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DECLARATION
OF
COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
FOOTHILLS AT CHERRY LANE SUBDIVISION

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**NOTICE TO POTENTIAL
BUYERS AND OWNERS**

THIS DOCUMENT IS A VERY IMPORTANT LEGAL DOCUMENT WHICH EACH POTENTIAL RESIDENT AND OWNER OF A LOT WITHIN THE SUBDIVISION SHOULD READ AND UNDERSTAND. THIS DOCUMENTS DETAILS THE OBLIGATIONS AND RESPONSIBILITIES OF ALL THE SUBDIVISION OWNERS AND RESIDENTS.

THE DECLARANT (AS DEFINED HEREIN) EXPRESSLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, STATEMENTS OR INFORMATION NOT SET FORTH HEREIN OR IN ANY WRITTEN DOCUMENT EXECUTED BY DECLARANT. ANY REPRESENTATIONS OR WARRANTIES MADE BY ANY REAL ESTATE BROKER OR AGENT OR OTHER PERSON CONCERNING ANY MATTER SHOULD BE DISREGARDED IN THEIR ENTIRETY AND IN ALL EVENTS THE TERMS AND CONDITIONS OF THIS DECLARATION AND ANY APPLICABLE DOCUMENTS EXECUTED BY THE DECLARANT SHALL CONTROL.

ARTICLE I

RECITALS

WHEREAS, the Declarant is the owner of a residential subdivision in the City of Layton, Davis County, Utah, with the real property of such subdivision more particularly described as follows (which real property is referred to herein as the "Property"):

Foothills at Cherry Lane Subdivision

Lots 101 through and including 124, Block 1; FOOTHILLS AT CHERRY LANE SUBDIVISION – PHASE I, according to the official plat thereof filed in Book 5284 of Plats at Page 38, Instrument No. 2600849, records of Davis County, Utah.

WHEREAS, the Declarant desires to subject the Property to the covenants, conditions, restrictions, easements, reservations, limitations and equitable servitudes herein set forth to accomplish the following: (i) insure the enhancement and preservation of property values; (ii) provide for the proper design, development, improvement and use of the Property by the Declarant and all other persons or entities who may subsequently acquire an interest in the Property; and (iii) create a residential development of high quality;

WHEREAS, as additional land owned by the Declarant adjacent to the Property is platted and developed for uses similar to that of the Property, upon election by the Declarant, such shall become subject to the terms of this Declaration by the Declarant's annexation of the same as provided herein;

WHEREAS, because the Property will be developed in several phases, each of which may have unique characteristics, needs and requirements, the Declarant may, from time to time, promulgate further conditions, covenants, restrictions and easements relating to particular tracts or parcels of real property within the Property, which may supplement and/or amend this Declaration; and

WHEREAS, in order to achieve the objectives and desires of the Declarant, the Declarant will control the management and government of the Property and the non-profit association of Owners to be created until such time as the Owners take over the management functions through the Association as provided in this Declaration.

ARTICLE II

DECLARATION

The Declarant hereby declares that the Property and each Lot (as defined herein) is and shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the following covenants, conditions, restrictions, easement, reservations, limitations and equitable servitudes (hereafter collectively called "covenants and restrictions"), all of which are declared and agreed to be in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property or any Lot therein, and to enhance the value, desirability and attractiveness thereof. The covenants and restrictions set forth herein shall run with the land and each estate therein and shall be binding upon all persons having or acquiring any right, title or interest in the Property or any Lot therein; shall inure to the benefit of every Lot in the Property and any interest therein; and shall inure to the benefit of and be binding upon the Declarant and each Owner, and each successor in interest of each, and may be enforced by the Declarant by and any Owner, or by the Association, as hereafter provided.

Notwithstanding the foregoing, no provision of this Declaration shall be construed or enforced to prevent or limit the Declarant's right to complete development of the Property in accordance with the plan therefor as the same exists or may be modified from time to time by the Declarant nor prevent normal construction activities during the construction of Improvements upon any Lot in the Property. No development or construction activities shall be deemed to constitute a nuisance or violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, erection of temporary structures, posting of signs or similar activities, provided that the same are actively, efficiently and expeditiously pursued to completion. In the event any dispute concerning the foregoing shall arise, a temporary waiver of the applicable provision(s) of this Declaration may be granted by the Declarant provided that such waiver shall be for a reasonable period of time and shall not violate the ordinances of the City of Layton, Utah, applicable to the Property. Any such waiver need not be recorded and shall not constitute an amendment of this Declaration.

In the event of a conflict between the provisions of this Declaration and the requirements of the ordinances of the City of Layton, Utah, applicable to the Property, the more restrictive shall control.

ARTICLE III

DEFINITIONS

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

Architectural Rules and Design Standards: Such rules or standards as may be created by the Declarant or the Association from time to time, as authorized by Section 5.27, below, to manage the architectural, building, landscape and other plans for the Property and each Lot thereon.

Annexation: The process by which additional tracts or parcels of land not initially a part of the Property are made subject to this Declaration.

Assessment: A payment required of an Owner of a Lot, including Regular, Special or Limited Assessments as provided in this Declaration.

Association: Foothills at Cherry Lane Owners Association Inc., a Utah non-profit corporation, and its committees, and/or sub-associations, if any.

Automobiles: Cars, sport utility vehicles, motorcycles, motorized scooters, and/or standard size pick-up trucks and/or vans, all whether operable or inoperable.

Board or Board of Directors: The duly elected and qualified Board of Directors of the Association.

Building: A structure, whether complete, substantially complete, or partially complete, including, but not limited to, a foundation for such structure, constructed on a Lot on a temporary or permanent basis and, unless specified to the contrary, shall include all other appurtenances and improvements thereto or used in connection therewith, whether complete, substantially complete or partially complete.

Bylaws: The Bylaws of the Association, including any amendments thereto duly adopted.

Common Area: All real property, including fee simple, easements (including, but not limited to, landscape easements as shown on the Plat or otherwise), licenses, leases, or any other real property interests therein, located within or outside of the boundaries of the Property, including but not limited to, any Lots (including common Lots as may be shown on the Plat), any interest in roads and pathways, and all Improvements located thereon (including personal property), in which the Association owns a real or personal property interest or controls, and/or which the Association is obligated to maintain in this Declaration or by any other document.

Development: The project to be undertaken by the Declarant resulting in the improvement of the Property, or any additional property annexed hereunder, including landscaping, amenities, construction of roadways, utility services and other improvements.

Declarant: Brighton Homes Utah LLC, a Delaware limited liability company ("Brighton"), for as long as Brighton, or any entity with at least one principal in common with Brighton, owns any portion of the Property. Brighton may at any time convey, assign and transfer its rights as "Declarant" in this Declaration to another entity which owns any portion of the Property, so long as Brighton records a document evidencing such conveyance, assignment and transfer of its rights as Declarant to such entity(ies) in the records of Davis County, Utah. A transferee of the Brighton's rights as described herein may also transfer its rights as described herein. Once Declarant (as may be assigned) no longer owns any portion of the Property, all Declarant approval rights with respect to Articles V and X hereunder, shall automatically transfer to the Association.

Improvements: All structures and appurtenances to real property, of all kinds and types, including, whether complete, substantially complete or partially complete, including, but not limited to, Buildings, pedestrian pathways, roads, driveways, parking lots, sidewalks, walkways, walls, fences, screens, landscaping, poles, signs, pools, storm drainage facilities, sprinklers, and/or lighting. Improvements shall not include those items which are located entirely within the interior of a Building and cannot be readily observed when outside thereof, except for in the case of Common Area owned and/or maintained by the Association.

Initial Construction: The physical movement of any soil on a Lot with the intent of constructing Improvements on such Lot.

Limited Assessment: An Assessment levied by the Association upon one or more Lots, but not upon all Lots within the Property, for the purpose of securing payment by the Owner(s) thereof of amounts expended by the Association to correct a condition prohibited or to cure an Owner's breach hereunder.

Lot: A portion of the Property which is a legally described tract or parcel of land within the Property, or which is designated as a Lot in a Plat, including any Building and other improvements located on such tract or parcel of land.

Declaration: This instrument as it may be amended from time to time.

Member: Any person(s) who is an Owner of a Lot within the Property is a Member of the Association, unless otherwise provided by applicable law.

Mortgage: Any mortgage or deed of trust or other hypothecation of land located in the Property to secure the performance of an obligation. Unless otherwise specifically provided, the reference to a "Mortgage" in this Declaration shall be limited to a "first Mortgage," including a "first Deed of Trust," on a Lot within the Property.

Mortgagee: The holder of a Mortgage or the beneficiary under a Deed of Trust, including an assignee(s) thereof, which Mortgage or Deed of Trust encumbers a Lot with the Property owned by an Owner. Unless otherwise specifically provided, the reference to a "Mortgagee" in this Declaration shall be limited to a holder of a first Mortgage, including a beneficiary under a first Deed of Trust on a Lot.

Occupant: Any person, association, corporation or other entity who or which is an Owner, or has leased, rented, been licensed, or is otherwise legally entitled to occupy and use any Building or Improvement on a Lot whether or not such right is exercised, including their heirs, personal representatives, successors and assigns.

Owner: A person or persons or other legal entity or entities, including the Declarant, holding fee simple title to a Lot within the Property. The obligations of Owner in this Declaration run with the Property and are also personal to the Owner as the Owner of a Lot.

Foothills at Cherry Lane Owners Association Inc.: The Utah non-profit corporation organized by the Declarant, comprised of Members, and which exists for the purpose of providing self-government for the Property.

Foothills at Cherry Lane Subdivision, Cherry Lane Subdivision, or Subdivision: The Property.

Plat: The final subdivision plat covering the Property, and any future real property annexed into the Property pursuant to this Declaration from time to time, all as recorded in the office of the County Recorder, Davis County, Utah, and as the same may be amended from time by duly recorded amendments thereto.

Property: The whole of the Property described in Article I, above, and any additional land annexed thereto pursuant to Article XI, below.

Regular Assessment: An assessment levied by the Association to provide funds to pay the ordinary estimated expenses of the Association.

Special Assessment: An assessment levied by the Association other than a Regular or Limited Assessment.

Vehicles and Equipment: Excluding Automobiles, all vehicles (including recreational vehicles), recreational equipment, and/or gardening and maintenance equipment, and/or bicycles, and/or riding or moving devices, or any equipment related to the foregoing, including, but not limited to, trailers, mobile homes, larger than standard-size pickup trucks and/or vans, boats, tractors, campers, garden or maintenance equipment, and toys, all whether operable or inoperable.

