., as amended, which is designed to encourage use of alternative methods of dispute resolution that avoid costly and potentially lengthy court proceedings. Interpretation and application of these procedures shall conform to Utah court rulings interpreting and applying the Uniform Arbitration Act. The arbitrator shall apply the laws of the State of Utah, and the arbitrator's award may be enforced in any court of competent jurisdiction. The arbitrator shall have the authority to try and shall try all issues, whether of fact or law, including without limitation, the validity, scope and enforceability of these arbitration provisions, and may issue any remedy or relief that the courts of the State of Utah could issue if presented the same circumstances.

8.5 Acknowledgment. BY ACCEPTANCE OF A DEED TO A LOT, EACH OWNER ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THE FOREGOING AND AGREES TO SUBMIT ANY DISPUTES OR CLAIMS OR CONTROVERSIES ARISING OUT OF THE MATTERS INCLUDED WITHIN THESE ARBITRATION PROVISIONS TO NEUTRAL BINDING ARBITRATION AS SPECIFIED IN THESE ARBITRATION PROVISIONS.

8.6 Disputes Under FHA/VA Warranty. Notwithstanding the provisions set forth above, the arbitration provisions shall not apply to the extent an Owner is issued a builder's limited warranty approved by the U.S. Department of Housing and Urban Development for issuance to certain Federal Housing Administration or Veterans Administration Financed Buyers ("*FHA/VA Warranty*"). With respect to all disputes arising out of the FHA/VA Warranty ("*FHA/VA Warranty Disputes*"), the Declarant and Owners shall comply with the dispute resolution procedures and provisions specified in the FHA/VA Warranty. The arbitration of FHA/VA Warranty Disputes shall not be mandatory. All other disputes shall continue to be governed by the arbitration provisions set forth in this Declaration, including, without limitation, the provisions requiring binding arbitration. However, in the event that the Owner who is issued a FHA/VA Warranty files an action in a court of law regarding an FHA/VA Warranty Dispute while at the same time pursuing an arbitration for other disputes, the Declarant may elect to have all disputes resolved in the court action

8.7 WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY LAW AS TO ALL DISPUTES, OWNERS AND THE DECLARANT WAIVE ANY RIGHTS TO JURY TRIAL FOR SUCH DISPUTES EVEN IF THE ABOVE DESCRIBED ALTERNATIVE DISPUTE RESOLUTION PROCEDURES AND PROVISIONS ARE OTHERWISE FOUND UNENFORCEABLE. BY DELIVERY AND ACCEPTANCE OF A DEED TO A LOT, EACH OWNER AND THE DECLARANT MAKE THIS WAIVER KNOWINGLY, INTENTIONALLY AND VOLUNTARILY, AND ACKNOWLEDGE THAT NO ONE HAS MADE ANY REPRESENTATION OF FACT TO INDUCE THEM TO MAKE THIS WAIVER OR IN ANY MANNER OR IN ANY WAY TO MODIFY OR NULLIFY ITS

EFFECT. SUCH PARTIES FURTHER ACKNOWLEDGE THAT PRIOR TO DELIVERY AND ACCEPTANCE OF A DEED THAT THEY HAVE HAD THE OPPORTUNITY TO BE ADVISED BY INDEPENDENT LEGAL COUNSEL IN CONNECTION WITH THIS COVENANT AND IN MAKING THIS WAIVER. EACH OWNER AND THE DECLARANT ACKNOWLEDGE HAVING READ AND UNDERSTOOD THE MEANING AND RAMIFICATIONS OF THIS JURY WAIVER, AND INTEND THIS JURY WAIVER BE READ AS BROADLY AS POSSIBLE AND EXTEND TO ALL DISPUTES, AS DEFINED HEREIN.

8.8 No Amendment; Reservation of Rights and Remedies. Except as and to the extent otherwise required by law, rule or regulation, the provisions, terms and conditions of this Article 8 may not be amended, supplemented, repealed, modified, or terminated without the advance, written consent of the Declarant (or its successor-in-interest), which rights and remedies are expressly reserved by the Declarant notwithstanding any term or condition of this Declaration (including without limitation Article 9, below).

#### ***ARTICLE 9. MISCELLANEOUS PROVISIONS***

9.1 Amendment and Repeal. This Declaration, or any provision thereof, as from time to time in effect with respect to all or any part of the Subject Property, may be amended or repealed as to all or any portion of the Subject Property by the vote or written consent of Owners of Lots holding more than sixty-seven percent (67%) of the voting rights of the Class A members of the Association, together with the written consent of the Class B member, if such membership has not been terminated as provided herein. Any such amendment or repeal shall become effective only upon recordation in the Official Records, of a certificate of the president or secretary of the Association setting forth in full the amendment, amendments or repeal so approved and certifying that such amendment, amendments or repeal have been approved in the manner required by this Declaration. In no event shall an amendment under this section create, limit or diminish special rights of the Declarant without the Declarant's written consent, affect any Lot Owner's voting rights, or change the boundaries of any Lot or any uses to which any Lot is restricted unless the Owners of the affected Lots unanimously consent to the amendment. To the extent any amendment relates to the preservation or maintenance of any Common Areas or the City Owned Common Maintenance Areas, or the existence of an entity responsible for accomplishing the same, such amendment shall be approved by the lead administrative official of the land use authority.

