

36

12892814  
11/27/2018 03:27 PM \$80.00  
Book - 10733 Pg - 5844-5879  
ADAM GARDINER  
RECORDER, SALT LAKE COUNTY, UTAH  
PETERSON DEVELOPMENT CO LLC  
225 S 200 E #200  
SLC UT 84111  
BY: RMP, DEPUTY - MI 36 P.

**After Recording, Please Return to:**

Orchard Heights WJ LLC  
526 North 400 West  
North Salt Lake, Utah 84054

Space Above for Recorder's Use

**DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS  
FOR  
ORCHARD HEIGHTS**

**TABLE OF CONTENTS**

**SECTION 1 DEFINITIONS ..... 1**

1.1 Applicant..... 1

1.2 Application ..... 1

1.3 Approval ..... 1

1.4 Architectural Guidelines..... 2

1.5 Architectural Control Committee..... 2

1.6 Articles..... 2

1.7 Assessments..... 2

1.8 Board..... 2

1.9 Bylaws ..... 2

1.10 City ..... 2

1.11 Common Areas and Facilities..... 2

1.12 Common Expenses ..... 2

1.13 County..... 2

1.14 Declarant..... 3

1.15 Declarant Control Period ..... 3

1.16 Development..... 3

1.17 Director ..... 3

1.18 Eligible Mortgagee ..... 3

1.19 General Assessment..... 3

1.20 Governing Documents ..... 3

1.21 Guest ..... 3

1.22 Individual Assessment..... 3

1.23 Lot..... 4

1.24 Master Plan ..... 4

1.25 Member..... 4

1.26 Mortgage..... 4

1.27 Mortgagee ..... 4

1.28 Owner ..... 4

1.29 Person ..... 4

1.30 Plat..... 4

1.31 Purchaser..... 4

1.32 Reserve Fund ..... 4

1.33 Residence..... 5

1.34 Rules and Regulations ..... 5

1.35 Special Assessment..... 5

1.36 Tenant ..... 5

1.37 Transfer Assessment ..... 5

1.38 Turnover Meeting ..... 5

**SECTION 2 MEMBERSHIP IN THE ASSOCIATION..... 5**

2.1 Organization ..... 5

2.2 Membership..... 5

2.3 Voting Rights..... 5

<b><u>SECTION 3 MANAGEMENT OF THE ASSOCIATION</u></b> .....	<b>6</b>
<u>3.1 Board of Directors</u> .....	6
<u>3.2 Turnover Meeting</u> .....	6
<u>3.3 Liability</u> .....	6
<b><u>SECTION 4 POWERS AND OBLIGATIONS OF THE ASSOCIATION</u></b> .....	<b>6</b>
<u>4.1 General Powers and Obligations</u> .....	6
<u>4.2 Specific Powers and Duties</u> .....	7
<u>4.3 Implied Rights and Obligations</u> .....	8
<b><u>SECTION 5 PROPERTY RIGHTS IN LOTS</u></b> .....	<b>8</b>
<u>5.1 Use and Occupancy</u> .....	8
<u>5.2 Right of Entry Reserved</u> .....	8
<b><u>SECTION 6 PROPERTY RIGHTS IN COMMON AREAS AND FACILITIES</u></b> .....	<b>8</b>
<u>6.1 Right of Enjoyment</u> .....	8
<u>6.2 Title to Common Areas and Facilities</u> .....	8
<u>6.3 Limitations on Use of Common Areas and Facilities</u> .....	8
<u>6.4 Alienation of the Common Areas and Facilities</u> .....	9
<b><u>SECTION 7 MAINTENANCE</u></b> .....	<b>9</b>
<u>7.1 Association’s Responsibilities</u> .....	9
<u>7.2 Owners’ Responsibilities</u> .....	9
<b><u>SECTION 8 ASSESSMENTS</u></b> .....	<b>9</b>
<u>8.1 Purpose of Assessments</u> .....	9
<u>8.2 Types of Assessments</u> .....	9
<u>8.3 Apportionment of Assessments</u> .....	9
<u>8.4 Annual Budget</u> .....	10
<u>8.5 General Assessments</u> .....	10
<u>8.6 Special Assessments</u> .....	10
<u>8.7 Individual Assessments</u> .....	10
<u>8.8 Transfer Assessment</u> .....	10
<u>8.9 Reserve Fund</u> .....	11
<u>8.10 Assessment Lien</u> .....	11
<u>8.11 Appointment of Assessment Director</u> .....	11
<u>8.12 Municipal Assessment</u> .....	11
<b><u>SECTION 9 ARCHITECTURAL CONTROL</u></b> .....	<b>11</b>
<u>9.1 General</u> .....	11
<u>9.2 Composition of Architectural Control Committee</u> .....	12
<u>9.3 Architectural Guidelines</u> .....	12
<u>9.4 Application</u> .....	12
<u>9.5 Standard</u> .....	12
<u>9.6 Approval Procedure</u> .....	13
<u>9.7 Appeal</u> .....	13
<u>9.8 Fees</u> .....	13

9.9	<u>Enforcement</u> .....	13
9.10	<u>Majority Action</u> .....	13
9.11	<u>Liability</u> .....	14
9.12	<u>Nonwaiver</u> .....	14
9.13	<u>Effective Period of Consent</u> .....	14
9.14	<u>Estoppel Certificate</u> .....	14
<b><u>SECTION 10 RESTRICTIONS</u> .....</b>		<b>14</b>
10.1	<u>Residential Lots</u> .....	14
10.2	<u>Dwelling Cost, Quality and Size</u> .....	14
10.3	<u>Construction Methods and Materials</u> .....	14
10.4	<u>Landscaping</u> .....	15
10.5	<u>Drainage; Erosion Control</u> .....	15
10.6	<u>Zoning and Subdivision Ordinances</u> .....	15
10.7	<u>Repairs</u> .....	15
10.8	<u>Completion Required Before Occupancy</u> .....	15
10.9	<u>Temporary Structures Prohibited</u> .....	15
10.10	<u>Animals</u> .....	15
10.11	<u>Trash</u> .....	15
10.12	<u>Fences</u> .....	16
10.13	<u>Nuisance</u> .....	16
10.14	<u>No Unsightliness</u> .....	16
10.15	<u>No Hazardous Activity</u> .....	16
10.16	<u>No Annoying Lights</u> .....	16
10.17	<u>Sewer Connection Required</u> .....	16
10.18	<u>Maintenance of Property</u> .....	17
10.19	<u>Repair Following Damage</u> .....	17
<b><u>SECTION 11 ENFORCEMENT</u> .....</b>		<b>17</b>
11.1	<u>General</u> .....	17
11.2	<u>Fines</u> .....	18
11.3	<u>Enforcement of Assessment Lien</u> .....	18
11.4	<u>Interest, Expenses, and Attorneys' Fees</u> .....	18
11.5	<u>Remedies Cumulative</u> .....	18
<b><u>SECTION 12 MORTGAGEE PROTECTIONS</u> .....</b>		<b>19</b>
12.1	<u>Notification of Eligible Mortgagees</u> .....	19
<b><u>SECTION 13 AMENDMENT AND REPEAL</u>.....</b>		<b>19</b>
<b><u>SECTION 14 MISCELLANEOUS PROVISIONS</u> .....</b>		<b>19</b>
14.1	<u>Joint Owners</u> .....	19
14.2	<u>Tenants/Guests</u> .....	19
14.3	<u>Construction; Severability; Number; Captions; Exhibits</u> .....	19
14.4	<u>Approvals, Notices, and Other Writings</u> .....	19
14.5	<u>Not a Cooperative</u> .....	20

**DECLARATION  
OF  
COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS  
FOR  
ORCHARD HEIGHTS**

This Declaration of Covenants, Conditions, Restrictions, and Easements for Orchard Heights (“**Declaration**”) is executed as of Nov. 2<sup>nd</sup>, 2018, by Orchard Heights WJ LLC, a Utah limited liability company (“**Initial Declarant**”).

**BACKGROUND**

A. Initial Declarant is the owner of that certain real property (“**Land**”) located in West Jordan City, Salt Lake County, Utah, and legally described on Exhibit A attached hereto and incorporated herein by this reference.

B. Declarant intends to develop the Land into a residential subdivision to be known as Orchard Heights.

C. Declarant has or will cause Orchard Heights Homeowners Association, Inc., a Utah nonprofit corporation (together with its successors and/or assigns, the “**Association**”), to be incorporated under the laws of the State of Utah for the purposes of exercising the functions set forth in this Declaration.

