



"W2068853"

AMENDED DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
FARR ORCHARD
(A RESIDENTIAL PLANNED UNIT DEVELOPMENT SUBDIVISION)

E# 2068853 PG 1 OF 29
DOUG CROFTS, WEBER COUNTY RECORDER
17-NOV-04 1255 PM FEE \$154.00 DEP SGC
REC FOR: FARR.ORCHARD.OWNERS.ASSOC

November 2004

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**AMENDED DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
FARR ORCHARD
(a Residential Planned Unit Development Subdivision)**

This Amended Declaration of Covenants, Conditions and Restrictions ("Amended Declaration") is made and executed this ____ day of _____, 2004, by the Farr Orchard Owners Association ("Association"). The purpose of this Amended Declaration is to update, amend, replace, and restate various provisions of the original Declaration recorded in the Weber County Recorder's Office on June 6, 2000.

RECITALS:

A. **Description of Land.** The planned residential unit development subdivision ("Project") that is the subject of this Declaration is situated in and upon that certain real property ("Subject Land") located in Weber County, State of Utah, as specifically described in Exhibit A attached hereto and incorporated herein by this reference. Declarant has prepared and has recorded in the office of the County Recorder for Weber County, State of Utah, plats for Farr Orchard Phase I, Phase II, and Phase III, a residential a planned unit development subdivision ("Plat"), which Plats were recorded in the Weber County Recorder's Office. There are now 89 Lots in the Project, as shown on the various Plats.

B. **Association and Bylaws.** The Farr Orchard Owners Association, Inc. ("Association"), has been created by filing Articles of Incorporation with the Utah Division of Corporations and Commercial Code. The Association is the governing body of the Project subject hereto and is operated in accordance with this Amended Declaration and the Bylaws of Farr Orchard." The Bylaws that were attached to the original Declaration as Exhibit B are not being amended herewith but remain in force as originally enacted.

C. **Intent and Purpose.** Declarant, by recording the original Declaration, and the various amendments to the original Declaration wherein Farr Orchard was expanded, and the Plats for each of the phases of Farr Orchard wherein 89 lots were created, did so for the purpose of: (1) creating a planned residential unit development with common areas including permanent open spaces, streets, parking; landscaping, fencing and other related areas and facilities for the common use and enjoyment of the Owners of the Lots; (2) submitting the Subject Land and all improvements situated upon the Subject Land to the applicable ordinances and statutes of the city of Ogden, Utah related to planned residential unit developments; and (3) to impose upon said property mutually beneficial restrictions under a general plan of improvement for the benefit of all Lots within said Project and the Owners thereof.

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**ARTICLE I
DEFINITIONS**

1.1 **Defined Terms.** Unless the context clearly indicates otherwise, certain terms as used in this Declaration shall have the meanings set forth in this Article I.

1.2 **Association** shall mean Farr Orchard Owners Association, Inc., a Utah nonprofit corporation, organized to be the governing body of the Project.

1.3 **Board of Trustees** or **Board** shall mean the Board of Trustees of the Association.

1.4 **Common Areas** or **Common Areas and Facilities** shall mean all of the Subject Land except all Lots, including without limiting the generality of the foregoing, all streets, parking areas, open spaces, and other undesignated areas shown on the Plat as Common Areas, together with all equipment, facilities, fixtures, and other personal property and real property improvements located thereon and/or owned by the Association for the use and benefit of all Owners, including without limiting the generality of the foregoing, all streets, curb and gutter improvements, playgrounds, trees, bushes and other landscaping, and all equipment, fixtures, facilities, and other personal property and real property improvements hereafter purchased in accordance with this Declaration with monies from the Common Expense Fund. The Common Areas shall be owned by the Association, and all Common Areas shall be managed and controlled by the Association for the common use and enjoyment of the Owners as more fully described in this Declaration.

1.5 **Common Expense Fund** shall mean the fund created or to be created pursuant to the provisions of Article IX of this Declaration and into which all funds of the Association shall be deposited.

1.6 **Declarant** shall mean Silver Creek Development, L.C., a Utah limited liability company, its successors and assigns.

1.7 **Lot** shall mean each individual parcel of real property shown on the Plat as a Lot, together with all improvements located thereon and all appurtenances thereunto appertaining.

1.8 **Manager** shall mean the person, firm, or company, if any, designated from time to time by the Association to manage, in whole or in part, the affairs of the Association and the Project.

1.9 **Member** shall mean a member of the Association.

1.10 **Mortgage** shall mean any mortgage, deed of trust, or other security instrument by which a Lot or any part thereof is encumbered.

1.11 **Mortgagee** shall mean (i) any person named as the mortgagee or beneficiary under any Mortgage, or (ii) any successor to the interest of such person under such Mortgage.

1.12 **Owner** shall mean any person or entity or combination thereof, including the Declarant, at any time owning a Lot within the Project, as shown on the records of Weber County,

State of Utah. The term "Owner" shall not refer to any Mortgagee (unless such Mortgagee has acquired title for other than security purposes) or to any person or entity purchasing a Lot under contract until such contract is fully performed and legal title conveyed.

1.13 **Plat** shall mean the Plat for Farr Orchard Phase I, Phase II, or Phase III, a residential planned unit development, as recorded in the office of the County Recorder for Weber County, State of Utah.

1.14 **Project** shall mean all Lots and all Common Areas, collectively.

1.15 **Subject Land** shall mean the land upon which the Project is situated, as more particularly described in Exhibit A.

1.16 **Total Votes of the Association** shall mean the total number of votes appertaining to the Lots in the Project, as shown on Exhibit C attached hereto.

1.17 **Unit** shall mean and refer to each physically constructed dwelling or building containing a residence located as an improvement on a Lot.

ARTICLE II DIVISION OF PROJECT

2.1 **Submission to Declaration.** All of the Subject Land is and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, and improved as a planned residential unit development subdivision to be known as Farr Orchard. All of said Subject Land is and shall be subject to the covenants, conditions, restrictions, easements, uses, limitations, and obligations set forth herein and in the Plat, each and all of which are declared and agreed to be for the benefit of the Project and in furtherance of a plan for improvement of said property and division thereof into Lots. Further, each and all of the provisions hereof shall be deemed to run with the land and shall be a burden and a benefit to the Lot owners, their successors and assigns, and any person acquiring, leasing, or owning an interest in any Lot, their lessees, heirs, executors, administrators, devisees, successors and assigns.

2.2 **Subdivision into Lots.** Pursuant to the Plat, the Subject Land is divided into Lots as more particularly described on the Plats. The Owner of each Lot, regardless of the size, purchase price or location of the Lot, shall have the right to use, the Common Areas. The Declarant, with the recordation of this Declaration, hereby quitclaims all of its right, title and interest in and to all of the Common Areas, as more particularly shown on the Plats, without warranty, to the Association, to be held and administered in accordance with the provisions of this Declaration.