9.2 Declarant's Retained Rights. In addition to the rights otherwise retained by the Declarant herein, the Declarant reserves for itself the following rights:

(a) The Declarant reserves the right for itself (and to the extent necessary, such right is hereby extended to the Association and its affiliates, agents, employees and contractors), to enter upon any Common Area, any Common Maintenance Area or any Lot and to do whatever the Declarant deems necessary or advisable in connection with construction or other work to be performed by the Declarant for the development of the Subject Property Improvements, including, but without limitation, the construction and installation of systems, fire protection, drainage, water storage facilities, the installation of all utilities, the construction of all roads, grading and landscaping, the construction of all Buildings and other Improvements to be constructed by the Declarant, including amenities, the erection or placement of such temporary structures as may be reasonably necessary to facilitate such development, and the placement of such sign or signs as the Declarant may deem advisable in connection with the construction of the Improvements and with the sale of the Lots. The foregoing rights may be exercised by the

Declarant as to any Common Area notwithstanding the conveyance of such Common Area to the Association.

(b) The Declarant may use any portion of the Common Area and Common Maintenance Area without charge for the purpose of marketing for sale Lots owned by the Declarant, and may construct and maintain upon portions of the Common Area, Common Maintenance Area and property owned by the Declarant such facilities, activities, and things as, in the Declarant's opinion, may reasonably be required, convenient, or incidental to the Improvement or sale of Lots. Such permitted facilities, activities, and things include but are not limited to business offices, signs, flags (whether hung from flag poles or attached to a structure), model homes, sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, the Declarant may park vehicles in areas other than garages or driveways, including on streets. The Declarant's rights under this Section are delegable by the Declarant to any builder who is a purchaser (or with an option to purchase) of more than one Lot.

(c) The Declarant and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Lots for the purpose of making, constructing, and installing Improvements to such Lot and to the Common Area and Common Maintenance Area as it deems appropriate in its sole discretion.

(d) Any or all of the Declarant's special rights and obligations set forth in this Declaration may be transferred in whole or in part to other persons; provided, the transfer shall not reduce any obligation nor enlarge any right beyond that which the Declarant has under this Declaration. No such transfer or assignment shall be effective unless it is in a recorded instrument signed by the Declarant. The Declarant may allow other persons to exercise, on a one time or limited basis, any right of the Declarant without transferring the entire right. In such case, a recorded instrument is not required.

(e) No person other than the Declarant or any affiliate thereof shall use the name "***Deer Run Preserve Homeowners' Association***" or any derivative of "***Deer Run Preserve Homeowners' Association***" for any commercial purpose in any printed or promotional material, or in logo or depiction, without the Declarant's or the Association's prior written consent. However, Owners may use the name "***Deer Run Preserve***" where such term is used solely to specify that a particular property is located within the Subject Property.

(f) The Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, Improvement or condition which may exist on any portion of the Subject Property, including any Lot, and a nonexclusive easement of access throughout the Subject Property to the extent reasonably necessary to exercise such right. Except in an emergency or in the case of an inspection relating to construction or in a case involving enforcement of a violation of this Declaration, the Design and Construction Guidelines or any condition of design review approval, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into the interior of an occupied Residence or other structure on a Lot shall be permitted without the Owner's consent. Except where entry is necessary to abate a violation of this Declaration, the Design and Construction Guidelines or any condition of design review approval, the person exercising this easement shall promptly repair, and pay for, any resulting damage.

(g) The Declarant shall have the right to make the following boundary line adjustments without the consent of the Association or the Owners: (i) as between the boundary of any Lots owned by the Declarant; (ii) as between the boundary of any Lots owned by the Declarant and any Common Area; and (iii) as between the boundary of any Lots owned by the Declarant and property adjacent to the lands abutting such Lots. As to any boundary line adjustment under this Section, the Declarant shall obtain any requisite approvals required by the appropriate local governing authority and shall pay all reasonable costs incident thereto, including preparation, approval and recording of an amended plat.



(h) The rights granted under this Section 9.2 of this Article shall terminate upon the earlier of (a) the period specified in the particular Section; (b) fifty (50) years from the date this Declaration is recorded in the Official Records; or (c) the termination of Class B membership as provided in this Declaration. Thereafter, the Declarant may continue to use the Common Areas for the purposes stated in this Article only pursuant to a rental or lease agreement between the Declarant and the Association which provides for rental payments based on the fair market rental value of any such portion of the Common Areas, or as an Owner of a Lot. This Article may not be amended without the written consent of the Declarant so long as the Declarant owns any portion of the Subject Property.

9.3 Regulatory Amendments. Notwithstanding the provisions of Section 9.1 above, until termination of the Class B membership, the Declarant shall have the right to amend this Declaration or the Bylaws of the Association in order to comply with the requirements of any Applicable Laws, including without limitation any applicable statute, ordinance or regulation or of the Federal Housing Administration, the Veterans Administration, the Farmers Home Administration of the United States, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, any department, bureau, board, commission or agency of the United States or the State of Utah, or any corporation wholly owned, directly or indirectly, by the United States or the State of Utah which insures, guarantees or provides financing for a planned community or lots in a planned community.

9.4 Duration. This Declaration shall run with the land and shall be and remain in full force and effect at all times with respect to all property included within the Subject Property and the Owners thereof for an initial period of fifty (50) years commencing with the date on which this document is recorded in the Official Records. Thereafter, this Declaration shall continue to run with the land and be and remain in full force and effect at all times with respect to all property within the Subject Property and the Owners thereof for successive additional periods of ten (10) years each. The continuation from the initial or any additional period into the next subsequent period shall be automatic and without the necessity of any notice, consent or other action whatsoever; provided, however, that this Declaration may be terminated at the end of the initial or any additional period by resolution approved not less than six (6) months prior to the intended termination date by the vote or written consent of Owners owning more than sixty-seven (67%) of the voting rights in the Association. Any such termination shall become effective only if (a) a certificate of the president or secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the Official Records not less than six (6) months prior to the intended termination date.