D. The Land and all improvements constructed thereon will be held and conveyed subject to the following covenants, conditions, restrictions, and easements, which will run with the land and will be binding upon and inure to the benefit of all parties having or acquiring any right, title, or interest in or to the Land or the Development.

**Section 1  
DEFINITIONS**

As used in this Declaration, the terms set forth below will have the following meanings:

**1.1 Applicant.**

Any Owner seeking to construct improvements on its Lot who submits an Application to the Architectural Control Committee.

**1.2 Application.**

Defined in Section 9.4.

**1.3 Approval.**

Unless otherwise specified in this Declaration: (a) with respect to Declarant, the Association, the Board, or the Architectural Control Committee: advance written approval; and (b) with regard to Members (other than Declarant): approval by the requisite percentage of votes entitled to be cast by the Members participating in a duly called meeting in person, by proxy, by written ballot, or by action without a meeting. This definition will apply to other forms of the word “approval” as well, whether capitalized or not.

**1.4 Architectural Guidelines.**

The architectural, design, and construction guidelines and review procedures adopted in accordance with Section 9, as amended.

**1.5 Architectural Control Committee.**

The committee appointed in accordance with Section 9.

**1.6 Articles.**

The articles of incorporation of the Association, as may be amended from time to time.

**1.7 Assessments.**

All assessments and other charges, fines, and fees imposed by the Association on an Owner in accordance with the Governing Documents, including General Assessments, Special Assessments, Individual Assessments, and Transfer Assessments.

**1.8 Board.**

The Board of Directors of the Association.

**1.9 Bylaws.**

The bylaws of the Association, as may be amended from time to time. A copy of the Association's current Bylaws are attached to this Declaration as Exhibit B.

**1.10 City.**

West Jordan City, Utah.

**1.11 Common Areas and Facilities.**

Those parcels, and any improvements, equipment, facilities and other property on such areas parcels, intended for the common use and enjoyment of the Owners and their Tenants and Guests, including the areas designated as "Common Areas" on the Plat or established by this Declaration or any Supplemental Declaration, including without limitation, the swimming pool, surrounding landscaping, and other improvements to be located on the area set forth as "Open Space B" in the Plat, and all improvements, equipment, facilities and property associated with such swimming pool. Notwithstanding the foregoing, Common Areas and Facilities do not include any publicly dedicated streets or areas that are owned and maintained by a governmental authority or a third party utility provider.

**1.12 Common Expenses.**

The actual and estimated costs and expenses incurred, or anticipated to be incurred, by the Association in carrying out its powers and obligations under the Governing Documents, including any reasonable reserve, and including any items specified as Common Expenses in this Declaration.

**1.13 County.**

Salt Lake County, Utah.

**1.14 Declarant.**

The Initial Declarant and its successors and assigns if the successor or assignee acquires Declarant's interest in the Development, or less than all of Declarant's interest in the Development if a recorded instrument executed by Declarant assigns to the assignee all of Declarant's rights under this Declaration.

**1.15 Declarant Control Period.**

The period beginning on the date this Declaration is recorded in the official records of the County, and ending at the first to occur of the following:

(a) 90% of the Lots have been conveyed to Purchasers; or

(b) Declarant records a written statement in the official records of the County voluntarily terminating the Declarant Control Period, effective as of the date set forth in the statement.

**1.16 Development.**

The Land and the improvements constructed thereon.

**1.17 Director.**

A member of the Board.

**1.18 Eligible Mortgagee.**

Any Mortgagee of a Lot (or any insurer or guarantor of a Mortgage on a Lot) who has provided a written request to the Association (such request to state the name and address of such Eligible Mortgagee and the street address of the Lot to which its Mortgage relates), to be notified of any of the events listed in Section 12.1.

**1.19 General Assessment.**

Defined in Section 8.5.

**1.20 Governing Documents.**

This Declaration, the Articles, the Bylaws, the Architectural Guidelines, the Rules and Regulations, any fine schedule adopted in accordance with Section 11.2, and any other document, rule, or regulation adopted by the Association in accordance with the Governing Documents.

**1.21 Guest.**

Any person who is a visitor or invitee and who (a) is accompanied by an Owner or a Tenant, or (b) has been granted permission by an Owner to occupy its Residence for a period of time.

**1.22 Individual Assessment.**

Defined in Section 8.7.

**1.23 Lot.**

Each Lot shown on the Plat, which currently includes Lots 101 through and including Lot 323.

**1.24 Master Plan.**

The Highland Master Development Plan dated September 26, 2012 adopted by the City, as may be hereafter amended.

**1.25 Member.**

Any Person, including Declarant, holding a membership in the Association in accordance with Section 2.2.

**1.26 Mortgage.**

Any mortgage, deed of trust, or other document pledging any Lot or interest therein as security for payment of a debt or obligation.

**1.27 Mortgagee.**

Any Person named as a mortgagee or as a trustee or beneficiary under any Mortgage and any successor to the interest of any such Person under a Mortgage.

**1.28 Owner.**

Any Person having a fee ownership interest in a Lot. "Owner" does not include a Tenant or a Person holding less than a fee interest in a Lot. The rights, obligations, and other status of being an Owner commence upon acquisition of the fee interest in a Lot and terminate upon disposition of that interest, but termination of ownership will not discharge an Owner from obligations incurred before termination.

**1.29 Person.**

A natural person, a corporation, a partnership, a limited liability company, a trust, or any other legal entity.

**1.30 Plat.**

The plat entitled "Orchard Heights Phase I", subdividing the Land, and recorded concurrently with this Declaration in the official records of the County, as may be amended.

**1.31 Purchaser.**

A Person other than Declarant who acquires a fee simple interest in a Lot.

**1.32 Reserve Fund.**

A fund established for the operation, repair, maintenance and/or replacement of Common Area improvements, as described in Section 8.9.



**1.33 Residence.**

A building located on a Lot and designated for single-family residential occupancy.

**1.34 Rules and Regulations.**

Those rules and regulations adopted by the Board governing the conduct of persons on, and the operation and use of, the Common Areas and Facilities.

**1.35 Special Assessment.**

Defined in Section 8.6

**1.36 Tenant.**

Any Person who is leasing or renting a Residence.

**1.37 Transfer Assessment.**

Defined in Section 8.8.

**1.38 Turnover Meeting.**

The meeting called by Declarant to turn over administrative responsibility for the Development to the Members, as described in Section 3.2.

**Section 2  
MEMBERSHIP IN THE ASSOCIATION**

**2.1 Organization.**

The Association will be a Utah nonprofit corporation and will have the property, powers, and obligations set forth in this Declaration for the benefit of the Development and all Owners. The Articles will provide for the Association's perpetual existence, but if the Association is at any time dissolved, whether inadvertently or deliberately, it will 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 before its dissolution will automatically vest in the successor unincorporated association, and such vesting will thereafter be confirmed as evidenced by appropriate conveyances and assignments by the incorporated association. To the greatest extent possible, any successor unincorporated association will be governed by the Articles and Bylaws as if they were the governing documents of the unincorporated association.

**2.2 Membership.**

Every Owner of one or more Lots within the Development will be a Member of the Association. Membership will begin automatically when a Person becomes an Owner and will continue until the Person is no longer an Owner, at which point the membership will expire automatically.

**2.3 Voting Rights.**

Each Member will be entitled to one vote for each Lot owned, except that no more than one vote may be cast with respect to any one Lot. When a Lot is owned by multiple Owners, all such Persons will

be Members and the vote for such Lot will be exercised as the Owners among themselves determine. However, if the Owners of a Lot cannot agree on how to exercise their vote with respect to a pending matter, any such Owner may deliver notice of such disagreement to the Association before the vote is finalized, and the vote will then be disregarded with respect to such matter (except for purposes of establishing a quorum).

### **Section 3 MANAGEMENT OF THE ASSOCIATION**

#### **3.1 Board of Directors.**

The affairs of the Association will be conducted by the Board and by such officers as the Board may elect or appoint in accordance with the Articles and Bylaws. During the Declarant Control Period, the Board will consist of three Directors, appointed by Declarant in its sole discretion. Directors appointed by Declarant will serve until replaced by Declarant or until their successors take office at the Turnover Meeting, whichever occurs earlier. Effective as of the Turnover Meeting, the Board will be composed of five Directors, who will be elected by the Members and whose terms and qualifications will be set in accordance with the Bylaws.