2.3 **Easements.** The Declarant, its successors and assigns, shall have a transferable easement over and on the Common Areas, including roads providing ingress and egress to the Project, for the purpose of doing all things reasonably necessary and proper for the construction, completion, development and sale of the Project.

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**ARTICLE III
IMPROVEMENTS**

3.1 **Description of Improvements.** The Project consists of 89 Lots as shown on the Plats. Each of the Lots shall, when improved, contain one detached single family building, or one attached single family dwelling in a building containing two, three or four single family dwellings, which buildings shall be principally constructed or wood frame, aluminum siding, rock wainscoating, sheetrock interiors and asphalt shingle roofs, and such other materials as allowed by current building codes.

3.2 **Description and Legal Status of Lots.** The Plats show the number of each Lot. All Lots shall be capable of being independently owned, encumbered, and conveyed.

3.3 **Contents of Exhibit "C".** Exhibit C to this Declaration furnishes the following information with respect to each Lot: (a) the Lot number, and (b) the number of votes appertaining to each Lot by the Owner as a Member of the Association.

**ARTICLE IV
NATURE AND INCIDENTS OF OWNERSHIP**

4.1 **Ownership and Maintenance of Lots.** Each Owner shall have the exclusive right to construct, improve, reconstruct and repair the house and other improvements located on his Lot, except as hereinafter provided relating to the Association's duty to insure, maintain and repair portions of the Units. All construction, improvements, reconstruction and repair must comply with applicable land use planning, regulations and common architectural design approval including, but not limited to, a minimum of R-19 wall insulation and R-38 ceiling insulation, and a two car garage for each detached single family dwelling, and a one car garage with a slab for each attached single family dwelling. Each Lot, and the improvements located thereon, being the sole and exclusive property of the Owner thereof, shall be maintained and repaired by the Owner and shall be kept in a clean and sanitary condition and in a state of good repair, except as hereinafter provided.

4.2 **Title.** Title to a Lot within the Project may be held or owned by any person or entity or any combination thereof and in any manner in which title to any other real property may be held or owned in the State of Utah, including without limitation, joint tenancy or tenancy in common.

4.3 **Prohibition Against Subdivision of Lot.** No Owner, by deed, plat or otherwise, shall subdivide or in any manner cause his Lot to be subdivided, partitioned or separated into physical tracts or parcels smaller than the whole Lot as shown on the Plat.

4.4 **Ownership and Use of Common Areas.** The Association shall own all Common Areas for the common use and enjoyment of the Owners, and the Association shall have the exclusive right and obligation to manage and maintain all Common Areas, and to repair, replace and reconstruct any existing or new Common Areas. The Owner, pursuant to action taken in accordance with this Declaration and the Articles and Bylaws, may determine from time to time, subject to any required governmental approval, what improvements will be constructed or located on the Common Areas. Each Owner shall have an irrevocable license and easement to use, occupy and enjoy all Common

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Areas in common with all other Owners. Except as otherwise provided in this Declaration, each Owner shall be entitled to the nonexclusive use of the Common Areas in any manner that does not hinder or encroach upon the rights of other Owners and is not contrary to any rules or regulations promulgated by the Association. Each Owner will be responsible for an equal share of the taxes, insurance, maintenance and other costs and expenses relating to the Common Areas.

4.5 **Exclusive Use of Common Areas.** Any porches, patios, driveways and other areas immediately contiguous to a Lot are reserved for the exclusive use of the Owner of that Lot, and such Owner's invitees and guests.

4.6 **Maintenance of Landscaping and Sidewalks.** All areas located outside the Lots shall be maintained, cleaned, repaired and reconstructed by the Association ("Maintained Areas"), and shall be re-landscaped, rebuilt, replaced, repaired or materially altered only with the review, approval and consent of the Board of Trustees of the Association, and in accordance with the provisions of this Declaration. Without limiting the generality of the foregoing, the Association shall (a) maintain, clean, repair and keep in a sanitary condition and in a state of good repair all Maintained Areas; (b) remove all snow from all streets, sidewalks and driveways located in the front of houses located on the Lots; and (c) re-landscape, re-construct and repair all Maintained Areas at such time as the same are in a state of disrepair and require replacement. Notwithstanding the foregoing to the contrary, (i) the Association shall not be obligated to remove snow from any driveways, patios or porches located in the rear of or on the sides of houses located on the Lots, (ii) an Owner may plant and maintain flowers, ground covers and other plants within the planting areas of the Maintained Areas, provided, however, that the Association shall not be obligated to maintain any fences or walls located between two Lots, as more fully described in Section 4.7 below.

4.7 **Fences and Walls.** The Maintained Areas defined in Section 4.6 above shall include, if applicable, all fences and walls located in the Project that (a) separate the Project from contiguous property not a part of the Project ("Perimeter Fences") or (b) that were installed by Declarant upon initial construction of the Project. The Association shall have the exclusive right to construct, locate, maintain, repair, and reconstruct any Perimeter Fences. Any Perimeter Fences shall not be removed except with the approval of Owners owning a majority of the Lots in the Project, at a meeting of the Owners duly held in accordance with the provisions of this Declaration, the Articles and Bylaws. No additional fences or walls, including any rear or side fences, shall be constructed between any Lots without the approval of the Board of Trustees, which approval may be given only after the Board of Trustees has adopted a written policy, applicable to all Lot Owners, stating the standards that must be followed if an additional fence or wall is to be constructed. Any fences or walls permitted by the provisions of this section, shall be constructed of materials and shall be of such colors, styles and characteristics, as shall be approved by the Board of Trustees from time to time, with the intent being that the Board of Trustees will control the construction, maintenance and reconstruction of any fences or walls allowed by the provisions hereof to assure that they are constructed of similar materials and that they are harmonious with the overall architecture and aesthetics of the Project.

4.8 **Inseparability.** Title to any part of a Lot within the Project may not be separated from any other part thereof. Every devise, encumbrance, conveyance, or other disposition of a Lot, or any part thereof, shall be constructed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the entire Lot, together with all appurtenant rights created by law or by this

Declaration, including appurtenant membership in the Association as hereinafter set forth, and an irrevocable license to use, occupy and enjoy the Common Areas in common with all Owners.

4.9 **No Partition.** The Common Areas shall be owned by the Association, in accordance with the provisions of this Declaration, and no Owner nor the Association may bring any action for partition thereof except as allowed by law.

4.10 **Separate Mortgages by Owners.** Each Owner shall have the right separately to mortgage or otherwise encumber his Lot. No Owner nor the Association shall attempt to or shall have the right to separately mortgage or otherwise encumber the Common Areas and Common Facilities or any part thereof. Any mortgage or other encumbrance of any Lot shall be subordinate to all of the provisions of this Declaration, and in the event of foreclosure the provisions of this Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise.