ARTICLE IV

PURPOSE

The Property is hereby made subject to the covenants and restrictions contained in this Declaration, all of which shall be deemed to be imposed upon and run with the land and each and every Lot and parcel thereof, and shall apply to each and every Owner and Occupant thereof and their respective successors in interest, to insure proper design, development, improvement, use and maintenance of the Property for the purpose of:

- (a) Insuring Owners and Occupants of Buildings of quality of design, development, improvement, use and maintenance as shall protect and enhance the investment and use of all Lots and Improvements;
- (b) The prevention of the erection within the Property of Improvements of improper design or construction with improper or unsuitable materials or with improper quality and method of construction;
- (c) Encouraging and insuring the erection of quality and attractive Improvements appropriately located within the Property to assure visual quality and harmonious appearance and function;
- (d) Securing and maintaining proper set-backs from streets and open areas within the Property and adequate free spaces between Improvements; and
- (e) The integration of development of the different Lots by setting common general standards consistent with the Architectural Rules and Design Standards existing from time to time.

As used hereafter, "Project Objectives" shall mean the foregoing specified purposes.

ARTICLE V

PERMITTED USES AND PERFORMANCE STANDARDS

SECTION 5.01 Use.

(a) **Generally.** Lots shall be used only for residential purposes and such uses as are customarily incidental thereto. As used herein and elsewhere in this Declaration, "residential" shall mean the use of the Improvements on a Lot for living accommodations by one (1) or more related or unrelated persons, including guests of the principal occupant(s), which guests reside therein on a temporary basis, and shall not include any commercial or business activity, except as expressly discussed in this Section 5.01. As used herein, "customarily incidental" shall include, but is not limited to, the following uses, so long as such use is in compliance with all applicable statutes, laws and ordinances: (i) any and all uses by the Association of any Lots (including, but not limited to, Common Area uses, and/or development and sales activities relating to the Property, including model homes); and/or (ii) a home office provided that such home office does not result in a consistent increase in traffic and demand within the Property as determined by the Board in its discretion; and/or (iii) a daycare provided that such daycare does not result in a consistent increase in traffic and demand within the Property as determined by the Declarant in its discretion. Notwithstanding the foregoing, as used in this Declaration, neither "residential" or "customarily incidental" uses include, nor shall the same be construed to include, the use of Lot for the operation of a shelter home for persons unrelated

to each other or unrelated to the Owner or Occupant, which is hereby expressly prohibited.

(b) **Failure to Comply.** Willful or negligent act or omission of an Owner and/or Occupant to comply with this Declaration shall subject such Owner and/or Occupant to enforcement actions pursuant to this Declaration and as determined by the Association from time to time, including, but not limited to, revocation of Subdivision privileges, and/or fines. In the case of fines, and/or costs incurred by the Association to correct such Owner and/or Occupant's acts or omissions, the Association may levy Limited Assessments against the Lot associated with such Owner and/or Occupant, based on the procedure provided herein for such Limited Assessments.

SECTION 5.02 Buildings. No Lot shall be improved except with one (1) dwelling unit and related Improvements. Each dwelling unit shall have an attached or detached fully enclosed garage adequate for three (3) standard size cars; provided that if the configuration of a particular Lot does not practicably accommodate the above number of standard size cars, a garage adequate for two (2) standard size cars shall be permitted. The maximum number of standard size cars per garage shall be as determined by the Declarant from time to time. The minimum square footage of living area within a dwelling unit located on a Lot shall as provided in the Architectural Rules and Design Standards. The square footage of living area shall be based on the finished interior living space at or above the grade of the Lot, exclusive of basement, porches, patios and garage.

SECTION 5.03 Approval of Use and Plans. No Improvements shall be built, constructed, erected, placed or materially altered within the Property unless and until the plans, specifications and site plan for the Improvements have been reviewed in advance and approved by the Declarant in accordance with the provisions of Article X, below. Once an Owner commences Initial Construction on a Lot, an Owner shall have one hundred eighty (180) days from commencement of construction to complete or remove any Improvements which are not completed within such period, with all costs and expenses incurred to do so at such Owner's cost and expense, and subject to a Limited Assessment for payment therefor.

SECTION 5.04 Prohibited Buildings/Uses. No trailer or other vehicle, tent, shack or garage shall be used as a temporary or permanent residence within the Property. Buildings and Lots, if occupied, must be Owner occupied, and no portion of a Building or a Lot thereof may be leased to an Occupant; provided, however, that this provision shall not prohibit any rentals required to be permitted pursuant to Utah Code, Title 57, Chapter 8a, Section 209, as it may be amended from time to time. The Association shall track, and create appropriate procedures to track, the number of rentals which are permitted pursuant to the foregoing sentence, and ensure consistent administration of the same. Additionally, if an Owner provides sufficient evidence to the Board of an undue hardship caused by the foregoing restriction on leasing, the Board may permit a lease in its discretion, which discretion shall be consistently applied. No noxious or offensive nuisance shall be conducted on any Lot which may be or become an unreasonable annoyance or nuisance to the Occupants of the Lots within the Property (as determined by applicable law and/or the Board in its discretion) by reason of: (i) activities by any person; (ii) by reason of unsightliness; and/or (iii) the excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke or noise.

SECTION 5.05 Set-Backs. No building or other structure (exclusive of fences and similar structures approved by the Declarant) shall be located on a Lot nearer to a Lot line than the distance permitted by (i) the ordinances of the City of Layton, Utah, applicable to the Property except as may be modified by a Conditional Use Permit issued by the City of Layton, Utah, or (ii) the Architectural Rules and Design Standards, whichever requires the greater distance. The Declarant shall have the right to stagger the front setbacks of the Lots in order to create a more pleasing appearance and to minimize the negative visual appearance of a uniform building line.

SECTION 5.06 Antennae. No exterior radio antennae, television antennae or other antennae, including a satellite dish, shall be erected or maintained on a Lot without the prior approval in writing by the Declarant.

SECTION 5.07 Easements. There is hereby reserved for the use and benefit of the Declarant and granted for the use and benefit of each Lot, and for the use and benefit of each Owner and Occupant, and/or for the use and benefit of the Association, and their successors and assigns, as specifically provided for herein, the following easements, under, over, on, through and across the applicable areas of the Property:

- (a) **Public Utilities.** To benefit all of the above, for the purpose of installation and maintenance of public utility facilities of all kinds, including radio and television and transmission cables, the easements so designated on the recorded Plat(s) for any portion of the Property;
- (b) **Water Drainage.** To benefit the Declarant and Association, for the purpose of water drainage, including "established" drainage described in Section 5.12, retention, recreation or amenity purposes; and to benefit each Owner, not to exceed one foot (1") as between each Lot;
- (c) **Landscape Easement and Access to Common Areas.** To benefit the Declarant and the Association, for the purpose of installing landscaping and entry improvements in the landscape easement area shown on the Plat, and also access through those portions of Lots contiguous to any Common Area to maintain, repair, replace and restore landscaping and any other Improvements within the Common Area, including, but not limited to, a sprinkler system which may be installed to irrigate landscaping located on any other Common Area;
- (d) **Encroachment.** To benefit the Declarant, Association and each Owner, for the purpose of encroachment, reciprocal appurtenant easements of encroachment, not to exceed one foot (1'), as between each Lot and such portion(s) of the Common Area adjacent thereto, or between adjacent Lots, due to the unintentional placement or settling or shifting of the Improvements constructed thereon, which easements of encroachment shall be valid so long as they exist and the rights and obligations of Owners shall not be altered in any way by said encroachments, settling or shifting; provided, however, that in no event shall a valid easement for encroachment occur due to the willful act or acts of an Owner; and
- (e) **Plat.** To benefit all of the above, for the purposes for which they are designated, any additional easements, if any, as shown and designated on the recorded Plat for the Property.

Unless otherwise specified herein or in another recorded document, the easement areas (excluding any equipment or appurtenances owned by the Declarant, the Association or a utility company located thereon) herein reserved shall be maintained by the Owner of the Lot upon which they are situated.

No Improvements shall be placed or permitted to remain on such easement areas located within any Lot which shall interfere with the intended use or purpose of such easement(s), and no other activity shall be undertaken on any Lot which may interfere with the use and access intended to be provided by such easement or the installation or maintenance of the utilities or other facilities, if any, located thereon or therein.

SECTION 5.08 Lighting. If required by the Declarant, each Owner shall install, and maintain in an operative condition such exterior lighting as shall be provided in the Architectural Rules and Design Standards.

SECTION 5.09 Roofs. The type, pitch and roof covering material(s) which shall be required on Buildings within the Property shall be as set forth in the Architectural Rules and Design Standards.

SECTION 5.10 Animals. No animals, livestock, birds, insects or poultry of any kind shall be raised, bred, or kept on any Lot, except that not more than two (2) domesticated dogs and/or cats, or other small household pets which do not unreasonably bother or constitute a nuisance to others may be kept, provided that they are not kept, bred or maintained for any commercial purpose. Dogs and other similar pets shall be on a leash when not confined to an Owner's Lot.

SECTION 5.11 Septic Tanks/Cesspools. No septic tanks and/or cesspools shall be allowed within the Property.

SECTION 5.12 Grading and Drainage. A site plan indicating the proposed grading and drainage of a Lot must be approved by the Declarant before Initial Construction. Lot grading shall be kept to a minimum and Buildings are to be located for preservation of the existing grade(s) and any grade(s), berms or swales should be an integral part of the grading design. Water may drain or flow into the drainage swales, if any, located on each Lot or within the public rights-of-way within the Property but otherwise shall be contained on-site on such Lot (meaning it shall not be allowed to drain or flow upon, across or under adjoining Lots), unless an express written easement for such purpose exists. There shall be no interference with the established drainage pattern over any portion of the Subdivision, unless an adequate alternative provision is made for proper drainage and is first approved in writing by the Declarant. For the purposes hereof, "established" drainage is defined as the system of drainage, whether natural or otherwise, which exists at the time the overall grading of any portion of the Subdivision is completed by the Declarant, or that drainage which is shown on any plans approved by the Declarant, which may include drainage from a Common Area Lot over any Lot within the Subdivision. The Owner of any Lot within the Subdivision, in which grading or other work has been performed pursuant to a grading plan approved by the Declarant, shall maintain and repair all graded surfaces, drainage structures, means or devices within the Lot which are not the responsibility of the Association or any governmental entity.