#### **3.2 Turnover Meeting.**

Declarant will call a meeting (“**Turnover Meeting**”) of the Association for the purpose of turning over administrative responsibility for the Development to the Members sometime before the expiration of the Declarant Control Period. At the Turnover Meeting, the Members will elect Directors to replace the Directors appointed by Declarant. The newly elected Directors will take office, and the Directors appointed by Declarant will resign, effective as of the expiration of the Declarant Control Period or such earlier date as Declarant may specify. If Declarant fails to call the Turnover Meeting, any Member or Mortgagee may call the meeting by giving notice as provided in the Bylaws.

#### **3.3 Liability.**

A Director or officer of the Association will not be liable to the Association or any Member for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for acts of gross negligence or intentional misconduct. If any Director or officer of the Association is made a party to any proceeding because the individual is or was a Director or officer of the Association, the Association will indemnify such individual against liability and expenses incurred, to the maximum extent permitted by law.

### **Section 4 POWERS AND OBLIGATIONS OF THE ASSOCIATION**

#### **4.1 General Powers and Obligations.**

The Association will 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, duties, and obligations of a nonprofit corporation under the Utah Revised Nonprofit Corporation Act or its successor.

(c) Any additional powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association and promoting the general welfare of the Owners, all in accordance with this Declaration.

#### 4.2 **Specific Powers and Duties.**

The specific powers and duties of the Association will include, without limitation, the following:

(a) **Maintenance and Operation.** The Association will maintain and operate the Common Areas and Facilities in an attractive condition and in a good and workmanlike manner so as to carry out the purpose for which the Common Areas and Facilities are intended. The Association will also perform the maintenance specified in Section 7.1.

(b) **Services.** The Association may provide or contract for such services as the Board may reasonably deem to be of benefit to the Development, including pool maintenance, garbage removal and security services for the Development. The Association may also create various classes of service and levy appropriate Individual Assessments against the Owners and Lots benefiting from such services, without being required to render such services to Members who do not agree to pay such charges.

(c) **Insurance.** The Association will obtain and maintain at least \$2,000,000 of commercial general liability insurance. The Association may obtain property insurance insuring the Association against casualty damage to the Common Areas and Facilities in an amount deemed necessary by the Board.

(d) **Rulemaking.** The Association may make, establish, promulgate, amend, and repeal Rules and Regulations governing the Common Areas and Facilities.

(e) **Assessments.** The Association will adopt budgets and impose and collect Assessments as provided in Section 8.

(f) **Enforcement.** The Association will enforce the Governing Documents in accordance with Section 11.

(g) **Employment of Agents, Advisers, and Contractors.** The Association may employ the services of any Person as manager; hire employees to manage, conduct, and perform the business, obligations, and duties of the Association; employ professional counsel and obtain advice from landscape architects, recreational experts, architects, planners, lawyers, accountants or other advisers; and contract for or otherwise provide for all services necessary or convenient for the management, maintenance, and operation of the Development.

(h) **Acquiring, Holding, and Conveying Property.** The Association may acquire, hold, and convey, with or without consideration, real and personal property and interests therein, including easements across all or any portion of the Common Areas and Facilities, and will accept any real or personal property interests within the Development conveyed to the Association by Declarant.

(i) **Transferring, Dedicating, and Encumbering the Common Areas and Facilities.** Subject to Section 6.4, the Association may sell, transfer, or encumber all or any portion of the Common Areas and Facilities to a Person, whether public or private, and dedicate or transfer all or any portion of the Common Areas and Facilities to any public agency, authority, or utility for public purposes.

**4.3 Implied Rights and Obligations.**

The Association may exercise any other power reasonably implied by, or necessary to carry out, an express power given to the Association under this Declaration.

**Section 5  
PROPERTY RIGHTS IN LOTS**

**5.1 Use and Occupancy.**

Each Lot Owner will be entitled to the exclusive use and benefit of its Lot, but the Lot will be bound by, and the Owner will comply with, the Governing Documents.

**5.2 Right of Entry Reserved.**

Declarant hereby reserves the following right of entry for the benefit of Declarant and the Association. The Association may at any reasonable time, upon reasonable notice to the Lot Owner, enter upon any Lot 5.3 to determine whether the use or improvements of the Lot comply with the Governing Documents or 5.4 to enforce the Governing Documents in accordance with Section 11. No such entry will be deemed to constitute a trespass or otherwise create any right of action in the Owner of the Lot.

**Section 6  
PROPERTY RIGHTS IN COMMON AREAS AND FACILITIES**

**6.1 Right of Enjoyment.**

Subject to the terms of the Governing Documents, each Owner will have a nonexclusive right of use and enjoyment in and to the Common Areas and Facilities. Such right and easement will be appurtenant to and will pass with the title to each Lot. Any Owner may delegate this right and easement to its Tenants.

**6.2 Title to Common Areas and Facilities.**

Title to the Common Areas and Facilities will be conveyed to the Association by Declarant, free and clear of monetary liens, upon recordation of the Plat.

**6.3 Limitations on Use of Common Areas and Facilities.**

The right and easement of use and enjoyment in and to the Common Areas and Facilities will be subject to the following limitations:

(a) The right of the Association to suspend the right of an Owner to use the Common Areas and Facilities in accordance with Section 11.

(b) The right of the Association to adopt, amend, or repeal Rules and Regulations governing the conduct of persons on, and the operation and use of, the Common Areas and Facilities as it deems necessary or appropriate to ensure the peaceful and orderly use and enjoyment of the Common Areas and Facilities in accordance with the Governing Documents. A copy of the Rules and Regulations, as amended from time to time, will be delivered to each Owner by the Board and will be binding upon the Owners as of the date of delivery.

(c) An easement for ingress and egress to and from the Lots, Common Areas and Facilities, and streets, in favor of the Association to fulfill its obligations hereunder.

(d) The right of Declarant to establish easements, reservations, exceptions, and exclusions consistent with the ownership of the Development and the best interests of the Owners and the Association.

**6.4 Alienation of the Common Areas and Facilities.**

The Association may not abandon, partition, subdivide, encumber, sell, or transfer the Common Areas and Facilities without the approval of at least 67% of the Members and, during the Declarant Control Period, the approval of Declarant.

**Section 7  
MAINTENANCE**

**7.1 Association's Responsibilities.**

The Association will be responsible for maintaining, repairing, and replacing the Common Areas and Facilities in accordance with City standards. The cost and expense incurred by the Association in performing the obligations set forth in the previous sentence will be a Common Expense.

**7.2 Owners' Responsibilities.**

Maintenance of each Lot and all improvements on the Lot will be the sole responsibility of the Lot Owner, who will maintain its Lot and improvements in a clean, sanitary, attractive, and marketable condition and in good repair at all times. Such maintenance will include repair and replacement of irrigation systems, utility lines, roofs, gutters, leaders, downspouts, exterior building surfaces, glass surfaces, walks, and other exterior improvements. Trees, shrubs, grass, flowers, and other landscaping will be neatly trimmed and properly cultivated. Lots will be kept free of trash, weeds, and other unsightly material at all times. Damage caused by fire, flood, storm, earthquake, riot, vandalism, or other causes will be repaired by the Owner within a reasonable period of time.

**Section 8  
ASSESSMENTS**

**8.1 Purpose of Assessments.**

The Assessments levied by the Association will be used exclusively to promote the recreation, health, safety, and welfare of the Owners and occupants of the Development and for the improvement, operation, and maintenance of the Common Areas and Facilities.

**8.2 Types of Assessments.**

The Association may levy General Assessments, Special Assessments, and Individual Assessments, all as more particularly described below.

**8.3 Apportionment of Assessments.**

Lots owned by Declarant will not be subject to Assessments until such time as the Lot is occupied for residential use. Each other Lot will be assessed its pro rata share of the General Assessments and Special Assessments as soon as it is conveyed to an Owner other than Declarant. The pro rata share will be calculated by dividing the total dollar amount of each such Assessment by the total number of Lots subject to assessment.