4.11 **Separate Taxation.** Each Lot and all improvements located thereon shall be assessed separately for all taxes, assessments, and other charges of the State of Utah or of any political subdivision thereof or of any special improvement district or of any other taxing or assessing authority. The Common Areas shall be deemed to be a parcel and shall be assessed separately for all taxes, assessments, and other charges of the State of Utah or of any political subdivision thereof or of any special improvement district or of any other taxing or assessing authority. All such taxes, assessments, and other charges on each respective Lot shall be separately levied against the Owner thereof. All such taxes, assessments, and other charges on the Common Areas shall be separately levied against the Association. No forfeiture or sale of any Lot for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Lot.

4.12 **Mechanic's Liens.** No labor performed or material furnished for use in connection with any Lot with the consent or at the request of an Owner or his agent or contractor shall create any right to file a statement, claim, or notice of mechanic's lien against the Lot of any other Owner not expressly consenting to or requesting the same.

4.13 **Description of Lot.** Any deed, lease, mortgage, deed of trust, or other instrument conveying or encumbering a Lot shall describe the interest or estate involved substantially as follows:

All of LOT NO. _____ contained within Farr Orchard Phase _____, as the same is identified in the subdivision plat recorded in the Office of the Recorder of Weber County, Utah as Entry No. _____, in Book _____, at Page _____ (as said subdivision plat may have heretofore been amended or supplemented) and in the Declaration of Covenants, Conditions and Restrictions for Farr Orchard, recorded in the Office of the Recorder of Weber County, Utah as Entry No. _____, in Book _____, at Page _____, (as said Declaration may have heretofore been amended or supplemented).

Regardless of whether or not the description employed in any such instrument is in the above specified form, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Lot. Neither the membership in the Association, nor the

right of non-exclusive use of Common Areas shall be separated from the Lot to which it appertains; and even though not specifically mentioned in the instrument of transfer, such mandatory membership in the Association and such right of non-exclusive use of Common Areas shall automatically accompany the transfer of the Lot to which they relate.

4.14 **Non-Exclusive Easements.** All streets constituting Common Areas that provide access to public roads outside of the Project shall be easements for the non-exclusive use of Declarant, the Owners, their guests, occupants, lessees, and invitees.

4.15 **Mortgages and Liens on Common Areas.** The Association shall not attempt nor shall it have the right to mortgage or otherwise encumber the Common Areas or any part thereof. No labor performed or material furnished for use in connection with the Common Areas shall create any right to file a statement, claim, or notice of mechanic's lien against the Common Areas.

ARTICLE V EASEMENTS

5.1 **Easement for Maintenance.** The Association shall have the irrevocable right to have access from time to time to all Common Areas and to all Maintained Areas during such reasonable hours as may be necessary for the maintenance, cleaning, repair, and replacement thereof or for making emergency repairs at any time herein necessary to prevent damage to the Common Areas. The Association shall also have the irrevocable right to have access from time to time to all Lots and Units during such reasonable hours as may be necessary for the maintenance, cleaning, repair, and replacement of those portions of the Lots and Units over which the Association has responsibility or for making emergency repairs at any time herein necessary to prevent damage to the Lot or Unit.

5.2 **Right to Ingress and Egress.** Each Owner shall have the right to ingress and egress over, upon, and across the Common Areas as necessary for access to such Owner's Lot, and such rights shall be appurtenant to and pass with the title to each Lot.

5.3 **Easement for Completion of Project.** Declarant shall have a transferable easement over and on the Common Areas for the purpose of completing construction of the Project and improvements therein and for the purpose of doing all things reasonably necessary or appropriate in connection therewith.

5.4 **Easements Deemed Created.** All conveyances of Lots within the Project hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.

5.5 **Easements Reserved by Declarant and Association.** The Association shall have power to grant and convey to any third party and Declarant hereby reserves unto itself easements and rights of way, including but not limited to rights of ingress and egress, in, on, over and under the Common Areas, for the purpose of constructing, erecting, operating and maintaining lines, cables, wires, conduits or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm drains and pipes, water systems, sprinkling systems, water, heating and gas lines

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or pipes, and any similar public or quasi-public improvements or facilities to provide common utility services to the Project and other property that may be added to the Project.

5.6 **Party Walls.** Certain of the buildings constructed on Lots have common or party walls with adjacent buildings, Units and Lots. The boundary between two adjacent buildings, Units and Lots shall be the vertical boundary running through the center of the party wall, equidistant from the plane joining and along the outermost surfaces of studs and structural beams making up the party wall. Each Owner of a Lot that has a building adjoining another building on a separate Lot is hereby granted an easement of support and shelter over the portion of any party or retaining wall on the adjoining Lot. Each Owner covenants with the other to maintain the party wall in a structurally sound and weather tight state, and to continue to provide the support and shelter that presently exists and as may be necessary to maintain the integrity of each building. Each Owner has an easement for access for repair and maintenance over and through the adjoining Lot, and an easement for pipes, ducts utility ways and chases, access stairs, and fences passing through the other Lot. Physical structures including party walls serving two Units or buildings on separate Lots will be shared through a mutual nonexclusive easement of enjoyment for all purposes for which the improvements and their replacements were intended.

ARTICLE VI RESTRICTIONS ON USE

6.1 **Residential Uses Only.** Each Lot contained in the Project is intended to be used for single family residential housing and is restricted to such use. No Lot shall be used for business or commercial activity; provided, however, that nothing herein shall be deemed to prevent (a) Declarant or its duly authorized agent from using any Lots owned by Declarant or any part of the Common Areas as sales models or property management offices, or (b) any Owner or his duly authorized agent from freely renting or leasing his Lot from time to time subject to the provisions of Section 6.11.

6.2 **No Noxious or Offensive Activity.** No noxious or offensive activity shall be carried on, in, or upon any part of the Project, nor shall anything be done or placed in or upon any part of the Project which is or may become a nuisance or may cause embarrassment, disturbance, or annoyance to Owners. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.

6.3 **Restriction on Recreational Vehicles.** No boats, trailers, recreational vehicles, trucks, commercial vehicles, or inoperable vehicles belonging to Owners or other residents of the Project shall be parked or stored in or upon any of the Common Areas, except in such portions of the Common Areas, if any, as the Association may specify, and subject to such rules and regulations as the Association may from time to time promulgate.

6.4 **Restriction on Signs.** Except as may be temporarily necessary to caution or warn of danger, and except for temporary signs, reasonable in size, design and location, for the sale of a Lot by Declarant or other Owner thereof, no signs or advertising devices or any nature, including without limitation commercial, political, informational, or directional signs or devices, shall be erected or maintained on any portion of the Project without the prior inspection and written approval of the Association. If the Association consents to the erection of any such signs or devices, the same shall

be promptly removed at the request of the Association. None of the foregoing shall be construed as to limit in any way Declarant's right and easement to locate and relocate its sales offices and all similar signs, banners or similar sales devices upon the Common Areas as permitted under Section 6.1 and Article XIV hereof

6.5 **No Structural Alterations.** No Owner shall, without the prior written consent of the Association, make or permit to be made any structural alteration, improvement, or addition, including without limitation any fences, walls or patios, to the exterior of the house located on his Lot, or to the Maintained Areas on his Lot, without the prior written consent of the Board, which consent may be granted or withheld in the Board's sole discretion. Notwithstanding the foregoing, the Board will reasonably grant permission for installation by an Owner of a satellite dish that is reasonably located and which does not exceed two feet in diameter. No Owner shall, without the prior written consent of the Association, do any act that would impair the safety of property or impair any easement appurtenant to the Project.