After the Initial Construction on a Lot, an Owner shall not change or alter any grading on a Lot or construct or alter any berms or swales on a Lot, including the drainage swales, if any, located in the public right-of-way adjacent to such Lot, which will affect or change the drainage on a Lot or any other Lot within the Subdivision, without the prior written approval of the Declarant.

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

- (a) Each Owner of a Lot shall maintain all Improvements located thereon in good and sufficient repair and shall keep the Improvements thereon painted or stained, lawns cut, shrubbery trimmed, windows glazed, rubbish and debris removed, weeds cut and otherwise maintain the same in a neat and aesthetically pleasing condition;
- (b) Each Owner of a Lot shall maintain the landscaping planted and installed by the Owner in the landscape strip located between the street curb and the sidewalk adjacent to the Owner's Lot (hereafter "Street Landscape Buffer"), as required by Section 5.24, below,

said landscaping to be maintained in a condition comparable to the condition of the landscaping on the Owner's Lot as required herein;

- (c) All damage to any Improvements shall be repaired as promptly as is reasonably possible;
- (d) A Building which is vacant for any reason shall be kept locked and the windows glazed in order to prevent entrance by vandals. Vacant Buildings and unimproved Lots shall not be exempt from the provisions of this Declaration;
- (e) All structures, facilities, equipment, objects and conditions determined by the Declarant or the Association, as applicable, to be offensive, in its sole discretion, shall be enclosed within an approved structure or appropriately screened from public view. All trash, debris, garbage and refuse shall be kept at all times in a covered container and all such containers shall be kept on a Lot within an enclosed structure or screened from public view;
- (f) No articles, goods, machinery, materials or similar items shall be stored, kept or maintained on a Lot in the required set-back area along a public or private right-of-way or otherwise kept in the open or exposed to public view;
- (g) Any event or condition on a Lot or adjacent to a Lot if under the control of the Owner, which, in the sole discretion of the Declarant or the Association, as applicable, creates an unsightly or blighting influence, shall be corrected, removed or obstructed from public view, as the case may be, by the Owner of the Lot, notwithstanding the fact that such event or condition may not be specifically described and/or prohibited in this Declaration. If such event or condition is not promptly corrected by the Owner, the Association shall have the right to correct the same pursuant to subsection (h), below; and
- (h) In the event that any Owner shall permit any Improvement, including any landscaping, which is the responsibility of such Owner to maintain, to fall into disrepair so as to create a dangerous, unsafe, unsightly or unattractive condition, the Board, upon fifteen (15) days prior written notice to the Owner of such Lot, shall have the right to correct such condition, and to enter upon said Lot and into any building or structure thereon, if necessary, for the purpose of correcting or repairing the same, and such Owner shall promptly reimburse the Association for the cost thereof. The Owner of the offending Lot shall be personally liable, and such Owner's Lot may be subject to a mechanic's lien for all costs and expenses incurred by the Association in taking such corrective action, plus all costs incurred in collecting the amounts due. Each Owner shall pay all amounts due for such work within ten (10) days after receipt of written demand therefor, or the amounts may, at the option of the Board, be levied as a Limited Assessment against said Lot and shall be enforceable in the same manner as set forth in Article X of this Declaration.

SECTION 5.14 Mining and Drilling. No Lot shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing water, steam, oil, gas or other hydrocarbons, minerals, rocks, stones, gravel or earth; provided that the Declarant or the Association may, by permit, grant, license or easement, allow the drilling for and the extraction of water for use on the Lot.

SECTION 5.15 Automobiles, and Vehicles and Equipment.

- (a) The primary purpose of the garage required on each Lot is for the parking and storage of Automobiles. A minimum of two (2) off-street parking spaces for Automobiles shall be

provided on each Lot. Automobiles, whether operative or non-operative, shall be kept within the garage or driveway on a Lot, except for the following: (i) actual use; and/or (ii) temporary periods of no more than seventy-two (72) consecutive hours in connection with actual use.

- (b) Vehicles and Equipment shall be kept at all times in an enclosed structure, or appropriately screened, as may be approved by the Declarant, and at no time shall any such Vehicles or Equipment be parked or stored on a Lot in public view or on a public or private right-of-way within the Property except: (i) when in actual use; and/or (ii) for a temporary period of no more than twenty-four (24) consecutive hours in connection with actual use.
- (c) Concrete recreational vehicle pads are permitted, subject to approval of location, screening and materials by the Declarant. Such pads must be adjacent to the driveway and/or garage, and include a six (6) foot privacy fence.

SECTION 5.16 Driveways. Driveways and recreational vehicle pads (as described above) must be in the location as approved by the Declarant.

SECTION 5.17 Garage Doors. Garage doors shall be closed except when open for a temporary purpose.

SECTION 5.18 Exterior Materials and Colors. All exterior materials and colors shall be selected and used which are approved by the Declarant. All exterior finishes and/or colors shall be approved by the Declarant and shall be in accordance with the Architectural Rules and Design Standards.

SECTION 5.19 Vehicles. The use of Automobiles and Vehicles and Equipment shall be subject to Architectural Rules and Design Standards, which may prohibit or limit the use thereof within the Property, provide parking regulations and other rules regulating the same.

SECTION 5.20 Exterior Energy Devices. No energy production device including, but not limited to, generators of any kind and solar energy devices, shall be constructed or maintained on any Lot without the prior written approval of the Declarant, except for heat pumps or similar appliances shown on the plans approved by the Declarant.

SECTION 5.21 Mailboxes. The US Postmaster and the Declarant shall have the right to approve mailbox locations and design.

SECTION 5.22 Signs. No commercial billboard or advertising shall be displayed to the public view on or from any Lot. Owners may advertise a dwelling unit and Lot for sale by displaying a single, neat, reasonably sized vacancy sign or "For Sale" sign thereon. Signs advertising the name of the builder may be displayed on a Lot during construction of the Improvements and until the Lot with such Improvements is sold. Lighted, moving or flashing signs for any purposes are prohibited. Directional signs may be used to give directions to traffic or pedestrians or give special instructions. Any directional or identification sign within the Property shall be permitted, provided the same is approved by the Declarant prior to installation. Notwithstanding the foregoing, the Declarant shall have the right to adopt Architectural Rules and Design Standards with respect to signs allowed within the Subdivision, which Architectural Rules and Design Standards, if adopted, shall regulate signs within the Subdivision and shall control over the specific provisions of this Section.

SECTION 5.23 Subdividing. No Lot may be further subdivided, nor may any easement or other interest therein less than the whole be conveyed by the Owner thereof without the prior written consent of the Declarant; provided, however, that nothing herein shall be deemed to prevent an Owner from transferring or selling any Lot to more than one person to be held by them as tenants in common, joint tenants, tenants by the entirety, or as community property, or require the approval of the Declarant therefor. In addition, the conveyance of an insignificant portion(s) of a Lot to the Owner of the Lot which abuts said conveyed portion for the purpose of correcting a common boundary or other similar purpose shall not be deemed to be a subdividing of a Lot within the prohibition contained herein.

SECTION 5.24 Fences. No fence or wall of any kind shall be constructed on a Lot unless the plans and specifications therefor, including the location, design, material and color thereof, have been approved in writing by the Declarant prior to the construction or installation. The type, design, material and finish of all privacy fences shall be as specified in the Architectural Rules and Design Standards, it being the intent of the Declarant that all such privacy fencing shall present, to the extent reasonably practicable, a uniform appearance throughout the Property. All fences and/or walls constructed on a Lot shall be in compliance with the ordinances of the City of Layton, Utah, applicable to the Property.

In addition to the requirements of the Architectural Rules and Design Standards applicable to fences, fencing, all fences and walls shall be subject to the following restrictions:

- (a) No fence or wall shall be permitted to be constructed or installed on the Common Area constructed by the Declarant within the Property; provided, that if the Declarant constructs or installs a fence in a Common Area, the Declarant may allow fences on the adjacent Lot(s) to be attached thereto so long as such attachment does not (i) impede the maintenance, repair or replacement of the Common Area, (ii) alter the visual theme established by the fence constructed or installed by the Declarant, and (iii) does not project above the top of the fence constructed or installed by the Declarant;
- (b) Fences and walls shall not extend closer to any street than twenty feet (20') nor project beyond the setback of the principal Building on the Lot, except for corner Lots, which may be less, and except as otherwise approved by the Declarant. The Declarant may approve a maximum height of up to six feet (6') for fences, depending on the materials and location proposed by the Owner for such fence;
- (c) All fences and walls shall be constructed and installed and maintained in good appearance and condition at the expense of the Owner of the Lot on which they are located and all damaged fencing and walls shall be repaired or replaced to original design, materials and color within a reasonable time after said damage occurs;
- (d) No fence or wall shall interfere with the use and enjoyment of any easement reserved in this Declaration or shown on the recorded Plat(s) of the Property; and
- (e) No fence, wall, hedge, high planting, obstruction or barrier shall be allowed if, because of the design, material, color, nature, qualities or characteristics thereof, the same would have a noxious or nuisance effect upon neighboring Lots as determined by the Declarant. It is not the intent of this subsection (e) to create a view easement on or across any Lot ("Affected Lot") in favor of any Lot which is adjacent to or in the vicinity of the Affected Lot.

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

- (a) The Owner shall prepare a landscape plan and shall submit the same to the Declarant as provided in Article X, below. The Declarant shall approve said landscape plan prior to the installation and/or construction of landscaping on a Lot. The use of berms in planting areas is encouraged. Landscaping of a Lot shall be in accordance with the approved plan;
- (b) Each Owner shall be required to landscape the Street Landscape Buffer (as defined in Section 5.13(b), above), unless prohibited by a governmental authority, which landscaping shall be included in the landscape plan to be submitted to and approved by the Declarant. Notwithstanding the foregoing, the Declarant shall have the right, if deemed necessary by the Declarant to assure uniformity in and/or compatibility of the landscaping within the Street Landscape Buffer, to adopt Architectural Rules and Design Standards which shall specify the nature, type, extent and design of the landscaping therein, and, if so adopted, the Architectural Rules and Design Standards shall be binding upon the Owners;
- (c) All required front yard landscaping on a Lot shall be installed within sixty (60) days after substantial completion of the Building on the Lot; provided that if substantial completion is between November 1 and March 31, front yard landscaping may be extended longer than the above-described sixty (60) days, to no later than May 1st. As used herein, "substantial completion" of the Building shall mean the Building meets the requirements to obtain a certificate temporary occupancy, regardless of whether such certificate is actually obtained; and
- (d) The Architectural Rules and Design Standards may set forth the initial minimum landscaping required on each Lot.