#### **8.4 Annual Budget.**

The Board will prepare an annual budget for the Association each fiscal year, taking into account the Common Expenses, contributions to be made to the Reserve Fund, any surplus from previous years, and any income expected from sources other than Assessments. During the Declarant Control Period, the annual budget will be prepared and adopted by the Board. After the Declarant Control Period expires, The Board shall present the adopted annual budget to the Owners at a meeting of the Owners. An annual budget shall be disapproved if within 45 days after the date of such meeting at which the Board presents the adopted budget: (a) there is a vote of disapproval by at least 51% of the Members, and (b) the vote is taken at a special meeting called for that purpose by the Members under the Governing Documents. If a budget is disapproved in accordance with the foregoing sentence, the budget that the Board last adopted that was not disapproved by the Members shall continue as the budget until and unless the Board presents another budget to the Members and that budget is not disapproved.

#### **8.5 General Assessments.**

Based on the annual budget, the Board will determine the amount of the General Assessment, which will be apportioned among the Lots as provided in Section 8.3. At the closing of the sale of each Lot, the Owner purchasing the Lot will pay an amount equal to the prorated portion of the General Assessment and any Special Assessment due for the month or year (depending on whether Assessments installments are paid monthly or annually) in which the closing occurs. An Owner who sells its Lot will not be entitled to a refund from the Association of any Assessments paid in advance. However, the purchasing Owner will be entitled to a credit for any Assessments paid in advance by a previous Owner, and the selling Owner may seek a corresponding credit from the purchasing Owner. The manner of billing and collecting Assessments will be as provided in the Bylaws or as otherwise determined by the Board.

#### **8.6 Special Assessments.**

In addition to the General Assessments authorized in Section 8.5, the Board may levy during any fiscal year a Special Assessment applicable to that year only, for the purpose of deferring all or any part of the cost of structural improvements, landscaping improvements, unbudgeted expenses, expenses in excess of those budgeted, or other unanticipated, extraordinary, or emergency expenses. Special Assessments which in the aggregate in any fiscal year exceed an amount equal to 15% of the budgeted gross expenses of the Association for the fiscal year may be levied only if approved by at least 67% of the Members and, during the Declarant Control Period, Declarant. Special Assessments will be apportioned as provided in Section 8.3 and may be payable in lump sum or in installments, with or without interest or discount, as determined by the Board.

#### **8.7 Individual Assessments.**

The cost of any service benefiting less than all of the Lots may, in the discretion of the Board, be assessed exclusively against the Lots benefited as an Individual Assessment. Individual Assessments will also include fines imposed for violation of the Governing Documents and charges against a Lot to reimburse the Association for costs incurred in bringing the Lot or its Owner into compliance with the Governing Documents. Unless otherwise provided by the Board, an Individual Assessment will be due thirty (30) days after the Board has notified the Owner subject to the Individual Assessment.

#### **8.8 Transfer Assessment.**

Upon taking title to a Lot, a Purchaser will pay to the Association a Transfer Assessment in an amount to be established and adjusted from time to time by the Board.

#### **8.9 Reserve Fund.**

The Association may establish a Reserve Fund for the operation, repair, or replacement of Common Areas and Facilities. When budgeting for the Reserve Fund, the Board will take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repairs or replacement cost. The Board may borrow funds from the Reserve Fund to meet high seasonal demands on the regular operating funds or to meet other temporary expenses which will later be paid from General Assessments or Special Assessments. The Association may prudently invest the Reserve Fund.

#### **8.10 Assessment Lien.**

Declarant covenants, and each Lot Owner is deemed to covenant, for each Lot owned by it within the Development, to pay to the Association all Assessments as may be fixed, established, and collected from time to time in accordance with this Declaration. Such Assessments, together with any interest, expenses, or attorneys' fees imposed in accordance with Section 11.4, will be a continuing lien upon the Lot against which each such Assessment or charge is made. However, no lien will attach to any Lot owned by Declarant until the Lot is subject to Assessment in accordance with Section 8.3. Assessments will also be the personal obligation of the Person who was the Owner of the Lot at the time the Assessment was assessed.

#### **8.11 Appointment of Assessment Director.**

Declarant hereby designates North American Title Company as the "trustee" for purposes of Section 57-8a-302 of the Utah Community Association Act. Declarant further hereby informs each Owner that such Owner's acceptance of an interest in a Lot constitutes a simultaneous conveyance of the Lot in trust, with power of sale, to said trustee or such substitute trustee as the Declarant may designate from time to time, as provided in Section 57-8a-302 of the Utah Community Association Act, for the purpose as securing payment of all amounts due under the Declaration or pursuant to such act. In accordance with Section 57-8a-212(1)(j)(ii): The Declarant hereby conveys and warrants pursuant to U.C.A. Sections 57-1-2- and 57-8a-302 to North American Title Company, with power of sale, the lot and all improvements to the lot for the purpose of securing payment of assessments under the terms of the Declaration.

#### **8.12 Municipal Assessment.**

The Development is within the area identified as the Highlands Assessment Area ("HAA") encompassing the Highlands Master Development Area, as identified in City ordinance 13-48 ("Ordinance"). The Development is subject to all restrictions, fees, assessments, encumbrances, and other burdens placed on the HAA, as identified in the Ordinance. A copy of the Ordinance may be obtained from the City.

### **Section 9 ARCHITECTURAL CONTROL**

#### **9.1 General.**

No improvements of any kind, including the construction of any Residence, garage, outbuilding, parking area, driveway, tennis court, walkway, swimming pool, outdoor hot tub or spa, fence, wall, curb, pool, trampoline, swing set or playground equipment, satellite dish or antenna, solar panel, outside air conditioning equipment, or any other permanent structure may be constructed, erected, or installed on a Lot without the approval of the Architectural Control Committee ("Committee"). No excavation, grading, filling, draining, landscaping, or planting or removal of existing vegetation may be performed without the

approval of the Committee. No approval will be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of its Residence without approval by the Committee. However, modifications to the interior of screened porches, patios, or similar portions of a Lot visible from outside the structure will be subject to Committee approval. All Residences constructed on the Lots will be designed by and built in accordance with the plans and specifications of a licensed architect. This Section will not apply to Declarant's activities.

#### **9.2 Composition of Architectural Control Committee.**

The Committee will consist of at least three individuals, appointed by the Board in its discretion.

#### **9.3 Architectural Guidelines.**

The Committee will prepare Architectural Guidelines that establish standards, rules, regulations, restrictions, and guidelines, in addition to those set forth in this Declaration, with respect to design features, architectural styles, exterior colors and materials, details of construction, location and size of structures, landscaping, and other matters requiring approval by the Committee. The Architectural Guidelines will also specify the content of the Application that must be submitted to the Committee by an Owner seeking approval to construct improvements and will establish the procedures for submitting the Application. If there is a conflict between the Architectural Guidelines and this Declaration, this Declaration will prevail. During the Declarant Control Period, the Committee may amend the Architectural Guidelines in its sole discretion. Upon the expiration of the Declarant Control Period, the Committee may amend the Architectural Guidelines subject to the approval of the Board. The Architectural Guidelines will be binding on all Owners and their respective architects, design professionals, builders, contractors, and agents. However, amendments to the Architectural Guidelines will be applied prospectively only and will not be applied so as to require modifications to or removal of improvements previously approved once construction of the approved improvements has begun. The Committee will make the Architectural Guidelines available to Owners who seek to construct improvements within the Development, but each Owner (and its architects, design professionals, builders, contractors, and agents) will be responsible for obtaining, understanding, and following the latest version of the Architectural Guidelines. Declarant may, in its sole discretion, record the Architectural Guidelines in the official records of the County, in which case the most recently recorded version will control if there is a dispute as to which version of the Architectural Guidelines was in effect at any particular time.

#### **9.4 Application.**

Any Owner seeking to construct improvements must submit an Application to the Committee for review, as specified in the Architectural Guidelines. The required Application materials may include plans and specifications showing site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of the proposed improvements, as applicable. The Committee may require the submission of such additional information as may be reasonably necessary to consider any Application. The Committee may also waive certain Application requirements depending on the nature of the proposed improvements.

#### **9.5 Standard.**

The Committee will review each Application for compliance with this Declaration and the Architectural Guidelines, and may consider issues such as (a) whether the proposed improvements are consistent with the architectural character of the Development, considering the nature, shape, color, size, material, location, height, form, proportion, volume, and aesthetic quality of the proposed improvements;



(b) whether the dimensions of the Lot can accommodate the proposed improvements; (c) whether the proposed improvements harmonize with the exterior design, topography, grade, and finished ground elevations of neighboring Lots, Common Areas and Facilities improvements; (d) whether the proposed improvements will be adequately screened (if applicable); and (e) whether landscaping, drainage, utility service systems, and lighting are adequate. Each Owner acknowledges that the decisions of the Committee will be based partly on subjective standards of appearance, and that an Application may be rejected entirely on aesthetic grounds. The Committee will have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations will not be subject to review so long as they are made in good faith and in accordance with the procedures set forth in this Section and in the Architectural Guidelines.