6.6 **No Obstructions.** There shall be no obstruction of the Common Areas by any Owner. Owners shall neither store nor leave any of their property in the Common Areas, except with the prior written consent of the Association. Specifically, without limiting the generality of the foregoing, no vehicles of any kind may be parked at any time on any of the Common Areas, which include without limitation all of the streets within the Project.

6.7 **Prohibition of Damage and Certain Activities.** Except with the prior written consent of the Association, nothing shall be done or kept in or on any Lot, in the Common Areas, or in any other part of the Project which may result in cancellation or any insurance on the Project or any part thereof, nor shall anything be done or kept in or on any Lot or Unit which may increase the rate of insurance on the Project or any part hereof over that which the Association, but for such activity, would have to pay. Nothing shall be done or kept in or on any Lot or Unit or in the Common Areas or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit, or other validly imposed requirement of any governmental authority. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or guest or invitee of any Owner, and each Owner shall indemnify and hold the Association and other Owners harmless against all loss resulting from any such damage or waste caused by such Owner, his guests, lessees, licensees, or invitees.

6.8 **Rules and Regulations.** The Owners shall comply with all of the rules and regulations governing use of the Common Areas, as such rules and regulations may from time to time be adopted, amended, or revised by the Board of Trustees.

6.9 **Construction Period Exemption.** During the course of actual construction of any structures or improvements which are permitted to be located on the Project, the provisions, covenants, conditions, and restrictions contained in this Declaration shall be deemed waived to the extent necessary or convenient to permit such construction; provided, however, that during the course of such construction, nothing shall be done which would result in a violation of any of said provisions, covenants, conditions, or restrictions following completion of such construction.

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6.10 PETS

- a. No pet greater than 30 pounds in weight or greater than 18 inches in height (measured at the back hips) shall be allowed at Farr Orchard. All pets in violation of either of these restrictions shall be strictly prohibited and promptly removed from Farr Orchard and the owner of the pet shall pay all costs and attorney fees incurred in removing the pet. The Board shall have authority to order any pets removed that are brought into Farr Orchard after the date of this amendment that are in violation of these restrictions. The refusal of a resident to allow verification of a pet's weight by the Board shall be conclusive proof of violation of this provision. A pet includes any animal residing at Farr Orchard for more than 3 days in any one year period.
- b. One pet per unit may be allowed at Farr Orchard upon the written approval of the Board, which shall be granted when a unit owner or resident agrees to abide by the provisions set forth herein. Under no circumstances may a pet be present on the Common Areas unless the pet is on a leash or held by a person.
- c. Under no circumstances may a pet reside at Farr Orchard or shall the Board approve any application to bring a dog, cat or pet to Farr Orchard unless the agreements contained in the Farr Orchard Pet Agreement are first made in writing by the resident making the application.
- d. The Board shall have authority to order the removal of any dog, cat or pet, if, at any time, the resident possessing the animal fails to live up to the representations made in the Pet Agreement, if the animal causes or creates a nuisance or disturbance, or if the animal demonstrates any type of threatening or aggressive behavior toward humans or other animals.
- e. No animals, livestock or poultry will be allowed, raised, bred or kept in any unit (with the exception of small birds and small, quiet children's pets, e.g. hamsters) or in the general or limited common areas and facilities unless they receive written approval from the Board before being brought to Farr Orchard. The Board has the right to refuse any application to bring an animal into Farr Orchard if it determines the animal could be a nuisance or could potentially damage the common area.

6.11 No Short-Term Rentals or Leases. Owners may freely rent or lease their Lots provided that such rental or lease shall comply with applicable laws, rules ordinances and regulations and such rental or lease period shall not be less than six (6) months in duration.

6.12 Parking Areas. Owners shall have the right to park automobiles in the driveway areas immediately in front of their Lot, but not elsewhere within the Project. No parking is allowed along designated private streets. The Association shall post "no parking" signage as necessary to enforce parking restrictions.

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**ARTICLE VII
THE ASSOCIATION**

7.1 **Membership.** Each Owner shall be entitled and required to be Member of the Association. Membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Lot is held by more than one person, the membership appurtenant to that Lot shall be shared by all such persons in the same proportionate interests and by the same type of tenancy in which title to the Lot is held. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be case with respect to any Lot. An Owner shall be entitled to one membership for each Lot owned by said Owner. Each membership shall be appurtenant to the Lot to which it relates and shall be transferred automatically by conveyance of that Lot. Ownership of a Lot within the Project cannot be separated from membership in the Association appurtenant thereto, and any devise, encumbrance, conveyance, or other disposition of a Lot shall be construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the Owner's membership in the Association, and the rights appurtenant thereto. No person or entity other than an Owner may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Lot.

7.2 **Board of Trustees.** The Board of Trustees shall initially consist of three (3) members which can be increased up to as many as five (5) members upon the majority vote of the existing Board of Trustees or the majority vote of the Owners at a duly called meeting of the Owners.

7.3 **Amplification.** The provisions of this Article VII may be amplified by the Articles of Incorporation and Bylaws of the Association; provided, however, that no such amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Declaration.

7.4 **Liability of Management Committee.** The Association shall indemnify every officer and member of the Board against any and all expenses, including but not limited to attorney fees reasonably incurred by or imposed upon any officer or member of the Board in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer or member of the Board. The officers and members of the Board shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers and members of the Committee shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or members of the Board may also be Members of the Association), and the Association shall indemnify and forever hold each such officer and member of the Board free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or member of the Board, or former officer or member of the Board, may be entitled. The Association shall, as a common expense, maintain adequate general liability, officer's, and director's insurance coverage to fund this obligation, if such insurance is reasonably available

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**ARTICLE VIII
CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

8.1 **The Common Areas.** The Association shall be responsible, as described in Section 4.4, and subject to the rights and duties of the Owners as set forth in this Amended Declaration, for the exclusive management and control of the Common Areas and all improvements thereon. In particular, the Association shall be responsible for maintenance of the private roads and associated improvements located in the Project. Except as otherwise provided for in this Declaration, the Association shall also be responsible for maintenance, repair, and replacement of all improvements or other materials located upon or used in connection with the Common Areas. The specification of duties of the Association with respect to particular Common Areas shall not be construed to limit its duties with respect to other Common Areas, as set forth in the first sentence of this Section. All goods and services procured by the Association in performing its responsibilities under this Section shall be paid for with funds from the Common Expense Fund.

8.2 **Manager.** The Association may by written contract delegate in whole or in part to a professional Manager such of the Association's duties, responsibilities, functions, and powers hereunder as are properly delegable. The services of any Manager retained by the Association shall be paid for with funds from the Common Expense Fund.