SECTION 5.26 Storm Drainage. Storm drain facilities within the Property may be located within rights-of-way, which may or may not be within Lot(s) owned by the Association. Maintenance of all the storm drain facilities within the public rights-of-way shall be the responsibility of the applicable governmental agency(ies). Surface maintenance (grass, trees, shrubs, etc.) of the storm water management facilities outside the public rights-of-way (i.e., Association properties, swales, seepage trenches, storm ponds, park/detention areas, etc., hereinafter "Storm Water Areas") is the responsibility of the Owner of the Lot in which it is located. All Storm Water Areas are subject to easements, if any, shown on the recorded Plat(s) for the Subdivision. Appropriate governmental agencies have the right to inspect such facilities in the Storm Water Areas, and if necessary, perform any required maintenance or repairs. Any changes or modifications to the Storm Water Areas above and beyond the improvements shown on any approved storm drain plans for the Subdivision require the prior approval of the Association and applicable governmental agency(ies).

SECTION 5.27 Adoption of Architectural Rules and Design Standards. The Declarant shall have the power to create Architectural Rules and Design Standards relating to the planning, construction, alteration, modification, removal or destruction of Improvements within the Property deemed necessary or desirable by the Declarant to carry out the purposes of this Declaration, and to determine approvals as provided herein. All Architectural Rules and Design Standards shall be consistent with the provisions of this Declaration. Upon Declarant's request, the Association shall use all of its powers to enforce any approvals and/or matters determined by Declarant pursuant to Article V and Article X. Declarant may assign its rights to create such rules and standards and/or approve plans and other matters hereunder, to the Association in writing, either generally or in a specific matter. Upon relinquishment of Declarant's rights as otherwise provided in this Declaration, Declarant's rights and approvals pursuant to this Section 5.27 shall automatically transfer to the Association.

SECTION 5.28 Exemption of Declarant. Nothing herein contained shall limit the right of the Declarant to subdivide or re-subdivide any Lot or portion of the Property, and/or effectuate lot line adjustments and/or surveys, or to grant licenses, reservations, rights-of-way or easements with respect to the Common Area to utility companies, public agencies or others; or to complete excavation, grading and development to or on any Lot or other portion of the Property owned or controlled by the Declarant, or to alter the foregoing and its Development plans and designs, or construct additional Improvements as the Declarant deems advisable in the course of Development of the Property. This Declaration shall not limit the right of the Declarant at any time prior to acquisition of title to a Lot by an Owner to establish on that Lot additional licenses, restrictions, reservations, rights-of-way and easements to itself, to utility companies and to others, as may from time to time be reasonably necessary. The Declarant need not seek or obtain Association approval of any Improvements constructed or placed within the Property by the Declarant in connection with the Development. The Declarant shall be entitled to the non-exclusive use, without charge, of any Common Area within the Property in connection with the marketing of the Lots therein. In addition, the Declarant shall have the right, in connection with the marketing of the Lots, to install, place, display and exhibit such signs, banners and other similar items on the Common Areas on and the Lot(s) owned by the Declarant for such a period of time as is reasonably deemed by the Declarant to be necessary.

ARTICLE VI
FOOTHILLS AT CHERRY LANE OWNERS ASSOCIATION INC.

SECTION 6.01 Organization of Association. Foothills at Cherry Lane Owners Association Inc. shall be organized by the Declarant as a Utah non-profit corporation and shall be charged with the duties and vested with the powers prescribed by law and set forth in its Articles of Incorporation, its Bylaws and this Declaration. Neither said Articles nor said Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

SECTION 6.02 Members. Each Owner (including the Declarant) of a Lot by virtue of being such an Owner and for so long as such ownership is maintained shall be a Member of the Association, unless otherwise provided by law. No Owner shall have more than one membership in the Association, but shall have such voting rights as hereafter set forth. A membership in the Association shall not be assignable, except to the successor-in-interest of the Owner and a membership in the Association shall be appurtenant to and inseparable from the Lot owned by such Owner. A membership in the Association shall not be transferred, pledged or alienated in any way except upon the transfer of title to said Lot and then only to the transferee of title to said Lot. Any attempt to make a prohibited transfer of a membership shall be void and shall not be reflected on the books of the Association.

SECTION 6.03 Classes of Membership. The Association shall have two (2) classes of membership:

CLASS A. "Class A Members" shall be the Members of the Association which are all Owners of Lots within the Property, with the exception of the Declarant. The Class A Members shall be non-voting Members of the Association until such time as voting rights of the Class B Member expires, as provided below. Upon the Class A Members becoming entitled to voting rights, each Class A Member shall be entitled to one (1) vote for each Lot owned and when more than one (1) person holds an interest in a Lot, all such persons shall be Class A Members but the vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot owned by a Class A Member(s).

CLASS B. "Class B Members" shall be the Declarant, and Members of the Association who are successors in title to Declarant as Owner(s) to Lot(s), to whom Declarant has

specifically granted such Class B Member voting rights in a writing recorded in the records of Davis County, Utah. If Declarant has not granted such Class B voting rights in such a recorded writing, the Owner of a Lot shall be a Class A Member. The Class B membership and the Class B Member voting rights shall cease and be converted to Class A membership and Class A voting rights when the Declarant (including any transferee who becomes Declarant) relinquishes its rights as Declarant under this Declaration.

SECTION 6.04 Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Articles and Bylaws, as the same may be amended from time to time.

SECTION 6.05 Powers of Association. The Association shall have all powers of a non-profit corporation organized under the laws of the State of Utah subject only to such limitations as are expressly set forth in the Articles, the Bylaws or this Declaration. It shall have the power to do any and all lawful things which may be authorized, required or permitted to be done under the Articles, Bylaws or this Declaration, and to do and perform any and all acts which may be necessary or proper for, or incident to, the proper management and operation of the Common Area and the performance of the duties of the Association and other responsibilities set forth in this Declaration, including, but not limited to, the following:

- (a) **Assessments.** The power to determine the amount of and to levy Regular, Special and Limited Assessments on the Owners and/or Lots and to enforce payment thereof in accordance with the provisions of this Declaration;
- (b) **Right of Enforcement.** The power and authority from time to time in its own name, on its own behalf, or on behalf of any Owner(s) who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Articles, Bylaws, Declaration or Architectural Rules and Design Standards, and to enforce by mandatory injunction or otherwise, all provisions thereof;
- (c) **Creation of Committees and Sub-Associations, and Delegation of Powers.** The authority to create, and delegate its power and duties to, committees and/or sub-associations it creates, officers, employees, or to any person, firm or corporation to act as manager, and to pay to such manager such compensation as shall be reasonable;
- (d) **Liability of Board Members and Officers.** Neither any member of the Board nor any officers of the Association shall be personally liable to any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of any act or omission of the Association, the Board, its officer, a manager or any other representative or employee of the Association, provided that said Board Member, officer, manager or other person has, upon the basis of such information as was available, acted in good faith without willful or intentional misconduct;
- (e) **Association Rules.** The powers to adopt, amend, and repeal such rules and regulations as the Association deems reasonable. Such rules shall govern the use by Owners and Occupants or any other person of Common Area and other property owned or controlled by the Association; provided, however, Association rules shall not discriminate among Owners and shall not be inconsistent with the Articles, Bylaws or this Declaration. A copy of Association rules as they may from time to time be adopted, amended or repealed shall be mailed or otherwise delivered to each Owner and Occupant. Upon such mailings said Association rules shall have the same force and effect as if they were set forth in and were

part of this Declaration. In the event of any conflict between an Association rule or any provision of the Articles, Bylaws or this Declaration, the conflicting provisions of the Association rules shall be deemed superseded to the extent of any such inconsistency;

- (f) **Emergency Powers.** The Association, or any person authorized by the Association, may enter onto any Lot or into any Building or other structure on a Lot in the event of any emergency involving illness or potential danger to life or property or when necessary in connection with any maintenance or construction for which it is responsible. Such entry shall be made with as little inconvenience to the Occupants as practicable and any damage caused thereby shall be repaired by the Association unless said entry was necessitated by a condition caused by the Owner or Occupant;
- (g) **Licenses, Easements and Rights-of-Way.** The power to grant and convey to any third party such licenses, easements, rights-of-way or fee title in, on, through, under or of the Common Area and/or the Property as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment thereof and for the preservation of health, safety, convenience and welfare of the Owners, for the purpose of constructing, erecting, operating or maintaining:
- (i) Underground lines, cables, wires, conduits and other devices for the transmission of any utility or other service;
 - (ii) Public sewers, storm drains, water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes; and
 - (iii) Any similar public or quasi-public improvements or facilities; and
- (h) **Fiscal Year.** The Board shall have the right to elect a fiscal year for the Association instead of a calendar year for budget, Assessment and accounting purposes.