#### **9.6 Approval Procedure.**

The Committee will make a determination on each Application within 30 days after receipt of a completed Application and all required information. The Committee may (a) approve the Application, with or without conditions; (b) approve portions of the Application and disapprove other portions; or (c) disapprove the Application. The Committee will notify the Applicant of its decision within ten days of making the decision. In the case of disapproval, the Committee will specify the reasons for disapproval or offer suggestions for curing any objections. If the Committee fails to render its decision within 30 days after receipt of a completed Application, approval will not be required, and the Applicant will be deemed to have fully complied with this Section.

#### **9.7 Appeal.**

Any Owner adversely affected by an action of the Committee may appeal such action to the Board. Appeals must be made in writing within ten days of the Committee's action and must contain specific objections to the Committee's decision or mitigating circumstances justifying overturning the Committee's decision. A final, conclusive decision will be made by the Board within 30 days after receipt of the appeal.

#### **9.8 Fees.**

The Committee may collect a fee for reviewing an Application ("**Review Fee**") and may require the Review Fee to be paid in full before the Committee reviews an Application. The Review Fee may include the reasonable cost of having the Application reviewed by architects, engineers, or other professionals whom the Committee may employ as it deems necessary to perform the review. The Board may change the amount of the Review Fee from time to time to cover increasing costs.

#### **9.9 Enforcement.**

The Committee will notify the Board of any Applicant who fails to comply with this Section. The Board may then enforce such violation in accordance with Section 11.

#### **9.10 Majority Action.**

Except as otherwise provided in this Declaration, a majority of the members of the Committee will have the power to act on behalf of the Committee, without the necessity of a meeting and without the necessity of consulting the remaining members of the Committee. Committee decisions will be rendered in writing and will set forth the actions taken by the consenting Committee members.

**9.11 Liability.**

No Committee member will be liable to any Owner, occupant, builder, or developer for any damage, loss, or prejudice suffered or claimed because of any act or omission of the Committee or a member of the Committee, as long as the Committee member has acted in good faith.

**9.12 Nonwaiver.**

Consent by the Committee to any matter will not be deemed to be a precedent or waiver preventing the Committee from withholding consent to any similar matter.

**9.13 Effective Period of Consent.**

The Committee's consent to any Application will automatically be revoked one year after issuance unless Owner has begun construction of the proposed improvements or has applied for and received an extension of time from the Committee.

**9.14 Estoppel Certificate.**

Within 30 days after written request is delivered to the Committee by any Owner, and upon payment to the Committee of a reasonable fee fixed by the Board to cover costs, the Committee will provide such Owner with an estoppel certificate executed by a member of the Committee, certifying with respect to any Lot owned by the Owner that as of the date of the certificate, either: (a) all improvements located on the Lot comply with this Declaration, or (b) certain improvements do not comply with this Declaration, in which event the certificate will also identify the noncomplying improvements and specify the nature of the noncompliance. Any purchaser of the Owner's Lot and any Mortgagee or other lienholder will be entitled to rely on the estoppel certificate, which will be conclusive as between the Owner, the Committee, the Association, and such purchaser, Mortgagee, or other lienholder.

**Section 10  
RESTRICTIONS**

**10.1 Residential Lots.**

All Lots shall be used for residential purposes only. No structure shall be erected, altered, placed or permitted to remain on any Lot which is not a single family dwelling, not to exceed two stories in height with no less than a two-car garage; provided that an Owner shall have the right to have one (1) storage shed on its Lot so long as such storage shed (a) does not to exceed 200 square feet, (b) is constructed on a concrete slab and (c) is constructed with the same building quality materials as used for the home on such Lot. Carports are prohibited.

**10.2 Dwelling Cost, Quality and Size.**

All dwellings shall have a minimum of an attached two-car garage. All rambler-style homes shall have no less than 1,600 square feet on main level, exclusive of open porches and garages. All two-story dwellings shall have a minimum of 1,900 square feet above ground, exclusive of open porches and garages.

**10.3 Construction Methods and Materials.**

The exterior front of any structure erected on a Lot shall have at least 30 percent of its area covered with brick or stone. No siding materials allowed. Stucco, and hardi board will be permitted. All buildings

shall have a roof of at least a 6 x 12 pitch. The Committee may grant a waiver of the exterior front coverage and roof pitch requirements for certain approved dwelling styles (including, but not limited to, full fiber cement board homes, and prairie or mid-century modern designs). All shingles shall be architectural grade, bar tile, cedar or shake.

**10.4 Landscaping.**

Within twelve (12) months following issuance to Owner of an occupancy permit, but in no event later than the summer immediately following the completion of Owner's home, each Owner is required to landscape its Lot.

**10.5 Drainage; Erosion Control.**

Easements for utility and drainage facilities are reserved as shown on the Plat. No Owner other than Declarant shall alter the slope and/or contour of its Lot in a manner that will materially increase the discharge of water onto the surface of any sidewalks, street or adjoining Lot or property. Each Owner shall be responsible to ensure that no erosion or water drainage shall take place from its Lot which may adversely affect neighboring properties and/or roads.

**10.6 Zoning and Subdivision Ordinances.**

Each Owner shall comply, and shall cause such Owner's Lot to comply, with all applicable laws and regulations, including, without limitation, zoning regulations of the City and the County and any applicable building, fire and health codes, and the Master Plan. No Lot may be occupied in a manner that is in violation of any applicable statute, law, ordinance, rule or regulation. The City may compel the Owners to comply with any governmental regulation or issue of public safety.

**10.7 Repairs.**

Once a Lot is purchased, each Owner acknowledges that they are responsible for any damage or repairs to the sidewalks and all other concrete improvements located on or adjacent to its Lot.

**10.8 Completion Required Before Occupancy.**

No dwelling may be occupied prior to its completion and the issuance of a certificate of occupancy by the City.

**10.9 Temporary Structures Prohibited.**

No structure of temporary nature, such as a trailer, basement, tent, shack, garage or other outbuilding shall be used on any Lot at any time as a residence.

**10.10 Animals.**

Only ordinary household pets may be kept on any Lot. Each Owner shall be responsible for keeping pets on their property.

**10.11 Trash.**

No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept or permitted to remain on any Lot except in sanitary containers. No materials shall be kept or stored on any Lot that would be unsightly or a fire hazard.

#### **10.12 Fences.**

No fence, wall or other similar structure shall be constructed or placed on any Lot nearer the street than the front house line, nor shall any fence, wall or similar structure be constructed to a height greater than six feet. All fences, walls or similar structures shall be of brick, stone, wrought iron, or white vinyl. Tan vinyl fencing and chain-link fencing are prohibited. Any fencing, wall or similar structure using other construction materials shall require the prior written approval of the Committee. In the event of a dispute regarding what constitutes the front, side or rear yards, the decision of the Committee shall be final, binding and conclusive.

#### **10.13 Nuisance.**

No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood, including the creation of loud or offensive noises or odors that detract from the reasonable enjoyment of nearby Lots. No mining, drilling, prospecting, mineral exploration or quarrying activity will be permitted at any time.

#### **10.14 No Unsightliness.**

No unsightliness is permitted on any Lot. This shall include, without limitation, the open storage of any building materials (except during the construction of any home or addition); open storage or parking of farm or construction equipment, boats, campers, camper shells, trailers, recreational vehicles, trucks larger than pick-up trucks (except during periods of actual loading and unloading) or inoperable motor vehicles; accumulations of lawn or tree clippings or trimming; accumulations of construction debris or waste; household refuse or garbage except as stored in tight containers in an enclosure such as a garage; and the storage or accumulation of any other material, vehicle, or equipment on the Lot in a manner that is visible from any other Lot or any public street; provided that the foregoing shall not restrict the parking of a vehicle or equipment on a Lot behind a fully screened fence section that is at least six (6) feet in height even if such vehicle or equipment can be seen above such fence.