8.3 **Miscellaneous Goods and Services.** The Association may obtain and pay for the services of such personnel as the Association shall determine to be necessary or desirable for the proper operation of the Project, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Project, the enforcement of this Amended Declaration, or any other matter. In addition to the foregoing, the Association may acquire and pay for out of the Common Expense Fund water, sewer, garbage collection, electrical, gas, and other necessary or desirable utility services for the Common Areas and insurance bonds, and other goods and services common to the Lots.

8.4 **Real and Personal Property.** The Association may acquire, hold and own real, personal, and mixed property of all types for the use or benefit of all of the Owners and may dispose of such property by sale or otherwise. All of the Common Area has been deeded by Declarant to the Association. The maintenance, repair and replacement of all such property shall be paid for out of the Common Expense Fund and all proceeds from the disposition thereof shall become part of such Fund.

8.5 **Rules and Regulations.** The Association by action of its Board of Trustees may make reasonable rules and regulations governing the use of the Lots and of the Common Areas, which rules and regulations shall be consistent with the rights and duties established in this Declaration. The Association may take judicial action against any Owner to enforce compliance with such rules and regulations or other obligations of Owners arising hereunder, or to obtain damages for noncompliance therewith, as permitted by law. The Association is empowered to adopt rules allowing for the termination of utilities upon non-payment of fees, as provided in Utah Code Annotated § 57-8a-204, to adopt rules for the collection of lease payments from tenants as provided in Utah Code Annotated § 57-8a-205, and to adopt rules allowing the Association to assess a fine against those residents, owners or tenants who violate the Association CC&Rs, bylaws or rules, which rules shall be similar and

consistent with those permitted for Utah Condominium Associations in Utah Code Annotated § 57-8-37. In the event of such judicial action, the Association shall be entitled to recover its costs, including reasonable attorney fees, from the offending Owner.

8.6 **Granting of Easements.** The Association may, without the vote or consent of the Owners or of any other person, grant or create, on such terms as it deems advisable, utility, ingress, egress, construction and similar easements over, under, across, and through the Common Areas.

8.7 **Implied Rights.** The Association may exercise any right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably necessary to effectuate any such right or privilege.

8.8 **Reserves.** The Association shall maintain an adequate reserve fund for maintenance, repairs and replacement of those Common Areas that must be replaced on a periodic basis, and such reserves shall be funded from the monthly assessments described in Article IX below.

8.9 **Lots and Units.** The Association shall be responsible for the maintenance, replacement and repair of the following exterior portions of the buildings: all roofs, siding, brick, stucco, exterior water pipes until such point as the water pipe enters a building. Costs to maintain, replace and repair these items shall be paid as a Common Expense. Each Owner of a Unit shall be responsible for the cost of maintaining, repairing and replacing the following portions of the building: windows and glass, exterior doors, and garage doors.

ARTICLE IX ASSESSMENTS

9.1 **Agreement to Pay Assessments.** Declarant, for and as the owner of the Project and every part thereof on the date hereof, hereby covenants, and each Owner of a Lot by the acceptance of instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association, to pay to the Association all assessments, both regular and special, made by the Association for the purposes provided in this Declaration. Such assessments shall be fixed, established and collected from time to time as provided in this Article IX.

9.2 **Regular Assessments.** Regular assessments shall be computed and assessed against all Lots in the Project as follows:

(a) **Common Expenses.**

(I) **Annual Budget.** On or before the 1st day of December of each year, the Association shall prepare, or cause to be prepared, an operating budget setting forth an itemized statement of the anticipated receipts and disbursements for the coming calendar year and taking into account the general condition of the Project. Each such budget, together with a written statement from the Association outlining a plan of operation for the year in question and justifying in every important particular the estimates made, shall be submitted to the Members on or before the 15th day of December of each year. Such budget, with any changes therein, shall be adopted by the Members

at each annual meeting of the Members. Said operating budget shall serve as the basis for the schedule of proposed monthly assessments for the annual period for which it is prepared. Said budget shall also constitute a major guideline under which the Association shall operate during such annual period.

(ii) **Basis of Annual Budget.** The annual budget shall be based upon the Association's estimates of the cash required to provide for payment of expenses ("Common Expenses") arising out of or connected with maintenance and operation of the Common Areas and the Maintained Areas. Such actual expenses and estimated expenses may include, among other things, the following: expenses of management; governmental taxes and special assessments; premiums for all insurance that the Association is required or permitted to maintain; repairs and maintenance; wages for Association employees, including fees for a Manager, if any; utility charges; legal and accounting fees; any deficit remaining from a previous period; creation of a reasonable contingency reserve; sinking or reserve funds required or allowed herein; and any other expenses and liabilities which may be incurred by the Association for the benefit of all of the Owners or by reason of this Declaration.

(iii) **Annual Assessments.** The Association shall establish a regular, equal monthly assessment to be paid by each Owner ("Common Expense Fund"). The dates and manner of payment shall be determined by the Association. The foregoing method of assessing the Common Expenses to the Owners may be altered by the Association so long as the method it adopts is consistent with good accounting practice and requires that the portion of Common Expenses borne by each Lot be equal. Each monthly installment of the regular assessment shall bear interest at the rate of one and one-half percent (1 ½ %) per month from the date it becomes due and payable until paid. Failure of the Association to give timely notice of any assessment as provided herein shall not affect the liability of the Owner of any Lot for such assessment.

(b) **Inadequate Funds.** In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Association may levy additional assessments in accordance with the procedure set forth in Section 9.3 below, except that the vote therein specified shall not be necessary.

(c) **Declarant's Obligations.** Notwithstanding the preceding provisions of this Section 9.2 to the contrary, until thirty five (35) Lots have been conveyed by Declarant to purchasers thereof, each Owner shall pay a monthly assessment of \$85.00 and Declarant shall pay each month an amount equal to the remaining balance of the Common Expenses of the Project.

9.3 **Special Assessments.** In addition to the regular assessments authorized by Sections 9.1 and 9.2 above, the Association may levy, at any time and from time to time, upon affirmative vote of at least fifty-one percent (51%) of the Total Votes of the Association, special assessments, payable over such periods of time as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Common Areas or any part thereof, or for any other expenses incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall

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be apportioned equally among and assessed equally to all Lots. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners. No payment shall be due less than thirty (30) days after such notice shall have been mailed. All unpaid portions of any special assessment shall bear interest at the rate of one and one-half percent (1 ½ %) per month from the date such portions become due until paid.

9.4 **Lien for Assessments.** All sums assessed to the Owner of any Lot within the Project pursuant to the provisions of this Article IX, together with interest thereon as provided herein, shall be secured by a lien on such Lot in favor of the Association. To evidence a lien for sums assessed pursuant to this Article IX, the Association may prepare a written notice of lien in conformance with Utah law setting forth the amount of the Assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot, and a description of the Lot. Each Owner shall be deemed to have consented to the filing of a notice of lien against such Owner's Lot. Such notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the office of the Weber County Recorder. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed in the State of Utah. In any such foreclosure, 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 in at any foreclosure sale, and to own, lease, mortgage or convey the subject Lot.