SECTION 6.06 Duties of Association. In addition to the powers delegated to it by the Articles, Bylaws and this Declaration, without limiting the generality thereof, the Association or its authorized agents, if any, shall have the obligation to conduct all business affairs of common interest to all Owners and to perform each of the following duties:

- (a) **Operation and Maintenance of Common Area.** Perform, or provide for the performance of, the operation, maintenance and management of the Common Area, if any, owned or controlled by the Association, including the repair and replacement of property or Improvements thereon damaged or destroyed by casualty loss, the maintenance, repair and replacement of any facilities, if any, installed by the Declarant, and the maintenance, management, repair or replacement all other property owned or controlled by the Association, all in compliance with all laws, plans, regulations, statutes and ordinances and agreements affecting the Property, whether recorded or unrecorded;
- (b) **Taxes and Assessments.** Pay all real and personal property taxes and assessments levied against the Common Area owned or controlled by the Association or against the Association and/or any property owned by the Association. Such taxes and assessments may be contested or compromised by the Association; provided, however, that they are paid or a bond insuring payment is posted prior to the sale or the disposition of any property to satisfy the payment of such taxes. In addition, the Association shall pay all other taxes, federal, state or local, including income or corporate taxes, levied against the

Association in the event that the Association is denied the status of a tax exempt corporation;

- (c) **Insurance.** Obtain, from reputable insurance companies authorized to do business in the State of Utah and maintain in effect the following policies of insurance:
- (i) Fire insurance, including those risks embraced by coverage of the type now known as the broad form "All Risk" or special extended coverage endorsement on a blanket agreement amount basis for the full insurable replacement value of all Improvements, equipment, fixtures and other property located within the Common Area owned or controlled by the Association, including such equipment, fixtures and other property not located in the Common Area, if the same are used or necessary for the use of the Common Area or easement areas under the control of the Association;
 - (ii) Comprehensive public liability insurance insuring the Association, the Board, officers, the Declarant and the individual Owners and agents and employees of each of the foregoing against any liability incident to the ownership and/or use of the Common Area owned by the Association or easement areas under the control of the Association. The limits of liability of such coverage shall be as determined by the Board of Directors;
 - (iii) If elected by the Board, full coverage directors and officer's liability insurance in an amount determined by the Board;
 - (iv) Such other insurance, including workmen's compensation insurance to the extent necessary to comply with all applicable laws and indemnity, faithful performance, fidelity and other bonds as the Board shall deem necessary or required to carry out the Association's functions or to insure the Association against any loss from malfeasance or dishonesty of any person charged with the management or possession of any Association funds or other property;
 - (v) The Association shall be deemed a trustee of the interests of all Owners in any insurance proceeds paid to it under such policies, and shall have full power to receive their interests in such proceeds and to deal therewith; and
 - (vi) Insurance premiums for the above insurance coverage shall be deemed a common expense to be included in the Regular Assessments levied by the Association.
- (d) **Administration Fees - Costs.** Pay to the Declarant, so long as the Declarant manages the Association, all actual out-of-pocket costs paid or incurred by the Declarant in the management and administration of the affairs of the Association plus an administrative fee equal to current market fees as are typically charged for such management and administration for similar properties in Layton, Utah, and which administrative fee shall be compensation to the Declarant for the services provided to the Association;
- (e) **Identification Signs.** Maintain, repair and replace all permanent entry and special

identification signs for the Property, whether the same is located within or without the boundaries of the Property;

- (f) **Rule Making.** Make, establish, create, amend and repeal Association rules;
- (g) **Enforcement of Restrictions and Rules.** Perform such other reasonable acts, whether or not expressly authorized by this Declaration, to enforce any of the provisions of this Declaration and the Association rules for which enforcement is desirable as determined by the Association; and
- (h) **Annual Meeting.** If requested by any Owner in writing, hold an annual meeting for the Owners.

SECTION 6.07 Cost of Maintenance, Repairs and Replacement. The cost of the maintenance, repairs and replacements of the Improvements located on a Common Area, the drainage swales, if any, located thereon within the public right(s)-of-way within the Subdivision, or any other Improvement, property or facility required by this Declaration to be maintained, repaired or replaced by the Association and the continuing operational expenses in connection therewith, including taxes, shall be paid by the Association from the funds of the Association obtained by its initial set-up fee, and Regular or Special Assessments against the Lots within the Subdivision which are served thereby. Such costs and expenses (hereafter "cost and expenses") shall be apportioned among the Lots within the Subdivision served thereby on an equitable basis. The Association shall have the right to establish a reserve account to implement the purposes of this Declaration, and the Board shall have the right to assess each Lot an initial set-up fee, and amounts to be included in a Regular or Special Assessment. The amount of the initial set-up fee and said Regular and Special Assessments shall be determined by the Board. The initial set-up fee is currently \$250, which amount shall be paid to the Association by a buyer upon any purchase of a Lot (whether or not improved). The set-up fee may be adjusted by the Board from time to time. The Board shall have the right to place all funds collected in an interest-bearing account in an appropriate financial institution. In the event the Association does not have adequate funds to pay the cost and expenses deemed by the Association to be required, the deficiency shall be assessed to each Lot, on an equal basis, as a Special Assessment.

SECTION 6.08 Effective Date. The provisions of this Article VI shall become operative upon the creation by the Declarant of the Association and the conveyance to said Association of fee simple title to the Common Area within the Subdivision. Until the creation and organization of the Association, the Declarant shall have the right to exercise all of the powers of the Association set forth in this Declaration.

ARTICLE VII ASSOCIATION PROPERTY

SECTION 7.01 Use. Each Owner of a Lot, his family, licensees, invitees, lessees and contract purchasers who reside on the Lot, shall be entitled to use the Common Area, subject to the following:

- (a) **Articles, Etc.** The provisions of the Articles and Bylaws of the Association applicable to the Lot, this Declaration, as may be amended from time to time, and the rules, regulations and standards promulgated thereunder. Each Owner, in using the Association properties, shall comply with the same;
- (b) **Suspension of Rights.** The right of the Association to suspend the rights to use properties owned by it (except roads and other means of access by an Owner) for any period during which any Assessment against that Owner's Lot remains unpaid; and for any

infraction or published rules and regulations of the Association;

- (c) **Dedications.** The right of the Association to dedicate or transfer all or any part of properties owned by it to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Board, so long as said transfer does not diminish the security of the Mortgagees on any Lot or Common Area in the Subdivision;
- (d) **Conveyance of Common Area.** Except as provided in subsection (c), above, no portion of the Common Area shall be conveyed by the Association unless the Board of Directors of the Association determines that such conveyance is in the best interests of the Subdivision, which determination shall be made following a regular or special meeting of the Members of the Association at which meeting the proposed conveyance is presented by the Board of Directors and the Members have the opportunity to present testimony in support of or against such proposed conveyance; and
- (e) **Mortgage of Common Area.** After the Class A Members become entitled to voting rights, no portion of the Common Area shall be mortgaged by the Association without the prior approval of at least two-thirds (2/3rds) of the Class A Members, which approval may be obtained in writing or by a vote of the Class A Members at a meeting called for such purpose and, with respect to such meeting, the provisions concerning notice and quorum in Section 8.10, below, shall apply.

SECTION 7.02 Liability for Damage. In the event that any maintenance, repair or replacement of all or any portion of the any Improvements located on a Common Area, and the Subdivision, and/or located thereon within the public right(s)-of-way within the Subdivision, or any other Improvement, property or facility required by this Declaration to be maintained, repaired or replaced by the Association, is performed by the Association as a result of the willful or negligent act or omission of an Owner or Occupant, or a family member, guest or invitee of an Owner or Occupant, the cost of such maintenance, repair or replacement shall be reimbursed by said Owner to the Association and/or the Association may assess the cost of the same against said Owner and the Owner's Lot as a Limited Assessment, as provided in this Declaration and may be collected as provided in Article IX, below.

SECTION 7.03 Damage and Destruction. In the case of damage by fire or other casualty to property owned by the Association, insurance proceeds to compensate for damage and destruction shall be paid to the Association, as the case may be, and the recipient thereof shall thereafter determine what repair or reconstruction shall be undertaken.

SECTION 7.04 Condemnation. If at any time any part of the Common Area or other property owned by the Association can be taken or condemned by any public entity or sold or otherwise disposed of in lieu thereof, all compensation, damages or other proceeds shall be paid to the Association whichever entity owns said property. The recipient of said payment shall then use all or a portion of the funds to pay obligations secured by any lien on the property taken and thereafter may determine to use the funds to (i) improve other properties of the Association; (ii) acquire and/or improve additional properties for the Association; or (iii) use such proceeds to reduce future assessments.

ARTICLE VIII
ASSESSMENTS

SECTION 8.01 Covenant to Pay Assessments. Each Owner hereby, and by acceptance of a deed to a Lot, covenants and agrees to pay when due all Regular, Special and Limited Assessments or charges made by the Association.

All such Assessments, together with interest, costs and reasonable attorneys' fees which may be incurred in collecting the same, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made, and shall be also the personal obligation of the Owner of such Lot at the time when the Assessment become due and payable. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed by them. No Owner may waive or otherwise avoid liability for any Assessment by non-use of the Common Area or by abandonment of his or her Lot.

SECTION 8.02 Regular Assessments. Regular Assessments, if any, may be made by the Association in such amounts and at times and intervals deemed appropriate by the Board. The Regular Assessments shall be based upon advance estimates of cash requirements as determined by the Board for the maintenance and operation of the Common Area and all easement areas, if any, owned or controlled by the Association and for the performance by the Association of its other duties and responsibilities, including, but not limited to, compliance with the Mitigation Plan. Such estimates may include, but shall not be limited to, expenses of management, taxes and special assessments of local governmental units, premiums for all insurance which the Association is required or permitted to maintain hereunder, landscaping and care of grounds, lighting, water charges, trash collection, sewerage charges, repair and maintenance, legal and accounting fees, and any deficit remaining from previous periods and the creation of a reserve, surplus and/or sinking fund(s).

SECTION 8.03 Special Assessments. In addition to Regular Assessments, the Association may levy at any time a Special Assessment payable over such period as the Board may deem appropriate for the following purposes:

- (a) To defray, in whole or in part, the cost of any construction or reconstruction of Improvements on a Common Area, unexpected repair or replacement of a Common Area or any facility located thereon or an easement area controlled by the Association, the furnishing of a special service or services (other than those appropriate for a Limited Assessment), or for any other expenses incurred or to be incurred as provided in this Declaration; and/or
- (b) To cure a deficit in the common and ordinary expenses of the Association for which Regular Assessments for a given calendar or fiscal year are or will be inadequate to pay, as determined by the Board.

At the closing of the sale of each Lot by the Declarant, a special assessment in an amount determined by the Board from time to time shall be collected from the purchaser of the Lot as payment to the Association for the set-up costs and the maintenance of the Common Area and landscape easements to be maintained by the Association. Upon the transfer of ownership of a Lot by an Owner to a third party, a transfer fee in an amount determined by the Board from time to time shall be payable by the Owner to the Association, provided, that no transfer fee shall be payable if the Lot was purchased by a builder from the Declarant and within one (1) year thereafter sold and transferred to a third Party.