#### **10.15 No Hazardous Activity.**

No activity may be conducted on any Lot that is, or would be considered by a reasonable person to be unreasonably dangerous to hazardous, or which would cause the cancellation of a conventional homeowners insurance policy. This includes, without limitation, the storage or caustic, toxic, flammable, explosive or hazardous materials in excess of those reasonable and customary for household uses, the discharge of firearms and setting open fires (other than properly supervised and contained barbecues).

#### **10.16 No Annoying Lights.**

No outdoor lighting shall be permitted except for lighting that is designed to aim downward and limit the field of light to the confines of the Lot on which it is installed. This shall not apply to street lighting maintained by the City.

#### **10.17 Sewer Connection Required.**

All Lots are served by sanitary sewer service, no cesspools, septic tanks or other types of waste disposal systems are permitted on any Lot. All dwelling units must be connected to the sanitary sewer system.

**10.18 Maintenance of Property.**

Each Lot and the improvements on it shall be maintained by the Lot Owner in a clean, sanitary, attractive and marketable condition at all times. No Owner shall permit his Lot or the improvements on it to fall into disrepair.

**10.19 Repair Following Damage.**

In the event of casualty loss or damage to the improvements on a Lot, the Owner will be entitled to reconstruct the improvements as they existed prior to the damage or loss, provided however that alterations or deviations from the originally approved plans will comply with applicable City zoning and ordinances. Nothing in this Declaration is intended to prevent an Owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent further damage, or to prevent injury or dangerous conditions following loss or damage, before re-construction begins. No damaged structure will be permitted to remain on any Lot for more than 90 days without repairs commencing, and any damaged structure which does remain unrepaired after 90 days following the occurrence of damage is deemed a nuisance.

**Section 11  
ENFORCEMENT**

**11.1 General.**

The Board will notify any Member of any violation of the Governing Documents for which the Member is responsible, including violations caused by a Tenant or Guest of the Member, and will specify any necessary remedial action. If the Member (1) has not begun and diligently pursued the remedial action within 10 days of notification; (2) the Member and the Association cannot agree to a mutually acceptable solution consistent with the Governing Documents; and (3) the Association has given the Member reasonable opportunity to be heard; then the Association may do any or all of the following:

- (a) subject to the additional requirements of Section 11.2, impose reasonable fines as an Individual Assessment upon the Member;
  - (b) suspend the Member's voting rights and right to use the Common Areas and Facilities for the period that the violation remains uncured;
  - (c) where applicable, enter the offending Member's Lot and remove the cause of the violation, or alter, repair, or change the item which is in violation of the Governing Documents in such a manner as to make it conform thereto, in which case the Association may assess the cost of the remedy as an Individual Assessment against the Member and the Member's Lot;
  - (d) bring suit or action against the Member to enforce the Governing Documents;
- and/or
- (e) pursue any other remedy available at law or in equity.

Nothing in this Section will authorize the Association to deprive any Member of access to and from its Lot.

## 11.2 Fines.

The Board may assess a fine against a Member only for a violation of a rule, covenant, condition, or restriction that is specifically listed in the Governing Documents. A fine must be in the amount specifically provided for in the Governing Documents for the specific type of violation, or in an amount commensurate with the nature of the violation. The Board will prepare and publish from time to time a fine schedule listing the various offenses and the corresponding fine amounts. Any Member assessed a fine may request an informal hearing before the Board to protest or dispute the fine within 14 days from the date the fine is assessed (“**Hearing**”). The Hearing will be conducted in accordance with the standards set forth in the Bylaws. No interest or late fees may accrue on a fine until after the Hearing has been conducted and a final decision has been rendered, unless the fined Member fails to request a Hearing within the 14-day time period.

## 11.3 Enforcement of Assessment Lien.

The Association will have a lien against each Lot for any Assessment levied against the Lot and the Owner thereof under the Governing Documents from the date on which the Assessment is due. If a Member fails to pay an Assessment levied under the Governing Documents within 30 days of its due date, the Association may foreclose on the lien and may, through its duly authorized agents, bid on the Lot at such foreclosure sale and may acquire, hold, lease, mortgage, or convey the Lot. The Association may bring an action to recover a money judgment for unpaid Assessments without foreclosing or waiving the lien described in this Section. Recovery on any such action, however, will operate to satisfy the lien, or the portion thereof, for which recovery is made.

## 11.4 Interest, Expenses, and Attorneys’ Fees.

Any Assessment or other amount not paid to the Association when due in accordance with this Declaration will bear interest from the due date (unless the Assessment is a fine and a Hearing is timely requested, in which case no interest or late fees may accrue until after the Hearing has been conducted and a final decision has been rendered) until paid at a rate 3 percentage points per annum above the prime rate published in the *Wall Street Journal* at the time, or such other rate as may be established by the Board, but not to exceed the lawful rate of interest under Utah law. A late charge may be levied for each delinquent Assessment in an amount established from time to time by the Board, as long as the late charge does not exceed 20% of the Assessment. If the Association files a notice of lien, the lien amount will also include the recording fees associated with filing the notice and a fee for preparing the notice of lien, which fee will be established from time to time by the Board. If the Association prevails in any procedure to enforce the Governing Documents, the Association is entitled to an award of its costs and reasonable attorneys’ fees associated with the action.

## 11.5 Remedies Cumulative.

An election by the Association to pursue any remedy provided for in this Declaration will not prevent concurrent or subsequent exercise of another remedy permitted under this Declaration. The remedies provided in this Declaration are not exclusive but will be in addition to all other remedies, including actions for damages and suits for injunctions and specific performance, available under applicable law. Failure by the Association to enforce the Governing Documents will not be deemed a waiver of the right to do so thereafter. Any aggrieved Member may bring an action against another Member or the Association to recover damages or to enjoin, abate, or remedy any violation of the Governing Documents by appropriate legal proceedings.

**Section 12**  
**MORTGAGEE PROTECTIONS**

**12.1 Notification of Eligible Mortgagees.**

Each Eligible Mortgagee will be entitled to written notice of any delinquency in the payment of Assessments owed by a Lot subject to a Mortgage held by the Eligible Mortgagee, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Lot or the Owner or its Tenants which is not cured within 60 days.

**Section 13**  
**AMENDMENT AND REPEAL**

This Declaration and the Plat may only be amended or repealed with the approval of at least 67% of the Members. However, (a) no amendment under this Section may create, limit, or diminish Declarant's rights without Declarant's approval; and (b) no amendment under this Section may change the boundaries of any Lot without the consent of the Board and all Owners of the affected Lots.

**Section 14**  
**MISCELLANEOUS PROVISIONS**

**14.1 Joint Owners.**

Where two or more Owners share the ownership of any Lot, the responsibility of such Owners to comply with this Declaration will be a joint and several responsibility.

**14.2 Tenants/Guests.**

Tenants and Guests using the Development under rights derived from an Owner will comply with all applicable provisions of the Governing Documents. Each Owner will be responsible for its Tenants' and Guests' compliance and will be liable for any failure of compliance by its Tenants or Guests in the same manner and to the same extent as if the failure had been committed by the Owner himself.

**14.3 Construction; Severability; Number; Captions; Exhibits.**

This Declaration will be liberally construed as an entire document to accomplish the purposes stated in the Background paragraphs. However, each provision of this Declaration will be deemed independent and severable, and the invalidity of any provision will not affect the validity of any other provision. As used in this Declaration, the singular includes the plural and the plural the singular, and the masculine and neuter include the masculine, feminine, and neuter, as the context requires. All captions used in this Declaration are intended solely for convenience of reference and will in no way limit this Declaration. The Background paragraphs and all exhibits attached to this Declaration are incorporated into this Declaration by reference.

**14.4 Approvals, Notices, and Other Writings.**

(a) Within 15 days after taking title to a Lot, the Owner of the Lot will provide the Association with the Owner's current mailing address (if other than the address at the Lot), phone number, and email address, and will provide the Association with a copy of the deed by which the Owner acquired title to the Lot. An Owner will notify the Association of any change in such Owner's contact information within 15 days after the change.