9.5 **Personal Obligation of Owner.** The amount of any regular or special assessment against any Lot shall be the personal obligation of the Owner of such Lot to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Lot, or by waiving any services or amenities. In the event of any suit to recover a money judgment for unpaid assessments hereunder the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorney's fees.

9.6 **Statement of Account.** Upon written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Lot and payment of any reasonable fee assessed, the Association shall issue a written statement setting forth the following: (a) the amount of the unpaid assessments, if any, with respect to such Lot, and (b) the amount of the current regular assessment with respect to such Lot and the date such assessment becomes or became due. Such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith.

9.7 **Personal Liability of a Purchaser.** A purchaser of a Lot shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Lot up to the time of the grant of conveyance; provided, however, that the provisions of this Section shall not prejudice the purchaser's right to recovery from the seller of the amount of such assessments paid by the purchaser for such assessments.

9.8 **Assessments Part of Common Expense Fund.** All funds received from assessments under this Article IX shall be a part of the Common Expense Fund.

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9.9 **Amendment of Article.** Except as may be necessary to conform to the law, as it may be amended from time to time, this Article IX shall not be amended unless the Owners of all Lots in the Project unanimously consent and agree to such amendment by a duly recorded instrument.

ARTICLE X INSURANCE

10.1 **Types of Insurance.** The Association shall obtain and keep in full force and effect at all times the following types of insurance coverage, provided by companies licensed to do business in the State of Utah:

(a) **Fire and Casualty Insurance.** A policy or policies of insurance on the Common Areas, Units and buildings of the Project in such amounts as shall provide for replacement thereof in the event of damage or destruction from casualty against which such insurance is customarily maintained by other projects similar in construction, design, and use. Such insurance shall include fire and extended coverage, vandalism and malicious mischief, and such other risks and hazards against which the Association shall deem it appropriate to provide insurance protection to the Common Areas and to the improvements, Units and buildings on the Lots. The Association may comply with the above requirements by the purchase of blanket coverage and may elect such "deductible" provisions as in the Association's opinion are consistent with good business practice. The Association shall not be responsible for nor purchase insurance coverage on the contents of the Units. Each Owner is required to obtain insurance (renters or condominium unit owners coverage) for their own protection and benefit and as a requirement of any loan they may have on their Unit, which Owner's insurance is for the purpose of insuring the contents, appliances and interior portions (from the sheetrock in, carpet up and ceiling down) of the Unit against fire damage, water damage, water pipe damage, theft and vandalism, plus those additional types of losses normally covered by condominium insurance that are not covered under the Association's fire policy. Each Owner shall provide a copy of this Article X to their insurance agent to make sure they obtain adequate and complete insurance coverage.

(b) **Public Liability and Property Damage Insurance.** The Association shall obtain a broad form of comprehensive public liability insurance coverage for the Project, in such amounts and in such forms as it deems advisable to provide adequate protection against liability for personal injury, death and property damage. Coverage shall include without limitation, liability for operation of automobiles on behalf of the Association and all activities in connection with the ownership, operation, maintenance, and other use of the Project.

(c) **Worker's Compensation Insurance.** Worker's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association, if any, in the amounts and in the forms now or hereafter required by law.

(d) **Fidelity Insurance or Bond & Directors and Officers Insurance.** Fidelity insurance or a bond in such amounts and in such forms as the Association deems appropriate to cover against dishonesty or employees or the Manager, destruction or disappearance of money or securities, and forgery, and adequate director's and officer's liability insurance (aka Errors and omissions insurance).

10.2 **Form of Insurance.** Insurance coverage on the Project, insofar as possible, shall be in the following form:

(a) **Casualty and Flood Hazard Insurance.** Casualty and hazard insurance in a form or forms naming the Association as the insured, as trustee for the Owners and for Declarant, whether or not Declarant is an Owner, and which policy or policies shall specify the interest of each Owner (Owner's name and Lot number), and shall contain a standard, noncontributory mortgagee clause in favor of each Mortgagee which from time to time shall give notice to the Association of its Mortgage. The Association shall furnish to each Owner, and to each Mortgagee requesting in writing the same, a certificate of coverage, including an identification of the Owner's interest.

(b) **Public Liability and Property Damage Insurance.** Public liability and property damage insurance which names the Association as the insured, as trustee for each Owner, for the Manager, if any, and for Declarant, whether or not Declarant is an Owner, and which protects each Owner, the Manager, if any, and Declarant against liability for acts or omissions of any of them in connection with the ownership, operation, maintenance, or other use of the Project.

10.3 **Additional Coverage.** The provisions of this Declaration shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required by this Declaration in such amounts and in such forms as the Association may from time to time deem appropriate.

10.4 **Adjustment and Contribution.** Exclusive authority to adjust losses under the insurance policies hereafter in force on the Project shall be vested in the Association. In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees.

10.5 **Insurance Carried by Owners.** Each Owner is responsible for and shall obtain insurance, at his own expense, providing coverage upon personal property located on his own Lot and/or in his Unit, and for general liability coverage, including without limitation, coverage for personal injury, property damage, and such other risks as each Owner may deem appropriate; provided that if the insurer under said policy is the insurer under any policy issued pursuant to Section 10.1 through 10.3 above, then any insurance policy obtained by an Owner shall provide that it does not diminish the insurance carrier's coverage for liability arising under any of the insurance policies obtained by the Association pursuant to this Article. The Association shall have an obligation and responsibility to carry insurance on the Lots, or any improvements located on the Lots.

10.6 **Review of Insurance.** The Association shall review annually the coverage and policy limits of all insurance on the Project and shall adjust the same at its discretion. Such annual review may include an appraisal of the improvements in the Project by a representative of the insurance carrier or carriers providing the policy or policies on the Project, or such other qualified appraisers as the Association may select.

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**ARTICLE XI
DAMAGE OR DESTRUCTION**

11.1 **Association as Attorney in Fact.** All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in fact in their name, place and stead for the purpose of dealing with the Common Areas, Lots, Units and buildings of the Project upon their damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from Declarant or any Owner shall constitute an appointment by said grantee of the Association as his attorney in fact as herein provided. As attorney in fact, the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, deed or other instrument with respect to the interest of an Owner in the Common Areas, Lots, Units and buildings which may be necessary or appropriate to execute the powers herein granted.