SECTION 8.04 Limited Assessments. In addition to Regular and Special Assessments, Owners shall pay Limited Assessments as follows:

- (a) **Maintenance and Repair.** The Association shall have the power, but not the obligation, to incur expenses for maintenance and repair of any Lot or the maintenance, repair, completion or removal of, any Improvement on a Lot, including the Street Landscape Buffer (as defined in Section 5.14(b), above), if such maintenance and repair, completion or removal, is necessary, is necessary to protect the Common Area or any other portion of the Property, and/or the existence of the condition of the Lot and/or Improvement reflects anything other than a first-class residential subdivision and/or in violation of Section 5.14, as determined by the Board in its discretion, and if the Owner of said Lot has failed or refused to perform said maintenance or repair within a reasonable timeframe after written notice of the necessity thereof has been delivered by the Board to said Owner. The Board shall levy a Limited Assessment against the Owner of the Lot owned by said Owner to pay for the cost of such maintenance and repair, completion and/or removal, and any other cost or expense, including attorneys' fees, arising out of or incident to such maintenance and repair, completion, and/or removal and the Assessment therefore;
- (b) **Correction of Violations.** In addition to maintenance and repair, the Board, upon the failure or refusal of an Owner to correct a violation of this Declaration or the Architectural Rules and Design Standards, shall have the power to correct any such violation on a Lot or any Improvement on a Lot, and incur costs necessary in connection therewith. The cost of such corrective action, together with interest, related expenses and attorneys' fees shall be assessed and collected as set forth in this Article X and Article IX of this Declaration; and
- (c) **Limited Purpose.** The Association shall have the power to levy a Limited Assessment against Owners and Lots for any limited special purpose which the Board believes necessary with respect to certain Lots but not an appropriate expense for payment by the Association. Such Limited Assessment shall not be made until the Owners of said Lots subject thereto have been given an opportunity, after notice, to participate in a hearing with respect to said Limited Assessment.

SECTION 8.05 Commencement of Regular Assessments. Regular Assessments of the Association, if any, against each Lot shall commence the date of the closing of the first sale of a Lot to an Owner; provided, however, that any Lot owned by the Declarant shall not be assessed until it is sold to an Owner. If the Declarant pays any portion of the expenses of the Association, such excess amounts so paid shall constitute a loan by the Declarant to the Association, which loan, without interest, shall be repaid by the Association to the Declarant from the funds of the Association which are available to make such repayment. Nothing herein contained shall obligate the Declarant to pay any Assessment with respect to a Lot within a separately platted phase or subdivision within the Property in which the Declarant owns all of the Lots.

SECTION 8.06 Uniform Rate of Assessment. Except as expressly provided to the contrary in this Declaration, Regular and Special Assessments of the Association shall be fixed at a uniform rate for all Lots.

SECTION 8.07 Assessment Due Date. The due dates for Regular, Special and Limited Assessments, if any, shall be the first day of the first month of each calendar quarter, unless some other due date is established by the Board. Each installment of an Assessment shall be delinquent if not paid within fifteen

(15) days after the due date thereof. Nothing herein contained shall prohibit the Board from requiring that Special or Limited Assessments be paid in a lump sum instead of installments.

SECTION 8.08 Interest and Penalties. Any Regular, Special or Limited Assessment levied by the Association on Lots, if not paid when due, shall bear interest at an annual rate as shall be set by the Board from time to time, or if none is so set, at an annual rate of twelve percent (12%). Such interest shall commence on the date the Assessment becomes due and payable. In addition to the interest charge the Board may, in accordance with rules and regulations promulgated by it, impose additional fines or charges for the failure of an Owner to timely pay any Assessment when due. The right of the Board to charge interest or impose additional fines or charges shall be in addition to, and not in lieu of, any other right of enforcement or sanction available to the Board in the event of non-payment of an Assessment.

SECTION 8.09 Estoppel Certificate. The Association, upon not less than twenty (20) days prior written request, shall execute, acknowledge and deliver to the party making such request a statement in writing stating whether or not to the knowledge of the Association, a particular Owner is in default under the provisions of this Declaration and further stating the dates to which Assessments have been paid by said Owner, it being intended that any such certificate delivered pursuant to this Section may be relied upon by any prospective purchaser or Mortgagee of said Lot, but reliance on such certificate may not extend to any default as to which the signer shall have had no actual knowledge. The Association shall have the right to charge a reasonable fee for the certification herein provided.

SECTION 8.10 Notice and Quorum Requirements. Notwithstanding anything to the contrary contained in either the Articles or the Bylaws of the Association, written notice of any meeting called for the purpose of levying a Special Assessment described in Section 8.03, above, or a Limited Assessment described in Section 8.04, above, shall be sent to each Owner whose Lot is subject to the levy of such Special or Limited Assessment not less than ten (10) nor more than fifty (50) days in advance of the meeting. The presence of sixty percent (60%) of the Owners, who have voting rights in the Association, either in person or by proxy, shall constitute a quorum. If the required quorum is not present, the meeting may be rescheduled by the Board for a date not later than sixty (60) days after the date of initial meeting and at the rescheduled meeting the presence of ten percent (10%) of the Owners who have voting rights in the Association, either in person or by proxy, shall constitute a quorum. No written notice of the rescheduled meeting shall be required. Notwithstanding the foregoing, in a case involving the levying of a Limited Assessment on a Lot, as provided in Section 8.04, above, there shall be no requirement of a quorum at a meeting rescheduled because of a lack of the required quorum at the initial meeting, and the Board may approve and levy such Limited Assessment even though the Owner of the Lot subject thereto is not present in person or by proxy.

ARTICLE IX **ENFORCEMENT OF ASSESSMENTS**

SECTION 9.01 Right to Enforce. The right to collect and enforce payment of the Assessments made by the Association is vested in the Association. Each Owner of a Lot hereby agrees to the enforcement of the payment of all Assessments in the manner herein provided. In the event an attorney is employed for the collection of an Assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of any of the terms and conditions of this Declaration, the Owner against whom such enforcement is sought shall pay reasonable attorneys' fees in connection therewith.

SECTION 9.02 Creation of Assessment Liens. There is hereby created a continuing claim of lien with power of sale on each and every Lot to secure payment of any and all Assessments levied against any and all Lots within the Property pursuant to this Declaration, together with interest thereon and all costs of

collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys' fees. Said lien shall be prior and superior to all other liens (including Mortgages and/or Deeds of Trust) or claims created subsequent to the recordation of this Declaration except only for: (i) valid tax and special assessment liens on Lots in favor of any governmental unit assessing authority; and (ii) labor or materialmen's liens, if the same are prior and superior by reason of applicable law. Except as expressly provided in this Section 9.02, the sale or transfer of any Lot shall not affect the Assessment lien provided for herein, nor the creation thereof by the recordation of a claim of lien, on account of the Assessments becoming due whether before, on, or after the date of such sale or transfer, nor shall such sale or transfer diminish or defeat the personal obligation of any Owner for delinquent Assessments as provided for in this Declaration.

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

SECTION 9.03 Notice of Assessment. If an Owner fails to pay an Assessment within thirty (30) days of its due date, the Association shall prepare a written Notice of Assessment setting forth the type of Assessment, the amount of the Assessment, the due date thereof, including the amount and due date of installments (if the same are permitted), the amount remaining unpaid at the time of filing, the name of the record Owner of the Lot and a legal description of the Lot. Such Notice shall be signed by the President and Secretary of the Association, acknowledged by a Notary Public and recorded in the office of the Davis County Recorder. At such time as a delinquent Assessment which is described in the Notice is paid, the Association shall prepare and record a Notice of Satisfaction with respect thereto.

SECTION 9.04 Enforcement. Upon the failure of an Owner to pay an Assessment in accordance with its terms, the lien for Assessment herein created may be enforced by sale by the Association, such sale to be conducted in the manner provided by law in Utah for the exercise of the power of sale in Deeds of Trust or in any other manner permitted by law elected by the Board. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including all reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any Assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire and thereafter hold, convey, lease, rent, encumber, use and otherwise deal with and in said Lot as the Owner thereof.

If an Owner of a Lot fails to pay an assessment for more than sixty (60) days after the assessment is due, the Board, may demand that any tenant of such Owner pay to the Association all future lease payments due to the Owner, beginning with the next monthly or other periodic payment, until the amount due to the Association is paid, as provided in Utah Code Title 57, Chapter 8a, Section 205, as may be amended from time to time.

SECTION 9.05 Notice Required. Notwithstanding anything to the contrary contained in this Declaration, no action may be brought to foreclose the lien for any Assessment, whether by power of sale or otherwise, until the expiration of thirty (30) days after written Notice of Default has been deposited in the United States mail, certified or registered mail, postage prepaid, return receipt requested, addressed to the Owner of the Lot described in such Notice at the last known address of the Owner as shown on the books and records of the Association. Said Notice shall specify the amount and due date of the unpaid Assessment(s) and the legal description of the Lot.

SECTION 9.06 Reporting. The Association shall provide a Mortgagee with a copy of a Notice of Default served on an Owner under Section 9.05, above. The duty to give such Notice shall arise only

after said Mortgagee furnishes to the Association written notice of a Mortgage (or Deed of Trust) which shall contain the following:

- (a) The name and address of said Mortgagee;
- (b) A legal description of the Lot subject to the lien of the Mortgage by Lot, Block and Subdivision;
- (c) The name and address of the Owner;
- (d) The date the lien of the Mortgage was filed of record in Davis County, Utah, and the instrument number thereof;
- (e) The maturity date of the obligation secured by said Mortgage lien;
- (f) A copy of a title insurance report evidencing that the Mortgagee is the holder of a first Mortgage or the beneficiary of a first Deed of Trust;
- (g) The signature of the Mortgagee or authorized agent.

In the event the Association shall be required to notify a Mortgagee as herein provided, the Association shall assess the Owner who is delinquent an amount for such notification and such charge shall be a cost of collection secured by the Assessment lien described in Section 9.02, above, as such amount is determined by the Board from time to time.

SECTION 9.07 Non-Exclusive Remedy. The remedies set forth in this Article or elsewhere in this Declaration shall not be deemed to be an exclusive remedy and the Association may pursue all other remedies available at law or in equity.

ARTICLE X **ARCHITECTURAL CONTROL**

SECTION 10.01 Declarant and Association. Declarant shall have the rights to adopt and implement architectural and design controls and approvals pursuant to Section 5.27, including the creation and implementation of the Architectural Rules and Design Standards. The Association may have such rights and approvals, as provided in Section 5.27.