9.5 Joint Owners. In any case in which two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Association, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter.

9.6 Lessees and Other Invitees. Lessees, invitees, contractors, family members and other persons entering the Subject Property under rights derived from an Owner shall comply with all of the provisions of this Declaration restricting or regulating the Owner's use,

improvement or enjoyment of the Owner's Lot and other areas within the Subject Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

9.7 Nonwaiver; Integration; Successors and Assigns. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The attached exhibits are incorporated in, and made a part of, this Declaration by this reference. The terms and conditions of this Declaration shall be binding upon, and inure to the benefit of, the successors and assigns of the Declarant and each Owner.

9.8 Construction; Severability; Number; Captions. This Declaration shall be liberally construed as an entire document to accomplish the purposes thereof as stated in the introductory paragraphs hereof. Nevertheless, each provision of this Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision. As used herein, the singular shall include the plural and the plural the singular, and the masculine and neuter shall each include the masculine, feminine and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

9.9 Notices and Other Documents. Any notice or other document permitted or required by this Declaration may be delivered either personally (receipted), by facsimile (confirmed), by electronic means (confirmed), or by mail. Delivery shall be deemed effective upon receipt; provided that, if delivery is by mail, delivery shall be deemed made twenty-four (24) hours after having been deposited in the United States mail as certified or registered mail, with postage prepaid, addressed as follows:

If to the Declarant:      Rod Staten  
   Weekley Homes, LLC  
   6243 South Redwood Road, Suite 230  
   Taylorsville, UT 84108

With copies to:            John Burchfield  
   Weekley Homes, LLC  
   1111 North Post Oak Road  
   Houston, TX 77055  
   Telephone: 713-963-0500

   Brandt Hislop  
   Weekley Homes, LLC  
   6243 South Redwood Road, Suite 230  
   Taylorsville, UT 84108

If to an Owner, at the address given at the time of the purchase of a Lot, or at the Lot. If to the Association, the mailing address of the Association as filed with the Utah Department of Commerce, Division of Corporations and Commercial Code. The address of a party may be changed at any time by notice in writing delivered as provided herein.



**EXHIBIT A**

***(Depiction and Legal Description of Subject Property Located on Phase 1 Plat; Subject Property Plan and Layout, including Building Envelopes, Park and Trail Areas, Private Road, City Owned Common Areas and other HOA Maintenance Areas)***

**Deer Run Preserve Phase 1**

Beginning at the Northeast Corner of Lot 391 of South Mountain Phase 2F Amended Subdivision, said point being on the Southerly Right-of-Way Line of Molasses Mill Drive, said point also being South 89°42'02" East 1,976.80 feet along the section line and South 1,923.62 feet from the West Quarter Corner of Section 5, Township 4 South, Range 1 East Salt Lake Base and Meridian; and running

thence Northeasterly 73.36 feet along the arc of a 175.00 foot radius curve to the right (center bears South 15°44'50" East and the chord bears North 86°15'45" East 72.83 feet with a central angle of 24°01'10") along Southerly Right-of-Way Line of Molasses Mill Drive;

thence South 81°43'40" East 34.78 feet along Southerly Right-of-Way Line of Molasses Mill Drive;

thence South 22°27'04" East 33.03 feet;

thence Southeasterly 51.71 feet along the arc of a 300.00 foot radius curve to the left (center bears North 67°25'34" East and the chord bears South 27°30'43" East 51.65 feet with a central angle of 9°52'33");

thence South 32°27'00" East 69.44 feet;

thence Northeasterly 667.75 feet along the arc of a 221.62 foot radius curve to the left (center bears North 57°33'00" East and the chord bears North 61°13'59" East 442.32 feet with a central angle of 172°38'02");

thence North 25°05'02" West 132.89 feet to the Southerly Right-of-Way Line of Candy Pull Drive;

thence North 28°28'25" East 38.54 feet along the Southerly Right-of-Way Line of said Candy Pull Drive;

thence Northeasterly 75.70 feet along the arc of a 175.00 foot radius curve to the right (center bears South 61°31'35" East and the chord bears North 40°51'59" East 75.11 feet with a central angle of 24°47'08") along the Southerly Right-of-Way Line of said Candy Pull Drive to the Northwest Corner of Lot 728 of South Mountain Phase 2F Amended Subdivision;

thence Southeasterly 143.51 feet along the arc of a 369.00 foot radius curve to the right (center bears South 34°52'18" West and the chord bears South 43°59'11" East 142.61 feet with a central angle of 22°17'02") along the Westerly Boundary Line of Lots 722 through 728 of said South Mountain Phase 2F Amended Subdivision;

thence South 26°09'19" East 16.01 feet (South 26°06'04" East 21.54 feet per plat) along the Westerly Boundary Line of Lot 722 of said South Mountain Phase 2F Amended Subdivision to the Westerly Common Corner between Lot 721 and Lot 722 of said South Mountain Phase 2F Amended Subdivision;

thence South 26°04'34" East 27.26 feet along the Westerly Boundary Line of Lots 721 through 722 of said South Mountain Phase 2F Amended Subdivision;

thence Southwesterly 1,151.39 feet along the arc of a 366.50 foot radius curve to the right (center bears South 63°53'02" West and the chord bears South 63°53'02" West 733.00 feet with a central angle of 180°00'00") along the Northwesterly Boundary Line of Lots 688 through 721 and the Northeasterly Boundary Line of Lots 398 through 471 of said South Mountain Phase 2F Amended Subdivision;

thence North 26°18'32" West 17.38 feet along the Easterly Boundary Line of Lots 397

and 398 of said South Mountain Phase 2F Amended Subdivision;

thence North 26°08'56" West 24.88 feet along the Easterly Boundary Line of Lot 397 of said South Mountain Phase 2F Amended Subdivision;

thence Northwesterly 139.93 feet along the arc of a 369.00 foot radius curve to the right (center bears North 70°27'34" East and the chord bears North 08°40'38" West 139.09 feet with a central angle of 21°43'37") along the Easterly Boundary Line of Lots 391 and 397 of said South Mountain Phase 2F Amended Subdivision to the point of beginning.