11.2 **Total Destruction.** If damage or destruction occurs in or to the Project that is so extensive that 67% of the Owners of Lots in the Project vote to not rebuild, repair or reconstruct the Common Areas, Lots, Units or buildings damaged or destroyed, then in such event and upon written agreement of 67% of the Owners, this Declaration shall be terminated, and each Owner shall own his Lot, and all Owners together shall own all Common Areas as tenants in common, and there shall be no obligation to repair or reconstruct the damaged portions of the Common Areas. Upon the dissolution of the Project as herein provided, a notice of such shall be filed with the Weber County Recorder, and upon filing of such notice, the following shall occur:

(a) The Common Areas shall be deemed to be owned in common by the Owners as tenants in common on an equal, undivided basis;

(b) Any liens affecting any of the Lots shall remain a lien on their respective Lots, but also shall be deemed to be transferred, in accordance with the existing priorities, to the undivided interest of the respective Owner in the Common Areas;

(c) If 67% of the Total Votes of the Association so elects within ninety (90) days after the damage has occurred, and if allowed by the applicable governmental authorities, the Common Areas shall be dedicated as public roads in accordance with applicable statutes and ordinances, and all Owners shall join in such dedication; and

(d) If the option described in Section 11.2 (c) above is not elected, the Common Areas shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of any sale resulting from such suit for partition, together with the net proceeds of the insurance on the Project, if any, shall be considered as one fund and shall be divided equally among all of the Owners, after first paying out of the respective share of each Owner, to the extent sufficient for such purpose, all liens on the undivided interest in the Project owned by such Owner.

11.3 **Partial Destruction.** As long as 67% of the Owners of Lots so elect, upon the damage or destruction of any portion of the Common Areas, Lots, Units or buildings, the Association shall proceed to repair and reconstruct the Common Areas, Lots, Units and buildings. The Association shall use insurance proceeds from the insurance it is obligated to carry to accomplish such repair and reconstruction. In the event insurance proceeds are insufficient to accomplish the

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repair and reconstruction as required herein, then the Association shall levy a special assessment against all Owners pursuant to the provisions of Article IX above to collect funds necessary to accomplish such repairs and reconstruction. (For purposes herein, Partial Destruction means greater than 10% and less than 50% of the Common Area, Lots, Units and buildings are destroyed or rendered uninhabitable).

11.4 **Repair or Reconstruction.** As soon as practicable after receiving estimates on the cost of repair or reconstruction, the Association shall, if repair or restoration is to occur, diligently pursue to completion the repair or reconstruction of that part of the Common Areas, Lots, Units and buildings damaged or destroyed. The Association may take all necessary or appropriate action to effect repair or reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith.

11.5 **Disbursement of Funds for Repair or Reconstruction.** If repair or reconstruction is to occur, then the insurance proceeds held by the Association and any amounts received from assessments shall constitute a fund for the payment of the costs of such repair and reconstruction. It shall be deemed that the first monies disbursed in payment for the costs of such repair or reconstruction shall be made from insurance proceeds; if there is a balance after payment of all of the costs of such repair or reconstruction, such balance shall be distributed equally to the Owners.

ARTICLE XII CONDEMNATION

12.1 **Condemnation.** If at any time or times all or any part of the Common Areas shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of the Common Areas in lieu of condemnation, but under threat of condemnation, shall be deemed to be taken by power of eminent domain.

12.2 **Proceeds.** All compensation, damages, and other proceeds from any such taking by power of eminent domain shall be allocated among and distributed to the Owners in proportion to and based on the number of Lots in the Project. Such distribution shall be made by check payable jointly to the respective Owners and their respective Mortgagees, as appropriate.

ARTICLE XIII COMPLIANCE WITH DECLARATION AND BYLAWS

13.1 **Compliance.** Each Owner shall comply with the provisions of this Amended Declaration, the Articles of Incorporation and Bylaws of the Association, rules and regulations promulgated by the Association, and the decisions and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Association or by an aggrieved Owner.

13.2 **Enforcement and Remedies.** The obligations, provisions, covenants, restrictions and conditions contained in this Amended Declaration, or in any supplemental or amended Declaration,

enforceable against the Association, shall be enforceable by Declarant or by any Owner of a Lot, by a proceeding for a prohibitive or mandatory injunction. The obligations, provisions, covenants, restrictions and conditions contained in this Amended Declaration, or in any supplemental or amended Declaration, enforceable against an Owner or any other person, shall be enforceable by Declarant or the Association by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid.

ARTICLE XIV MISCELLANEOUS

14.1 **Collection of Assessments from Tenants** If an Owner shall at any time rent or sublet his Unit to tenant, and the Owner shall default for a period of one month in the payment of any assessments, the Association may, at its option and in compliance with Utah Code Annotated, § 57-8a-205, so long as such default shall continue, demand and receive from any tenant or subtenant of the Owner occupying the Unit, the rent due or becoming due. The rent paid by the tenant to the Association shall be applied to the Owner's delinquent assessment and any rent in excess of the delinquent assessment shall be paid to the Owner. The payment of an assessment by the tenant to the Association under the terms of this paragraph shall not be grounds by the Owner for an action against the tenant for breach of contract, unlawful detainer or eviction. Every Owner is bound by the terms of this paragraph in dealing with the Owner's tenants. Nothing herein shall be construed to relieve an Owner of his personal obligation to pay assessments to the Association.

14.2 **Non-Judicial Foreclosure.** All costs, expenses, assessments and fees owed to the Association for Common Expenses may be secured by a lien, which lien may be foreclosed in the same manner as foreclosures of deeds of trust under Utah law. The lien shall also secure and the Owner shall also be required to pay to the Association any assessments against the Unit which shall become due during the period of foreclosure. The Association shall have the right and power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof. In any foreclosure or sale, the owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney fees, and a reasonable rental for the Unit during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. If the Association elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Unit hereby irrevocably appoints the attorney of the Association, provided he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In addition, Owner hereby transfers in trust to said Trustee all of his right, title, and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein.

14.3 **Late Fees.** Each monthly payment of Common Area Assessments is due by the 15th of the month and shall incur a late fee of \$25.00 if not paid when due.

14.4 **Restriction on the Number of Rentals.** The homeowners of Farr Orchard Planned Unit Development ("PUD") desire to preserve and enhance the quality of life at Farr Orchard and

have purchased their homes at Farr Orchard for the purpose of using their home as an owner occupied single family residence. The homeowners believe the PUD living concept was developed to create a real property interest wherein individuals could own their property and enjoy the benefits that accompany ownership of real property, including the stability associated with real property ownership, both individually and as a neighborhood, as well as the security that comes to a community by having residents who are owners and are committed to the long-term welfare and good of the community. Because the homeowners at Farr Orchard own a shared interest in the Common Area, the Common Area should be used and shared by those who own an interest in the Common Area and generally not be used by those who do not have an ownership interest but who rent an interest in a Unit. The homeowners also desire to live in a PUD community that is orderly, peaceful, well maintained and desirable, and that will allow for and protect the comfortable enjoyment of all residents of Farr Orchard PUD. The homeowners realize that the value of their property and their home is directly related to the ability to sell their home, that the ability to sell their home is directly related to the ability of prospective borrowers to obtain financing, and that underwriting standards at financial institutions and secondary mortgage markets restrict the percentage of non-owner occupied homes that can exist before a buyer will not be able to qualify for favorable and competitive market interest rates and financing terms. Therefore it has been determined that it is imperative that the number of renters be restricted at Farr Orchard. To accomplish the homeowners' objectives, the following provisions are adopted restricting homes from being rented at Farr Orchard:

(a) **Leasing of Homes.** Not more than ten percent (10%) of the homeowners at Farr Orchard PUD shall be permitted to rent or lease their homes at the same time. No home may be rented for more than a total of twelve (12) months in any twenty-four month period. All leases, subleases or assignments of leases and all renewals of such agreements shall be first submitted to the Board for compliance with this requirement. If ten percent (10%) of the homes at Farr Orchard are leased or are occupied by a non-homeowner, any homeowner desiring to lease his or her home or desiring to have his or her home occupied by a non-homeowner, shall notify the Board in writing of their desire to lease their home. The Board shall maintain a list of those homeowners who have notified it of a desire to lease their home and shall grant permission to homeowners to lease their home in the same order the Board receives written notice from the homeowners, but such permission shall not be granted until less than 10% of the homes at Farr Orchard are leased or occupied by a non-homeowner.