(b) All approvals, notices, and other writings required or permitted to be given under this Declaration must be delivered in person, by first-class United States mail, or by Federal Express, UPS, or other nationally recognized private commercial carrier, postage prepaid. Delivery of such approval, notice, or other writing will be deemed made two business days after having been deposited with the United States Postal Service or nationally recognized private commercial carrier, addressed to an Owner at the address provided under Section 14.4(a), or addressed to Declarant, the Association, or the Architectural Control Committee, at the following address (or at such other address as may be designated in writing from time to time):

Orchard Heights WJ LLC  
526 North 400 West  
North Salt Lake, Utah 84054

**14.5 Not a Cooperative.**

In accordance with Section 57-8a-212(1)(c) of the Utah Community Association Act, the project is not a cooperative.



Declarant has executed this Declaration to be effective as of the date first set forth above.

Orchard Heights WJ LLC,  
a Utah limited liability company

By: Bruce G Robinson  
Name: Bruce G. Robinson  
Title: MANAGER

State of Utah            )  
          Davis            ) ss.  
County of ~~Salt Lake~~ )

The foregoing instrument was acknowledged before me on November 2, 2018, by Bruce G. Robinson, Manager of Orchard Heights WJ LLC.



Heather Marie Muir  
Notary Public

## Exhibit A

### Legal Description of the Land

A portion of the NE1/4 of Section 34, Township 2 South, Range 2 West, Salt Lake Base & Meridian, located in West Jordan City, more particularly described as follows:

Beginning at a point located S89°54'20"W along the Section line 1,235.50 feet and S0°26'34"E 1,124.46 feet from the Northeast Corner of Section 34, T2S, R2W, S.L.B.& M.; thence S0°36'34"E 416.19 feet; thence N89°22'15"E 32.37 feet; thence South 192.31 feet; thence East 127.90 feet; thence N51°28'31"E 161.57 feet; thence East 12.30 feet to the westerly line of Phase 1, LONEVIEW NORTH Subdivision, according to the Official Plat thereof on file in the Office of the Salt Lake County Recorder; thence S0°36'34"E along said plat 253.29 feet to the northeast corner of WEST JORDAN SUNSET CHURCH Subdivision, according to the Official Plat thereof on file in the Office of the Salt Lake County Recorder; thence N89°58'51"W along said plat 956.58 feet to the east line of that Real Property conveyed to the City of West Jordan recorded in Deed Book 9634 Page 37 of the Official Records of Salt Lake County; thence N0°35'03"W along said deed 746.28 feet; thence N89°23'25"E 138.41 feet; thence N87°16'58"E 50.04 feet; thence N89°54'20"E 124.01 feet; thence N0°36'44"W 6.45 feet; thence N89°23'16"E 345.79 feet to the point of beginning.

Contains: 12.75+/- acres

**Exhibit B**  
Bylaws  
(See attached)

**BYLAWS  
OF  
ORCHARD HEIGHTS HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE 1.  
DEFINITIONS**

1.01 Declaration.

As used herein, "Declaration" means the Declaration of Covenants, Conditions, Restrictions, and Easements for Orchard Heights, as the same may be amended from time to time, recorded in the Official Records of Salt Lake County, Utah.

1.02 Other Definitions.

Unless otherwise defined herein, all capitalized terms used herein shall have the meanings given to them in the Declaration.

**ARTICLE 2.  
OFFICES**

The Association is a Utah nonprofit corporation, with its principal office located at 526 North 400 West, North Salt Lake, Utah 84054.

**ARTICLE 3.  
VOTING, QUORUM, AND PROXIES**

3.01 Voting.

Votes shall be allocated as set forth in Section 2.3 of the Declaration.

3.02 Quorum.

Except as otherwise required by law or by the Articles, the presence in person or by proxy of Owners entitled to vote more than a majority of the total votes of the Owners shall constitute a quorum.

3.03 Proxies.

Votes may be cast in person or by proxy. Every proxy must be executed in writing by the Owner or his duly authorized attorney-in-fact. Such proxy shall be filed with the secretary of the Association before or at the time of the meeting. No proxy shall be valid after the expiration of eleven months from the date of its execution unless otherwise provided in the proxy.

3.04 Majority Vote.

At any meeting of the Owners, if a quorum is present, the affirmative vote of a majority of the votes represented at the meeting, in person or by proxy, shall be the act of the Owners, unless the vote of a greater number is required by law, the Articles, the Declaration, or these Bylaws.

**ARTICLE 4.**  
**ADMINISTRATION**

4.01 Annual Meeting.

The annual meeting of the Owners shall be held at a time designated by the Board in the month of May in each year, or at such other date designated by the Board, beginning with the year 2018, for the purpose of electing Directors and for the transaction of such other business as may come before the meeting.

4.02 Special Meetings.

Special meetings of the Owners, for any purpose, unless otherwise prescribed by statute, may be called by the president or by a majority of the Directors and shall be called by the president at the request of Owners entitled to vote 20 percent or more of the total votes of all Owners.

4.03 Place of Meeting.

The Board may designate the Association's principal offices or any place within Salt Lake County, Utah, as the place for any annual meeting or for any special meeting called by the Board.

4.04 Notice of Meeting.

Written or printed notice of any meeting of the Owners, stating the place, day, and hour of the meeting and the purpose or purposes for which the meeting is called, shall be delivered personally or by mail to each Owner entitled to vote at such meeting not less than ten nor more than fifty days before the date of the meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail, addressed to the Owner at his address as it appears in the office of the Association, with postage thereon prepaid. For the purpose of determining Owners entitled to notice of or to vote at any meeting of the Owners, the Board may set a record date for such determination of Owners, in accordance with the laws of the State of Utah. If requested by the person or persons lawfully calling such meeting, the secretary shall give notice thereof at the expense of the Association.

4.05 Informal Action by Owners.

Any action required or permitted to be taken at a meeting of the Owners may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Owners entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote of the Owners.

**ARTICLE 5.**  
**DECLARANT CONTROL**

Declarant shall be entitled to control the Association as set forth in Section 6.02(a) hereof.

**ARTICLE 6.**  
**BOARD**

6.01 Number and Election of Directors.

The Board shall consist of three (3) Directors. The initial Directors shall hold office until the election or appointment of their successors at the first annual meeting. Thereafter, subject to the terms and conditions of Sections 6.02 and 6.03 below, each Director will hold office for a term of one (1) year, and the Owners shall elect the Directors at the annual meetings.

6.02 Appointment of Directors.

(a) During the Initial Declarant Control Period.

i. Subject to the terms and conditions of paragraphs 6.02(ii) and (iii) below, but notwithstanding anything else to the contrary contained in the Declaration or in any other Association Document, during the Initial Declarant Control Period (as such term is defined in the Declaration), Declarant shall have the exclusive right to appoint and remove all Directors and officers.

ii. Declarant may voluntarily surrender its right to appoint and remove officers and Directors prior to the expiration of the Initial Declarant Control Period; but, in that event, Declarant may require, for the remainder of the Initial Declarant Control Period, that specific actions of the Association or the Board, as described in a recorded instrument executed by Declarant, be approved by the Declarant before they become effective.

iii. No management contract or any other contract or lease designed to benefit the Declarant which was executed by or on behalf of the Association or the Owners as a group shall be binding after the expiration of the Initial Declarant Control Period unless renewed or ratified by the consent of a majority of the votes in the Association.

/

(b) After the Initial Declarant Control Period. After the Initial Declarant Control Period or the date Declarant voluntarily surrenders its right to appoint and remove Directors in accordance with paragraph 6.02(ii) above, the Board will be determined by majority vote of the Owners.

6.03 Removal of Directors.

(a) Directors appointed by Declarant may be removed, with or without cause, solely by Declarant.

(b) Directors elected by the Owners of the Lot may be removed, with or without cause, by majority vote of the Owners.

6.04 Replacement of Directors.

(a) Vacancies on the Board created by the removal, resignation or death of a Director appointed by Declarant shall be filled by a Director appointed by Declarant.

(b) A vacancy on the Board created by the removal, resignation, or death of a Director elected by the Owners shall be filled by a Director elected by the Owners.

(c) Any Director appointed pursuant to this Section 6.04 shall hold office for the remainder of the unexpired term of the Director that Director replaced.

6.05 Resignations; Vacancies.

Any Director may resign at any time by giving written notice to the president or to the secretary of the Association. Such resignation shall take effect at the time specified therein and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Any vacancy occurring on the Board shall be filled in accordance with Paragraph 6.04 above. A Director elected to fill a vacancy shall hold office until the next annual meeting of the Owners and until his successor is duly elected and qualified.