Contains 174,751 Square Feet or 4.012 Acres and 29 Lots and 1 Parcel.

**EXHIBIT B**

***(Depiction and Legal Description of Subject Property Located on Phase 2 Plat; Subject Property Plan and Layout, including Building Envelopes, Park and Trail Areas, Private Road, City Owned Common Areas and other HOA Maintenance Areas)***

**Deer Run Preserve Phase 2**

Beginning at a point on the Southerly Right-of-Way Line of Molasses Mill Drive, said point also being South 89°42'02" East 2,083.89 feet along the section line and South 1,9223.32 feet from the West Quarter Corner of Section 5, Township 4 South, Range 1 East, Salt Lake Base and Meridian; and running

- thence South 81°43'40" East 85.69 feet along the Southerly Right-of-Way Line of said Molasses Mill Drive;
- thence Southeasterly 20.28 feet along the arc of a 15.00 foot radius curve to the right (center bears South 08°16'20" West and the chord bears South 42°59'49" East 18.77 feet with a central angle of 77°27'42") along the Southerly Right-of-Way Line of said Molasses Mill Drive;
- thence North 85°44'08" East 64.50 feet along the Southerly Right-of-Way of said Molasses Mill Drive to the Southerly Right-of-Way Line of Roundhouse Road;
- thence Northeasterly 239.49 feet along the arc of a 100.00 foot radius curve to the right (center bears North 85°43'57" East and the chord bears North 64°20'30" East 186.22 feet with a central angle of 137°13'06") along the Southerly Right-of-Way Line of said Roundhouse Road to the Southerly Right-of-Way Line of Candy Pull Drive
- thence North 28°28'25" East 63.25 feet along the Southerly Right-of-Way Line of said Candy Pull Drive;
- thence North 28°28'25" East 94.78 feet along the Southerly Right-of-Way Line of said Candy Pull Drive;
- thence South 25°05'02" East 132.89 feet;
- thence Southwesterly 667.76 feet along the arc of a 221.62 foot radius curve to the right (center bears South 64°54'58" West and the chord bears South 61°13'59" West 442.32 feet with a central angle of 172°38'02");
- thence North 32°27'00" West 69.44 feet;
- thence Northwesterly 51.71 feet along the arc of a 300.00 foot radius curve to the right (center bears North 57°33'00" East and the chord bears North 27°30'43" West 51.65 feet with a central angle of 9°52'33" East and
- thence North 22°27'04" West 33.03 feet to the point of beginning.

Contains 114,352 Square Feet or 2.625 Acres and 13 Lots and 1 Parcel.

**EXHIBIT C**

***(Depiction and Legal Description of Subject Property Located on Phase 3 Plat; Subject Property Plan and Layout, including Building Envelopes, Park and Trail Areas, Private Road, City Owned Common Areas and other HOA Maintenance Areas)***

**Deer Run Preserve Phase 3**

All of Lots 1, 2 and 3 of South Mountain Phase 1 Subdivision Amended Commercial Lot "D", recorded as Entry No. 9171091, in Book 2004P, at Page 261 in the Office of the Salt Lake County Recorder, said parcel being more particularly described as follows:

Beginning at a point on the Southerly Right-of-Way Line of Highland Drive, said point also being South 89°42'02" East 2,196.98 feet along the section line and South 1,473.80 feet from the West Quarter Corner of Section 5, Township 4 South, Range 1 East, Salt lake Base and Meridian; and running

thence North 63°28'25" East 37.93 feet along the Southerly Right-of-Way line of said Highland Drive;

thence Northeasterly 151.03 feet along the arc of a 1,061.00 foot radius curve to the left (center bears North 26°31'35" West and the chord bears North 59°23'44" East 150.90 feet with a central angle of 08°09'21") along the Southerly Right-of-Way Line of said Highland Drive;

thence North 55°19'05" East 488.26 feet along the Southerly Right-of-Way Line of said Highland Drive;

thence North 57°10'06" East 50.27 feet along the Southerly Right-of-Way Line of said Highland Drive;

thence South 26°31'01" East 341.73 feet to the Northerly Right-of-way Line of Candy Pull Drive;

thence Southwesterly 31.74 feet along the arc of a 55.00 foot radius curve to the left (center bears South 06°32'16" West and the chord bears South 80°00'23" West 31.30 feet with a central angle of 33°03'45") along the Northerly Right-of-Way Line of said Candy Pull Drive;

thence South 63°28'25" West 395.77 feet along the Northerly Right-of-Way Line of said Candy Pull Drive;

thence Southwesterly 154.33 feet along the arc of a 252.64 foot radius curve to the left (center bears South 26°31'35" East and the chord bears South 45°58'25" West 151.94 feet with a central angle of 35°00'00") along the Northerly Right-of-Way Line of said Candy Pull Drive;

thence South 28°28'25" West 118.41 feet along the Northerly Right-of-Way Line of said Candy Pull Drive;