SECTION 10.02 Non-Liability. Neither the Declarant or the Association, or any member, partner, officer, employee, agent, successor or assign thereof, shall be liable to the Association (if applicable), any Owner or any other person, for any claim, cost, loss, damage or injury arising out of or connected with the performance of the powers, duties and/or responsibilities in this Declaration, the Architectural Rules and Design Standards, if any, or other Subdivision documents, by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve an application, and/or determinations related to violations and enforcement of this Declaration and/or Architectural Rules and Design Standards. Every person who submits an application to the Declarant for approval of plans and specifications agrees, by submission of such an application, and every Owner or Occupant of any Lot agrees, by acquiring title thereto or an interest therein, not to bring any action or suit against the Declarant or the Association, or any member thereof, or any officer, partner, employee, agent, successor or assign regarding the above.

SECTION 10.03 Approval Required. No construction, alteration, modification, removal or destruction of any Improvements of any nature whatsoever, whether real or personal in nature, shall be initiated or be permitted to continue or exist within the Property without the prior express written approval of the Declarant.

SECTION 10.04 Variances. The Declarant may authorize variances from compliance with the requirements of any conditions and restrictions contained in this Declaration, the Architectural Rules and Design Standards, or any prior approval when, in the sole discretion of the Declarant, circumstances such as topography, natural obstructions, aesthetics or environmental considerations or hardship may so require. Such variances must be evidenced in a writing signed by Declarant.

If a variance is granted as provided herein, no violation of this Declaration, Architectural Rules and Design Standards or prior approval shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or the Architectural Rules and Design Standards for any purpose except as to the particular subject matter of the variance thereof and the specific Lot covered thereby.

The Declarant shall have the right to consider and grant a variance as herein provided either with or without notice to other Owners or a hearing of Owners thereon.

The granting of a variance by the Declarant pursuant to this Section shall not relieve the Owner from the obligation to fully comply with the ordinances of the City of Layton, Utah, applicable to the Property.

SECTION 10.05 Application. To request Declarant approval for the construction, alteration, modification, removal or demolition of any Improvements within the Property, the Owner shall submit a written application in a form required by the Declarant which must be signed by the Owner and contain all information requested and be accompanied by all other material to be submitted as hereafter provided.

All applications must contain, or have submitted therewith, the following material (collectively called "plans and specifications") prepared in accordance with acceptable architectural standards and submitted with the application form, if any, approved by the Declarant:

- (a) **Site Plan.** A site plan showing the location of the Building(s) and all other structures and Improvements including fences and walls on the Lot, Lot drainage and all set backs, curb cuts, driveways, parking areas and other pertinent information relating to the Improvements;
- (b) **Building Plan.** A building plan which shall consist of preliminary or final blueprints, elevation drawings of the north, south, east and west sides, and detailed exterior specifications which shall indicate, by sample if required by the Declarant, all exterior colors, materials and finishes, including roof, to be used;
- (c) **Landscape Plan.** A landscape plan for portions of the Lot to be landscaped, including the Street Landscape Buffer (as defined in Section 5.14(b), above), which shall show the location, type and size of trees, plants, ground cover, shrubs, berming and mounding, grading, drainage, sprinkler system, fences, freestanding exterior lights, driveways, parking areas and walkways, and which will promote water efficient landscape practices in compliance with applicable Architectural Rules and Design Standards; and
- (d) **Evidence of Cost.** Such evidence of the cost of the Improvements as shall be

satisfactory to the Declarant to assure compliance with the requirements, if any, of the Architectural Rules and Design Standards.

The Declarant may, in its discretion, require the Owner to furnish additional specifications, drawings, material samples or such other information as the Declarant, in its sole discretion reasonably exercised, shall deem necessary or convenient for the purpose of assisting the Declarant in reviewing and processing the application.

SECTION 10.06 Completion Security Deposit. At the time of the submission of the application under Section 10.05, above, the Owner shall deposit with the Declarant, as a completion security deposit (hereafter "Completion Deposit"), as such amount is determined by the Declarant from time to time. The Completion Deposit shall be held by the Declarant as security for the completion by the Owner of the Improvements on the Lot as approved by the Declarant, as required by for the completion of Improvements described in Section 5.03 and landscaping as provided in Section 5.25. If an Owner meets the completion deadlines and requests return of the Completion Deposit in writing within sixty (60) days after such deadlines have passed, the Completion Deposit shall be returned to the Owner without interest. If the Owner fails to complete such Improvements, and/or fails to request return of such Completion Deposits within such designated periods stated above, Declarant shall have the right to: (a) deduct from such Completion Deposit the amount of any penalties, off-sets and costs as set forth in this Declaration or the Architectural Rules and Design Standards, including any costs which may be paid or incurred by the Association or a third party to complete or remove such Improvements, as the case may be; and (b) deduct the Inspection Fee(s) payable by an Owner to the Declarant under Section 10.15, from the Completion Deposit. Any remaining Completion Deposit shall be forfeited by Owner, and shall be retained for the Declarant's and/or the Association's use for any purpose in connection with the Subdivision, free and clear of any interest of the Owner.

SECTION 10.07 Decision. In reviewing the application and the materials submitted therewith and in reaching a decision thereon, the Declarant shall use its best efforts and judgment to assure that all Improvements shall produce and contribute to an orderly and aesthetically complementary design and appearance and be of the quality required to maintain the Property as a quality residential development.

Unless extended by mutual consent of the Owner and the Declarant, the Declarant shall render its decision with respect to an application within forty-five (45) days after the receipt of a properly submitted application. The decision of the Declarant can be in the form of an approval, a conditional approval or denial. The decision of the Declarant shall be in writing, signed by the Declarant, and a copy thereof mailed to the Owner at the address shown on the application.

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

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

SECTION 10.08 Inspection and Complaints. The Declarant is empowered to inspect all work in progress on any Lot at any time. Such inspection shall be for the purpose of determining whether the Owner is proceeding in accordance with the approved application or is deviating therefrom or is violating this Declaration or the Architectural Rules and Design Standards or the approved plans and specifications.

The Declarant is empowered to receive from other Owners ("Complainant") complaints in writing involving deviations from approved applications or violations of this Declaration or any applicable Architectural Rules and Design Standards. In the event the Declarant receives such a complaint from a Complainant, it shall first determine the validity of such complaint by inspection or otherwise.

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

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

Should the Declarant determine there has been no deviation or violation, it shall promptly issue a notice of such determination to the Owner, the Complainant, and or the Declarant.

SECTION 10.09 Hearing. An Owner served with a written notice of deviation or violation, or a Complainant shall have the right to request and be heard at a hearing held by the Declarant for the purpose of presenting facts and information to the Declarant. Such hearing must be requested by such party within ten (10) days from the date the written notice of the decision of the Declarant is mailed to the Owner (and Complainant) as evidenced by the records of the Declarant. The hearing shall be held within ten (10) days following receipt by the Declarant of the request for a hearing, unless the Declarant shall extend said period of time because of the unavailability of a Declarant representative. A hearing may be continued by the Declarant for the purpose of further investigation or to receive additional evidence. Upon completion of the hearing, the Declarant shall issue a written opinion to the involved parties within ten (10) business days thereafter which opinion shall set forth the findings of the Declarant with respect to the matters at issue and shall affirm, modify or rescind its previous decision as contained in the original written notice. If the Declarant incurs any costs or expenses in connection with the investigation, processing or hearing on a matter involving a deviation or violation, including the costs of retaining a consultant(s) to advise the Declarant and legal fees, such costs shall be paid by the Complainant unless an Owner is found to be in violation, in which event such Owner shall pay all such costs. The payment of such costs shall be enforceable as provided below. Upon any transfer of rights to the Association by the Declarant, the hearing described above shall be with the Board.

SECTION 10.10 Appeal. Either an Owner or a Complainant shall have the right to appeal to the Board a decision of the Declarant adverse to the Owner or the Complainant reached following a hearing held pursuant to Section 10.09, above, provided, however, that neither an Owner nor a Complainant shall be entitled to such an appeal with respect to deviations or violations unless said Owner or Complainant has participated in a hearing with Declarant. Upon any transfer of rights to the Association by the Declarant, the appeal to the Board described herein shall be considered a motion for rehearing.

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

The Board shall fix a date for the hearing of such an appeal which date shall be no later than ten (10) days from the date of receipt of a notice of appeal unless extended by the Board because of the unavailability of Board members. The Owner, Complainant, and Declarant, as applicable, shall be advised of the time and place of the hearing by a mailed written notice.

The Board may require the Owner or Complainant to provide additional information to facilitate the Board's decision and the failure of such party to comply promptly with such a request shall entitle the Board to deny the appeal, in which event the decision by the Declarant shall be considered final and not subject to further appeal.

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

Upon receiving all of the evidence, oral and documentary, and following the conclusion of the hearing, the Board shall retire to deliberate and shall reconvene at a time and place determined by the Board, at which time the Board shall cast its official ballot and the decision shall be duly recorded in the minutes of the meeting. The Owner, the Complainant, if any, and the Declarant shall be given written notice of the decision which shall be deemed given when deposited in the United States mail, postage prepaid and properly addressed.

If the Board incurs any costs or expenses in connection with the investigation, processing or hearing on an appeal, including the costs of retaining a consultant(s) to advise the Board and legal fees, such costs shall be paid by the party(s) filing the appeal unless the decision by the Board constitutes a substantial reversal of the decision of the Declarant, in which event such costs shall be paid by the Association. If the party filing the appeal is obligated to pay such costs, payment of the same shall be enforceable as provided in Section 10.13, below.

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

SECTION 10.11 Enforcement. The Declarant and the Board each shall be authorized on behalf and in the name of the Declarant and/or Association to commence such legal or equitable proceedings as are determined by it to be necessary or proper to correct or enjoin any activity or condition existing within the Property, the continuation of which violates the provisions of this Declaration, the Architectural Rules and Design Standards or the approved plans and specifications.

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

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

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

SECTION 10.12 Additional Damages. In addition to the costs and expenses to be reimbursed by the Owner or the Complainant, all other costs, expenses and damages determined by the Declarant or the Board to be proximately caused by the deviation or violation or the costs and expenses incurred by the Association to correct the same shall be assessed as a Limited Assessment against the Owner and the Lot owned by said Owner, or the Complainant and the Lot owned by the Complainant, as the case may be, which Limited Assessment shall be due and payable at such time or in such installments as determined by the Board, in its sole discretion. The right of the Declarant and/or Board to enforce said Limited Assessment shall be the same as provided in Article IX, above.