6.06 Regular Meetings.

Regular meetings of the Board may be held without call or formal notice at such places within or outside the State of Utah, and at such times as the Board from time to time by vote may determine. Any business may be transacted at a regular meeting. The regular meeting of the Board for the election of officers and for such other business as may come before the meeting may be held without call or formal notice immediately after, and at the same place as, the annual meeting of Owners, or any special meeting of Owners at which a Board is elected.

6.07 Special Meetings.

Special meetings of the Board may be held at any place within the State of Utah or by telephone, provided that each Director can hear each other Director, at any time when called by the president, or by two or more Directors, upon the giving of at least three days' prior notice of the time and place thereof to each Director by leaving such notice with such Director or at such Director's residence or usual place of business, or by mailing it prepaid and addressed to such Director at such Director's address as it appears on the books of the Association, or by telephone. Notices need not state the purposes of the meeting. No notice of any adjourned meeting of the Directors shall be required.

6.08 Quorum.

A majority of the number of Directors fixed by these Bylaws, as amended from time to time, shall constitute a quorum for the transaction of business, but a lesser number may adjourn any meeting from time to time. When a quorum is present at any meeting, a majority of the Directors in attendance shall, except where a larger number is required by law, by the Articles, or by these Bylaws, decide any question brought before such meeting.

6.09 Waiver of Notice.

Before, at, or after any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by such Director except when such Director attends the meeting for the express purpose of objecting to the transaction of business because the meeting is not lawfully called or convened.

6.10 Informal Action by Directors.

Any action required or permitted to be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors entitled to vote with respect to the subject matter thereof. Such consent shall have the same force and effect as a unanimous vote of the Directors.

**ARTICLE 7.**  
**OFFICERS AND AGENTS**

7.01 General.

The officers of the Association shall be a president (who shall be chosen from among the Directors), one or more vice presidents, a secretary, and a treasurer. The Board may appoint such other officers, assistant officers, committees, and agents, including assistant secretaries and assistant treasurers, as they may consider necessary or advisable, who shall be chosen in such manner and hold their offices for such terms and have such authority and duties as from time to time may be



determined by the Board. One person may hold any two offices, except that no person may simultaneously hold the offices of president and secretary. In all cases where the duties of any officer, agent, or employee are not prescribed by the Bylaws or by the Board, such officer, agent, or employee shall follow the orders and instructions of the president.

7.02 Removal of Officers.

The Board may remove any officer, either with or without cause, and elect a successor at any regular meeting of the Board, or at any special meeting of the Board called for such purpose.

7.03 Vacancies.

A vacancy in any office, however occurring, shall be filled by the Board for the unexpired portion of the term.

7.04 President.

The president shall be the chief officer of the Association. The president shall preside at all meetings of the Association and of the Board. The president shall have the general and active control of the affairs and business of the Association and general supervision of its officers, agents, and employees. The president of the Association is designated as the officer with the power to prepare, execute, certify, and record amendments to the Declaration on behalf of the Association.

7.05 Vice Presidents.

The vice presidents shall assist the president and shall perform such duties as may be assigned to them by the president or by the Board. In the absence of the president, the vice president designated by the Board or (if there be no such designation) designated in writing by the president, shall have the powers and perform the duties of the president. If no such designation shall be made, all vice presidents may exercise such powers and perform such duties.

7.06 Secretary.

The secretary shall:

- (a) keep the minutes of the proceedings of the Owners' meetings and of the Board meetings;
- (b) see that all notices are duly given in accordance with the provisions of these Bylaws, the Declaration, and as required by law;
- (c) be custodian of the corporate records and of the seal of the Association and affix the seal to all documents when authorized by the Board;

(d) maintain at the Association's principal offices a record containing the names and registered addresses of all Owners, the designation of the Lot owned by each Owner, and, if such Lot is mortgaged, the name and address of each Mortgagee; and

(e) in general, perform all duties incident to the office of secretary and such other duties as from time to time may be assigned to it by the president or by the Board. Assistant secretaries, if any, shall have the same duties and powers, subject to supervision by the secretary.

7.07 Treasurer.

The treasurer shall be the principal financial officer of the Association and shall have the care and custody of all funds, securities, evidences of indebtedness, and other personal property of the Association and shall deposit the same in accordance with the instructions of the Board. The treasurer shall receive and give receipts and acquittances for moneys paid in on account of the Association and shall pay out of the funds on hand all bills, payrolls, and other just debts of the Association of whatever nature upon maturity. The treasurer shall perform all other duties incident to the office of the treasurer and, upon request of the Board, shall make such reports to it as may be required at any time. The treasurer shall, if required by the Board, give the Association a bond in such sums and with such sureties as shall be satisfactory to the Board, conditioned upon the faithful performance of his duties and for the restoration to the Association of all books, papers, vouchers, money, and other property of whatever kind in his possession or under his control belonging to the Association. He shall have such other powers and perform such other duties as may be from time to time prescribed by the Board or the president. The assistant treasurers, if any, shall have the same powers and duties, subject to the supervision of the treasurer.

**ARTICLE 8.**  
**EVIDENCE OF OWNERSHIP, REGISTRATION OF**  
**MAILING ADDRESS, AND LIEN HOLDERS**

8.01 Proof of Ownership.

Except for those Owners who initially contracted to purchase a Lot from the Declarant, any person on becoming an Owner shall furnish to the Association a photocopy or a certified copy of the recorded instrument vesting that person with an ownership interest in the Lot. Such copy shall remain in the files of the Association. An Owner shall not be deemed to be in good standing and shall not be entitled to vote at any annual or special meeting of Owners unless this requirement is first satisfied.

8.02 Registration of Mailing Address.

If a Lot is owned by two or more Owners, such Owners shall designate one address as the registered address required by the Declaration. The registered address of an Owner or Owners shall be furnished to the secretary of the Association within ten days after transfer of title, or after a change of address. Such registration shall be in written form and signed by all of the Owners of the

Lot or by such persons as are authorized to represent the interests of all Owners of the Lot. If no address is registered or if all of the Owners cannot agree, then the address of the Lot shall be deemed the registered address of the Owner(s), and any notice shall be deemed duly given if delivered to the Lot.

8.03 Liens.

Any Owner who mortgages or grants a deed of trust covering his Lot shall give the Association written notice of the name and address of the Mortgagee and shall file true, correct, and complete copies of the note and security instrument with the Association.

8.04 Address of the Association.

The address of the Association shall be 526 North 400 West, North Salt Lake, Utah 84054. Such address may be changed from time to time upon written notice to all Owners and all listed Mortgagees.

**ARTICLE 9.**  
**SECURITY INTEREST IN MEMBERSHIP**

Owners shall have the right irrevocably to constitute and appoint a mortgagee as their true and lawful attorney-in-fact to vote their Membership in the Association at any and all meetings of the Association and to vest in the mortgagee any and all rights, privileges, and powers that they have as Owners under the Articles and these Bylaws or by virtue of the Declaration. Unless otherwise expressly provided in such proxy, such proxy shall become effective upon the filing of notice by the mortgagee with the secretary of the Association. A release of the mortgage covering the subject Lot shall operate to revoke such proxy. Nothing herein contained shall be construed to relieve Owners, as mortgagors, of their duties and obligations as Owners or to impose upon the Mortgagee the duties and obligations of an Owner.

**ARTICLE 10.**  
**AMENDMENTS**

10.01 By Directors.

Except as limited by law, the Articles, the Declaration, or these Bylaws, the Board shall have power to make, amend, and repeal the Bylaws of the Association at any regular meeting of the Board or at any special meeting called for that purpose at which a quorum is represented. If, however, the Owners shall make, amend, or repeal any Bylaw, the Directors shall not thereafter amend the same in such manner as to defeat or impair the object of the Owners in taking such action.

10.02 Owners.

Subject to any rights conferred upon first mortgagees in the Declaration, the Owners may, by the vote of the holders of at least sixty-seven percent (67%) of the votes of the Owners, unless a greater percentage is expressly required by law, the Articles, the Declaration, or these Bylaws, make, alter, amend, or repeal the Bylaws of the Association at any annual meeting or at any special meeting called for that purpose at which a quorum shall be represented.

**ARTICLE 11.**  
**MISCELLANEOUS**

11.01 Fiscal Year.

The fiscal year of the Association shall be such as may from time to time be established by the Board.

11.02 Other Provisions.

The Declaration contains certain other provisions relating to the administration of the Project, which provisions are hereby incorporated herein by reference.

<< >>