thence Southwesterly 20.19 feet along the arc of a 15.00 foot radius curve to the right (center bears North 61°31'34" West and the chord bears South 67°02'08" West 18.70 feet with a central angle of 77°07'27") along the Northerly Right-of-Way Line of said Candy Pull Drive;

thence Northwesterly 50.03 feet along the arc of a 164.50 foot radius curve to the left (center bears South 15°35'51" West and the chord bears North 83°06'56" West 49.84 feet with a central angle of 17°25'36") along the Northerly Right-of-Way line of said Candy Pull Drive to the Easterly Right-of-Way Line of Deer Preserve Lane (formerly known as Town Center Drive);

thence Northwesterly 17.10 feet along the arc of a 15.00 foot radius curve to the right (center bears North 01°49'45" West and the chord bears North 59°10'40" West 16.19 feet with a central angle of 65°18'09") along the Easterly Right-of-Way Line of Deer Preserve Lane;

thence North 26°31'35" West 303.68 feet along the Easterly Right-of-Way line of Deer Preserve Lane;

thence Northeasterly 23.56 feet along the arc of a 15.00 foot radius curve to the right (center bears North 63°28'25" East and the chord bears North 18°28'25" East 21.21 feet with a central angle of 90°00'00") along the Easterly Right-of-Way line of Deer Preserve Lane to the

point of beginning.

Contains 225,578 Square Feet or 5.179 Acres and 19 Lots and 3 Parcel.



**EXHIBIT D**

***(Depiction and Legal Description of Subject Property Located on Phase 4 Plat; Subject Property Plan and Layout, including Building Envelopes, Park and Trail Areas, Private Road, City Owned Common Areas and other HOA Maintenance Areas)***

**Deer Run Preserve Phase 4**

All of Lot 419 of South Mountain Phase 2F Amended Subdivision, a part of South Mountain Phase 2F Amended Subdivision recorded as Entry No. 6566350, in Book 97-2P, at Page 23 in the Office of the Salt Lake County Recorder, said parcel being more particularly described as follows:

Beginning at a point on the Southerly Right-of-Way Line of Highland Drive, said point being the Northeast Corner of South Mountain Phase 2B Subdivision, said point also being South 89°42'02" East 1,400.80 feet along the section line and South 1,778.34 feet from the West Quarter Corner of Section 5, Township 4 South, Range 1 East, Salt Lake Base and Meridian; and running  
thence Northeasterly 23.90 feet along the arc of a 919.00 foot radius curve to the right (center bears South 20°28'13" East and the chord bears North 70°16'29" East 23.90 feet with a central angle of 01°29'25") along the Southerly Right-of-Way Line of said Highland Drive;  
thence North 72°44'52" East 384.31 feet along the Southerly Right-of-Way Line of said Highland Drive;  
thence North 70°57'31" East 88.72 feet along the Southerly Right-of-Way Line of said Highland Drive;  
thence Northeasterly 138.61 feet along the arc of a 1,061.00 foot radius curve to the left (center bears North 19°02'29" West and the chord bears North 67°12'58" East 138.51 feet with a central angle of 07°29'06") along the Southerly Right-of-Way Line of said Highland Drive;  
thence North 63°28'25" East 68.44 feet along the Southerly Right-of-Way Line of said Highland Drive to the Westerly Right-of-Way Line of Deer Preserve Lane (formerly known as Town Center Drive);  
thence Southeasterly 23.56 feet along the arc of a 15.00 foot radius curve to the right (center bears South 26°31'35" East and the chord bears South 71°31'35" East 21.21 feet with a central angle of 90°00'00") along the Westerly Right-of-Way Line of said Deer Run Preserve;  
thence South 26°31'35" East 313.60 feet along the Westerly Right-of-Way Line of said Deer Run Preserve;  
thence Southwesterly 59.13 feet along the arc of a 164.50 foot radius curve to the left (center bears South 47°55'05" East and the chord bears South 31°47'02" West 58.81 feet with a central angle of 20°35'45") along the Westerly Right-of-Way Line of said Deer Run Preserve to the Northerly Right-of-Way Line of Molasses Mill Drive;  
thence Southwesterly 20.10 feet along the arc of a 15.00 foot radius curve to the right (center bears North 68°30'50" West and the chord bears South 59°52'45" West 18.63 feet with a central angle of 76°47'10") along the Northerly Right-of-Way Line of said Molasses Mill Drive;  
thence North 81°43'40" West 120.94 feet along the Northerly Right-of-Way Line of said Molasses Mill Drive;  
thence Southwesterly 136.65 feet along the arc of a 225.00 foot radius curve to the left (center bears South 08°16'20" West and the chord bears South 80°52'22" West 134.56 feet with a central angle of 34°47'55") along the Northerly Right-of-Way Line of said Molasses Mill Drive;  
thence South 63°28'25" West 132.05 feet along the Northerly Right-of-Way Line of said Molasses Mill Drive;  
thence Southwesterly 297.61 feet along the arc of a 565.15 foot radius curve to the right (center bears North 26°31'35" West and the chord bears South 78°33'34" West 294.18 feet with a central angle of 30°10'19") along the Northerly Right-of-Way Line of said Molasses Mill Drive to

the Southeast Corner of Lot 447 of South Mountain Phase 2B Subdivision;  
thence North 26°34'00" West 260.20 feet along the Easterly Boundary Line of said Lot  
447 and the Easterly Boundary Line of said South Mountain Phase 2B Subdivision to the point of  
beginning.

Contains 210,992 Square Feet or 4.843 Acres and 18 Lots and 3 Parcel.