SECTION 10.13 Non-Exclusive Remedy. The right of the Association to levy a Limited Assessment as described in Sections 10.11 and 10.12, above, shall not be deemed to be an exclusive remedy of the Declarant or Association and either may, in its sole discretion, without waiver of any other legal or equitable remedy, pursue enforcement of the lien of said Limited Assessment(s), proceed to collect any amount due directly from the Owner and/or pursue any other remedies available at law or in equity.

SECTION 10.14 Private Rights. The Declarant and/or Association shall not mediate or litigate a "private dispute" between Owners. As used herein, a "private dispute" shall mean a dispute to which either of the following apply: (i) the Declarant or Association has determined that there is no violation of this Declaration or the Architectural Rules and Design Standards, or other Subdivision documents; and/or (ii) in the sole discretion of the Declarant or Board, the Declarant or Board determines that the neither the interests of the Declarant, Association or a substantial number of the Owners would be benefitted by the Declarant, Board and/or the Association's mediation and/or litigation of such dispute.

SECTION 10.15 Inspection Fee(s). The Declarant shall have the right to charge an Owner an inspection fee (hereafter "Inspection Fee") as determined by the Declarant from time to time for each inspection of the Improvements constructed on a Lot if the initial inspection, which shall be performed by the Declarant without cost to the Owner, reveals that the Improvements do not comply with the approved application or is deviating therefrom or is violating this Declaration or the Architectural Rules and Design Standards or the approved plans and specifications, and an additional inspection(s) is required to assure such compliance. Any collection of Inspection Fee(s) so charged by the Declarant to an Owner shall be enforceable as provided in Section 10.11, above.

ARTICLE XI ANNEXATION

SECTION 11.01 Annexation. Additional property may be annexed to the Subdivision and brought within the provisions of this Declaration by the Declarant, at any time, without the approval of any Owner or the Association. To annex additional property to the Subdivision, the Declarant shall record an amendment to this Declaration which shall specify the annexation of the additional property to the Subdivision and which may supplement this Declaration with additional, amended or different covenants

and restrictions applicable to the annexed property, as the Declarant may deem appropriate, and may delete or modify as to such annexed property such covenants as are contained herein which the Declarant deems not appropriate for the annexed property, so long as the additional, different, deleted or modified covenants or restrictions. Upon such annexation, the Owners of the Lots within the annexed property shall become members of the Association with all rights, privileges and obligations as all other members as provided in this Declaration. The amendment of this Declaration as authorized by this Section, to annex additional property to the Subdivision, shall be controlled by the provisions of this Section and shall be expressly excluded from the requirements of Section 12.02 of this Declaration.

SECTION 11.02 De-Annexation. The Declarant shall have the right to delete all or a portion of the Property from the coverage of this Declaration and the jurisdiction of the Association, so long as the Declarant is the Owner of all of the property to be de-annexed and, provided further, that an appropriate amendment to this Declaration is recorded in the office of the Davis County Recorder.

ARTICLE XII MISCELLANEOUS

SECTION 12.01 Term. This Declaration and all covenants, conditions, restrictions and easements contained herein shall run until December 31, 2041, unless amended as hereafter provided. After December 31, 2041, said covenants, conditions, restrictions and easements shall be automatically extended for successive period of ten (10) years each, unless extinguished by a written instrument executed by the Owners of at least three-fourths (3/4) of the Lots covered by this Declaration and such written instrument is recorded with the Davis County Recorder.

SECTION 12.02 Amendment. This Declaration may be amended as follows:

- (a) **By Declarant.** Until title to a Lot within the Property is conveyed by the Declarant to an Owner, this Declaration may be terminated by the Declarant by recordation of a written instrument signed by the Declarant and acknowledged setting forth such amendment or termination.
- (b) **By Owners.** Except as otherwise expressly provided this Declaration, the provisions of this Declaration, other than this Section, may be amended by an instrument in writing, signed by a majority of all of the Class B votes held by the Class B Members, as certified by the President and Secretary of the Association. After the Class A Members become entitled to voting rights, the provisions of this Declaration, other than this Section, may be amended by an instrument in writing, approved by at least 50% of the of the total of the Class A votes cast by the Class A Members either in person or by proxy at a meeting of the Class A Members duly held for such purpose, as certified by the President and Secretary of the Association. Any amendment to this Section 12.02 shall require: (i) the signatures of at least 66.67% of all of the Class B votes held by the Class B Members, as certified by the President and Secretary of the Association, and any the vote of the Class B Members, or (ii) after the Class A Members become entitled to voting rights, approval by 66.67% of the total of the Class A votes cast by the Class A Members either in person or by proxy at a meeting of the Class A Members duly held for such purpose, as certified by the President and Secretary of the Association. Amendments complying with this Section 12.02 shall be effective upon recordation with the Davis County Recorder.
- (c) **By Necessity.** Declarant shall have the exclusive right, power and authority to amend this Declaration, or any of the Subdivision documents, at any time and at its sole discretion, if such amendment is: (i) necessary to bring any provision into compliance with

any applicable laws, statutes, rules, plans, ordinances, or other agreements governing the Property; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage for the Lots; (iii) required by an institutional or governmental lender or purchaser of mortgage loans, to enable such lender or purchaser to make or purchase mortgage loans on the Lots; (iv) necessary to enable any governmental authority or reputable private insurance company or lender to make insure or purchase mortgage loans on the Lots; and/or (v) otherwise necessary to satisfy the requirements of any governmental or quasi-governmental authority or applicable federal, state or local statute, ordinance, and/or law.

SECTION 12.03 Books and Records. All accounting books and records, and meeting minutes of the Board and Association, and any other records determined by the Board in its sole discretion, shall be made available for inspection and copying by any Owner or by his duly authorized representative, at any reasonable time and for a purpose reasonably related to his interest as a member in the Association, or at such other place and time as the Board shall prescribe.

SECTION 12.04 Non-Waiver. The failure of the Declarant, the Board or any Owner in any one or more instances to insist upon the strict performance of any of the covenants, conditions, restrictions, easements or other provisions of this Declaration or to exercise any right or option contained herein, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment for the future of such covenant, condition, restriction, easement or other provision, but the same shall remain in full force and effect.

SECTION 12.05 Acceptance – Declarations and Property Condition. Each Owner of a Lot, each purchaser of a Lot under a contract or agreement of sale and each holder of an option to purchase a Lot, by accepting a deed, contract of sale or agreement or option, accepts the same subject to all of the covenants, conditions, restrictions, easements and other provisions set forth in this Declaration, and the Plat, and agrees to be bound by the same. Additionally, Owner's acceptance includes express acceptance and acknowledgement of all existing characteristics and conditions on or near the Property, and all uses, nuisances, traffic and noise associated therewith, including, but not limited to agricultural uses and activities adjacent to, or in the proximity of, the Property.

SECTION 12.06 Indemnification. The Declarant (and its members, managers, officers and employees), each member of the Board and the Association shall be indemnified by the Owners against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed in connection with any proceeding to which said member may be a party or in which said member may become involved, by reason of being or having been a member of the Declarant, Board or the Association, or any settlement thereof, whether or not said person is a member of the Board Association, or Declarant at the time such expenses or liabilities are incurred, except in such cases wherein said person is adjudged guilty of willful misfeasance or malfeasance in the performance of his or her duties; provided that in the event of a settlement, the indemnification shall apply only when the Board, Association or the Declarant approves such settlement and reimbursement as being in the best interest of the Association or Owners. This Section shall extend to and apply also for the indemnification of the Declarant during the initial period of operation of the Association or prior thereto during the period the Declarant is exercising the powers of the Association.

SECTION 12.07 Notices. Any notice permitted or required to be delivered as provided in this Declaration shall be in writing and shall be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after the same has been deposited in the United States mail, postage prepaid, properly addressed.

SECTION 12.08 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate the Project Objectives set forth in Article IV, above, and shall be construed and governed by the laws of the State of Utah. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall include the masculine, feminine or neuter. All captions and titles used in this Declaration are intended solely for convenience of reference and shall not affect that which is set forth in any of the provisions hereof.

SECTION 12.09 Severability. Notwithstanding the provisions of the preceding Section, each of the provisions hereof shall be deemed independent and severable and the invalidity or unenforceability of any provision or portion thereof shall not affect the validity or enforceability of any other provision.

SECTION 12.10 Not a Partnership. The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted or construed to create a joint venture, partnership or any other similar relationship between the Owners, including the Declarant.

SECTION 12.11 No Third Party Beneficiary Rights. This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not an Owner or an occupant, unless otherwise expressly provided herein.

SECTION 12.12 Injunctive Relief. In the event of any violation or threatened violation by any person of any of the covenants, easements and restrictions contained in this Declaration, the Declarant, the Association, and/or any or all of the Owners shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Declaration or provided by law.

SECTION 12.13 Breach Shall Not Permit Termination. It is expressly agreed that no breach of this Declaration shall entitle any Owner to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration. Any breach of this Declaration shall not defeat or render invalid the lien or security of any lien holder made in good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

SECTION 12.14 Attorney's Fees. In the event any person initiates or defends any legal action or proceeding to interpret or enforce any of the terms of this Declaration, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party in any such action or proceeding the prevailing party's reasonable costs and attorney's fees, including the same with respect to an appeal.

SECTION 12.15 Force Majeure. The period of time provided in this Declaration for the performance of any act shall be extended for a period or periods of time equal to any period or periods of delay caused by strikes, lockouts, fire or other casualty, the elements or acts of God, refusal or failure of governmental authorities to grant necessary permits and approvals for the act (the parties agreeing to use reasonable diligence to procure the same), or other causes, other than financial, beyond their reasonable control.

[END OF TEXT]

IN WITNESS WHEREOF the Declarant has executed this Declaration as of the day and year first above written.

DECLARANT:

BRIGHTON HOMES UTAH LLC,
a Delaware limited liability company

By *Nathan W. Pugsley*
Nathan W. Pugsley, Manager

STATE OF UTAH)
) ss:
County of Davis)

On this 27th day of June, 2011, before me, the undersigned, a Notary Public in and for said State, personally appeared Nathan W. Pugsley, known or identified to me to be a Manager of BRIGHTON HOMES UTAH LLC, a Delaware limited liability company, the company that executed the foregoing instrument or the person who executed the foregoing instrument on behalf of said company, and acknowledged to me that such company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Tamera D. Wood
Notary Public for Utah
My Commission Expires: 9-13-2014