## **EXHIBIT F**

### **(Definitions)**

- 1.1 “**Applicable Laws**” means any governmental or municipal laws, rules, ordinances, or regulations applicable to the Subject Property, or any part thereof, including without limitation any applicable zoning laws.
- 1.2 “**Association**” means the nonprofit corporation to be formed to serve as the owners association as provided in Article 4 hereof.
- 1.3 “**Building Envelope**” means the limits of disturbance or buildable area of each Lot as shown on the Plat, outside of which no disturbance shall occur, except for underground Utilities installations and landscaping activities approved, in advance and in writing, by the Association.
- 1.4 “**City Owned Common Maintenance Area**” or “**City Owned Common Maintenance Areas**” means, as designated and shown on attached *Exhibit E*, the area(s) designated as such in this Declaration.
- 1.5 “**Claim**” means any claim, grievance, or dispute arising out of or relating to: (i) the interpretation, application, or enforcement of the Declaration, Bylaws or Articles of Incorporation; (ii) the rights, obligations, and duties of any party bound by the Declaration, Bylaws, or Articles of Incorporation; or (iii) the design or construction of improvements within the Project, other than matters of aesthetic judgment under Article 6 of the Declaration, which shall not be subject to review.
- 1.6 “**Common Area**” or “**HOA Maintenance Areas**” means, as designated and shown on attached *Exhibit E*, the areas within the Project, including those areas within any one or more Lots, designated as “**HOA Maintenance Areas**” within this Declaration, including any Improvements situated within any such Common Areas or HOA Maintenance Areas.
- 1.7 “**Common Sidewalks and Landscaping Areas**” means, as designated and shown on attached *Exhibit E*, the sidewalk and landscaping areas, inclusive of the mailboxes, within the Project that are included in the HOA Maintenance Areas and, accordingly, maintained by the Association.
- 1.8 “**Declaration**” means all of the easements, covenants, restrictions and charges set forth herein, together with any rules or regulations promulgated hereunder, as the same may be amended or supplemented from time to time in accordance with the provisions hereof, including without limitation the Rules and Regulations.
- 1.9 “**Dispute**” means any and all actions or claims by, between or among the Declarant and/or any Owners arising out of or in any way relating to (a) the Project or any Lot or Residences thereon, any agreements or duties or liabilities as between the Declarant and an Owner relating to the development, construction or sale of any portion of the Project, any maintenance of the Project or any HOA Maintenance Areas, or (b) the use or condition of any portion of the Project, or the design or construction of or any condition on or affecting the Project or any portion thereof, including without limitation construction defects, surveys, soils conditions, grading, specifications, installation of improvements, or disputes which allege strict liability, negligence or breach of implied, express or statutory warranties as to the condition of any portion of the Project or improvements thereon.
- 1.10 “**Entry Monument**” means, as designated and shown on attached *Exhibit E*, the

- monument located at the north entrance of the Project.
- 1.11 “**Improvement**” or “**Improvements**” means every structure or improvement of any kind, including but not limited to a fence, wall, driveway, swimming pool, storage shelter or other product of construction efforts on or in respect to the Subject Property.
- 1.12 “**Lot**” means a platted lot within the Subject Property as shown on the Plat, excluding for these purposes any tract designated in this Declaration as being a Common Area.
- 1.13 “**Owner**” means the person or persons, including the Declarant, owning any Lot in the Subject Property, but does not include a tenant or holder of a leasehold interest or a person holding only a security interest in any Lot or any other part of the Subject Property, directly or indirectly, voluntarily or involuntarily, by operation of law or otherwise. The rights, obligations and other status of being an Owner shall commence upon acquisition of the ownership of a Lot and terminate upon disposition of such ownership, but termination of ownership shall not discharge an Owner from obligations incurred to the date of any such termination.
- 1.14 “**Park and Trail Areas**” means, as designated and shown on attached *Exhibit E*, the Parcels A and B, as applicable, that shall be dedicated to the City for use as public park and trails.
- 1.15 “**Park and Trail Fencing and Landscaping**” means, as designated and shown on attached *Exhibit E*, the fencing and landscaping located on and within the Park and Trail Areas Subject Property that is included in the HOA Maintenance Areas.
- 1.16 “**Private Road**” or “**Private Roads**” means, as designated and shown on attached *Exhibit E*, each private road located within the Subject Property.
- 1.17 “**Project**” means the Subject Property, the Lots, the improvements thereon and the development, construction, marketing and sale of the Subject Property, the Lots, and the improvements thereon.
- 1.18 “**Residence**” or “**Residences**” means each residential structure constructed, from time to time, within each Lot part of the Subject Property and intended for the occupancy of individual Owners or tenants thereof.
- 1.19 “**Retaining Walls**” means, as designated and shown on attached *Exhibit E*, the retaining walls located within the Subject Property that are included in the HOA Maintenance Areas.
- 1.20 “**Standards**” means the standards of use, conduct, architecture, landscaping, aesthetic matters, maintenance, repair, replacement and upkeep standards described in this Declaration, as the same may be amended from time to time by the Association, including without limitation the Rules and Regulations.
- 1.21 “**Subject Property**” means the property described in Article 2 of this Declaration; provided that notwithstanding the foregoing, the Declarant shall retain the right to annex any real property, improved or unimproved, near, adjacent or contiguous to the Subject Property and, thereby, make any such real property (and improvements) part of the Project and, then, subject to the terms and conditions of this Declaration.
- 1.22 “**Rules and Regulations**” means the use restrictions and/or the rules and regulations set forth in *Exhibit G*, as the same may be amended or supplemented from time to time by the Association.

## *EXHIBIT G*

### *(Rules and Regulations)*

In addition to any restrictions noted on the Plat, the requirements of any Applicable Laws, and the terms and conditions of this Declaration, the Subject Property shall be held, used and enjoyed subject to the following conditions, limitations and restrictions:

1. Use of Lots/Occupancy of Improvements on Lots. Occupancies of Residences on the Lots shall be primarily for residential use, as a residential dwelling. Secondary commercial and business uses, without any adverse external effect on the nature, perception, operation or ambiance of the Subject Property as a first class residential community are expressly permitted, subject to restrictions of record and local zoning ordinances and regulations. In addition to the uses that are restricted by zoning, the following uses are prohibited within the Subject Property, including without limitation within any Unit:

- (a) trailer courts, mobile home parks, recreational vehicle campgrounds, and facilities for the sales or service of mobile homes or trailers;
- (b) junkyards, scrap metal yards, automobile uses parts sales facilities, motor vehicles sales operations or dealerships, motor vehicle dismantling operations, and sanitary landfills;
- (c) dumping, storage, disposal, incineration, treatment, processing, or reduction of garbage or refuse of any nature, other than handling or reducing waste produced on the premises from authorized uses in a clean and sanitary manner;
- (d) consignment shops, pawn shops, thrift stores, flea markets, salvage businesses, or discount stores whose merchandise consists primarily of uses goods or merchandise, excess inventory, discontinued items, and/or goods acquired through liquidation of other businesses or fire or bankruptcy sales; provided, periodic Association sponsored or sanctioned events or activities on the Common Area (such as, without limitation, craft fairs, arts festivals, or farmers markers) shall be permitted;
- (e) truck terminals and truck stop-type facilities, including truck parking lots (except as may be incidental to a use which is not prohibited);
- (f) tanning parlors, massage parlors, or any establishment which offers entertainment or services by nude or partially dressed male or female persons, except that the provision shall not preclude tanning and massage services offered by fully clothed, trained personnel as part of a hotel, a legitimate fitness or health facility, or a day spa operation that also offers beauty, body care, skin care, or similar services;
- (g) "adult entertainment uses," which term shall mean, for the purpose of this Declaration, any theater or other establishment which shows, previews, or prominently displays, advertises or conspicuously promotes for sale or rental: (A) movies, films, videos, magazines, books, or other medium (whether now or hereafter developed) that are rated "X" by the movie production industry (or any successor rating established by the movie production industry) or are otherwise of a pornographic or obscene nature or inconsistent with the prevailing community standard within the City; or (B) sexually explicit games, toys, devices, or similar merchandise;
- (h) tattoo parlors, body piercing shops, and so-called "head shops" (i.e., shops offering or promoting illegal drug paraphernalia or items intended for or commonly associated with the use of illegal drugs);
- (i) mini-warehouses, warehouse or distribution centers, and motor and freight terminals;
- (j) any facility for the dyeing and finishing of textiles, the production of fabricated metal products, or the storage and refining of petroleum;

(k) dry cleaning plants; provided, facilities for the drop-off or pick-up of items dry cleaned outside of the community are permitted;

(l) engine and motor repair facilities; heavy machinery sales or storage facilities of any kind or nature; and

(m) any use which would cause or threaten the cancellation of any insurance maintained by the Association, or which would measurably increase insurance rates for any insurance maintained by the Association or Owners above the rates that would apply in the absence of such use, except such uses as are specifically authorized under the Rules and Regulations.

2. Structures Permitted. No structures shall be erected or permitted to remain on any Lot except one single-family structure containing a dwelling unit and structures normally accessory thereto. The foregoing provision shall not exclude construction of a private greenhouse, storage unit, private swimming pool, tennis court, sport court, or structure for the storage of a boat and/or camping trailer for personal use, provided the location of such structure is in conformity with the Applicable Laws, is compatible in design and decoration with the dwelling structure constructed on such Lot, meets the definition of an enclosed Storage Area, and otherwise has been approved, in advance and in writing, by the Association. Each dwelling shall have a garage for not less than two (2) passenger vehicles. The construction of all Improvements on a Lot shall be confined to the Building Envelope, except as may be otherwise approved pursuant to the Design and Construction Guidelines, underground Utilities and landscaping activities pursuant to a development permit granted by the Association. No disturbance whatsoever shall occur outside of the Building Envelope, except for Common and Access Areas serving each Lot, underground Utilities and landscaping activities pursuant to a development permit granted by the Association.

3. Residential Use. Lots shall only be used for single-family residential purposes. Except with the consent of the Association, no trade, craft, business, profession, commercial or similar activity of any kind shall be conducted on any Lot, nor shall any goods, equipment, vehicles, materials or supplies used in connection with any trade, service or business be kept or stored on any Lot. Nothing in this paragraph shall be deemed to prohibit (a) activities relating to the rental or sale of dwelling units, (b) the right of the Declarant or any contractor or homebuilder to construct dwelling units on any Lot, to store construction materials and equipment on such Lots in the normal course of construction, and to use any dwelling unit as a sales or rental office or model home for purposes of sales or rental in the Subject Property, and (c) the right of the Owner of a Lot to maintain the Owner's professional personal library, keep the Owner's personal business or professional records or accounts, handle the Owner's personal business or professional telephone calls or confer with business or professional associates, clients or customers, in the Owner's dwelling unit. Any rentals of the dwelling units on any Lot are subject to the applicable rules, restrictions, and regulations set forth in the Draper City Municipal Code, as may be amended from time to time. The Association shall not approve commercial activities otherwise prohibited by this paragraph unless the Association determines that only normal residential activities would be observable outside of the dwelling unit and that the activities would not be in violation of applicable governmental ordinances.

4. Offensive or Unlawful Activities. No noxious or offensive activities shall be carried on upon any Lot or Common Area, nor shall anything be done or placed on any Lot or Common Area which interferes with or jeopardizes the enjoyment of other Lots or the Common Areas, or which is a source of annoyance to residents. No unlawful use shall be made of a Lot or any Common Areas, or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

5. Animals. No animals or livestock of any kind shall be raised, bred or kept or permitted within any Lot other than a reasonable number of household pets which are not kept, bred or raised for commercial purposes and which are reasonably controlled so as not to be a nuisance. Any inconvenience, damage or unpleasantness caused by such pets shall be the responsibility of the respective owners thereof. No dog shall be permitted to roam the Subject Property unattended, and all dogs shall be kept on a leash while outside a Lot. An Owner or resident may be required to remove a pet upon receipt of the third notice in writing from the Association of violations of any rule, regulation or restriction governing pets within the Subject Property.

6. Maintenance of Structures and Grounds. Each Owner shall maintain the Owner's Lot and Improvements thereon in a clean and attractive condition, in good repair and in such fashion as not to create a fire hazard. Such maintenance shall include, without limitation, painting, repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, walks and other exterior improvements and glass surfaces. In addition, each Owner shall keep all shrubs, trees, grass and plantings of every kind on the Owner's Lot neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material. Except for HOA Maintenance Areas, each Owner shall be responsible for maintaining the areas between such Owner's Lot line and the street, including without limitation sidewalks and street trees. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes shall likewise be the responsibility of each Owner and shall be restored within a reasonable period of time.

7. Parking. Parking of commercial vehicles, boats, trailers, motorcycles, trucks, truck campers or other recreational vehicle or equipment and vehicles in excess of three-quarter (3/4) ton in weight shall not be allowed on any part of the Subject Property, excepting only if kept in designated Storage or, as otherwise approved, in advance and in writing, by the Association, in the side or back yard of the Lot behind the front elevation of the dwelling, or within the confines of an enclosed garage or screened area, the plans of which shall have been reviewed and approved by the Association prior to construction, and no portion of the same may project beyond the screened area.

8. Vehicles in Disrepair. No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any Lot or on any street for a period in excess of forty-eight (48) hours. A vehicle shall be deemed in an "extreme state of disrepair" when the Association reasonably determines that its presence offends the occupants of the neighborhood. Should any Owner fail to remove such vehicle within five (5) days following the date on which notice is mailed by the Association, the Association may have the vehicle removed from the Subject Property and charge the expense of such removal to the Owner.

9. Signs. No signs shall be erected or maintained on any Lot, except a project sign and except that not more than one "For Sale" or "For Rent" sign placed by the Owner, the Declarant or by a licensed real estate agent, not exceeding five (5) square feet in size, may be temporarily displayed on any Lot. The restriction contained in this paragraph does not apply to signs used by a builder during the construction and sales period and shall not prohibit the temporary placement of "political" signs on any Lot by the Owner.

10. Rubbish and Trash. No Lot or part of the Common Areas shall be used as a dumping ground for trash or rubbish of any kind. All garbage and other waste shall be kept in appropriate sanitary containers for proper disposal and out of public view. Yard rakings, dirt and other material resulting from landscaping work shall not be dumped onto streets, Common Areas, HOA Maintenance Areas or on any Lots. Should any Owner fail to remove any trash, rubbish,



garbage, yard rakings or any such materials from any Lot, street, Common Maintenance Area or Common Area within ten (10) days following the date on which notice is mailed by the Association, the Association may have such materials removed and charge the expense of such removal to the Owner.

11. Completion of Construction. The construction of any building on any Lot, to the extent any such construction is not performed by the Declarant, including painting and all exterior finish, shall be completed within eighteen (18) months from the beginning of construction as evidenced by a Certificate of Occupancy issued by the applicable governmental entity. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval from the Association. The building area shall be kept reasonably clean and in workmanlike order, including without limitation with any reasonably necessary or appropriate dust control measures, during the construction period.

12. Landscape Completion. All landscaping must be completed within six (6) months from the date of occupancy of the dwelling unit constructed thereon. In the event of undue hardship due to weather conditions, this provision may be extended for a reasonable length of time upon written approval of the Association.

13. Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuildings shall be used on any Lot at any time as a residence either temporarily or permanently.

14. Fences. All fences must be approved by the Association. All perimeter fencing shall conform to the Design and Construction Guidelines adopted from time to time established by the Association.

15. Newspaper Boxes. No newspaper box or receptacle shall be placed on or adjacent to any Lot without the prior approval of the Association.

16. Service Facilities. Service facilities (garbage, fuel tanks, clotheslines, etc.) shall be screened such that the elements screened are not visible at any time from the street or a neighboring property. All telephone, power, natural gas, cable television and other communication lines shall be placed underground.

17. Prohibition on Easements. No Owner may grant an access easement over the Owner's Lot to any person other than an Owner of a Lot within the Subject Property or in favor of any parcel other than a Lot within the Subject Property.

18. Association Rules and Regulations. In addition, the Association from time to time may adopt, modify or revoke such rules and regulations governing the conduct of persons and the operation and use of Lots and the Common Areas as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Subject Property. A copy of the rules and regulations, upon adoption, and a copy of each amendment, modification or revocation thereof, shall be delivered by the Association promptly to each Owner and shall be binding upon all Owners and occupants of all Lots upon the date of delivery. The method of adoption of such rules shall be as provided in the Bylaws of the Association.