(b) The restrictions herein shall not apply if a homeowner moves from his home (a) due to military, humanitarian, religious or charitable activity or service, and (b) leases his home with the intent to return to occupy his home when the military, humanitarian, religious or charitable service terminates. Nor shall the restrictions herein apply if a parent or child leases their home to family members (parent, child or siblings). The provisions of this paragraph 14.4 shall not apply to any Owner who is renting his or her Unit at the time this paragraph 14.4 is adopted; however, any person who purchases a Unit from an Owner who is currently renting his or her Unit shall be subject to this paragraph 14.4. The Declarant shall be exempt from the provisions of this paragraph 14.4 for a period of two years from the date Declarant completes construction of its final Unit at Farr Orchard, after which Declarant may not rent any Unit still owned by Declarant.

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**ARTICLE XV
DECLARANT'S SALES PROGRAM**

15.1 **Declarant's Right to Promote and Sell the Project.** Notwithstanding any other provisions of this Declaration, until Declarant ceases to be an Owner ("Occurrence"), Declarant, its successor or assigns shall have the following rights in furtherance of any sales, promotional or other activities designed to accomplish or facilitate the sale of Lots owned by Declarant:

(a) **Sales Offices and Model Lots.** Declarant, its successors and assigns, shall have the right to maintain sales offices and model homes on Lots. Sales offices may be located on any Lot (at any location) owned by Declarant or may be located on any of the Common Areas of the Project. Declarant shall have the right to maintain any number of model homes it may desire using the Lots Declarant owns.

(b) **Promotional Devices.** Declarant, its successors and assigns, shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners and similar devices at any place or places on the Common Areas or Lots owned by Declarant, but any such devices shall be of sizes and in locations as are reasonable and customary.

(c) **Right to Use the Common Areas.** Declarant shall have the right to use the Common Areas of the Project to entertain prospective purchasers or to otherwise facilitate Lot sales, provided said use is reasonable as to both time and manner.

15.2 **Declarant's Rights to Relocate Sales and Promotional Activities.** Declarant shall have the right from time to time to locate or relocate its sales offices, model homes and signs, banners and similar devices, but in connection with each such location or relocation Declarant shall observe the limitations imposed by the preceding portions of this Article. Within a reasonable period of time after the happening of the Occurrence, Declarant shall have the right to remove from the Project any sales structures, fixtures, improvements, signs, banners and similar sales materials and properties.

15.3 **Limitation on Improvements by Association During Sales Program.** Prior to the Occurrence, the Association shall not, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as they existed when initially constructed.

**ARTICLE XVI
MORTGAGEE PROTECTION**

16.1 **Mortgage Protection.** No breach of any of the covenants, conditions, restrictions, and limitations contained herein shall defeat or render invalid the lien of any Mortgage made in good faith and for value; provided, however, that all such covenants, conditions, restrictions and limitations contained herein shall be binding upon an Owner whose title is derived through foreclosures or trustee's sale.

16.2 **Priority of Liens.** No enforcement of any lien provision herein contained shall defeat

or render invalid the lien of any Mortgage. All sums assessed in accordance with the provisions herein shall constitute a lien on each respective Lot prior and superior to all other liens except (1) all taxes, bonds, assessments, and other levies which, by law, would be superior thereto; and (2) the lien or charge of any recorded Mortgage on such Lot made in good faith and for value and recorded prior to the date on which any such assessment or assessments become due.

16.3 **Prior Liens Relate Only to Individual Lots.** All taxes, assessments and charges which may become liens prior to the first Mortgage under local law shall relate only to the individual Lot and not to the Project as a whole.

16.4 **Mortgage Holder Rights in Event of Foreclosure.** Any Mortgagee of a Mortgage of record which obtains title to a Lot by the foreclosure of the Mortgage on the Lot or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid assessments and charges against the Lot which accrued prior to the date of the acquisition of title to such Lot by such acquirer.

16.5 **Amendment.** No provision of this Article XVI shall be amended without the prior written consent of at least two-thirds of all first Mortgagees as appear on the official records of Weber County, Utah, as of the date of such amendment. However, should this Article XVI be amended without the prior written consent of at least two-thirds of all first Mortgagees, the first Mortgagees who have received a security interest in a Unit as indicated on the official records of Weber County, Utah, will not be subject to the amendment but will be bound by the provisions of Article XVI that existed of record at the time the first Mortgagee received a security interest. Any Mortgagee who receives a security interest in a Unit will be bound by the provisions of this Article XVI that existed of record at the time the Mortgagee received a security interest in a Unit.

ARTICLE XVII GENERAL PROVISIONS

17.1 **Intent and Purpose.** The provisions of this Declaration and any supplemental or amended Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a planned unit development project. Failure to enforce any provision, restriction, covenant, or condition in this Declaration, or in any supplemental or amended Declaration, shall not operate as a waiver of any such provision, restriction, covenant, or condition or of any other provisions, restrictions, covenants, or conditions.

17.2 **Construction.** The provisions of this Declaration shall be in addition and supplemental to all applicable provisions of law. Wherever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders. The Article and Section headings set forth herein are for convenience and reference only and are not intended to describe, interpret, define or otherwise affect the context, meaning, or intent of this Declaration or any Article, section or provision hereof. The provisions hereof shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

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17.3 **Registration of Mailing Address.** Upon the sale of any lot, the Owner of such Lot shall register from time to time with the Association his current mailing address. All notices or demands intended to be served upon any Owner may be sent by first class U.S. mail, postage prepaid, addressed to the Owner at his registered mailing address, or, if no address has been registered, to the Lot of such Owner. All notice or demands intended to be served upon the Association may be sent by first class U.S. registered or certified mail, postage prepaid, addressed to the Association at the address of its offices as may be furnished to the Owners in writing from time to time. Any notice or demand referred to in this Declaration shall be deemed given three days after deposited in the U.S. mail, postage prepaid, and in the form provided for in this Section.

17.4 **Audit.** Any Owner may at any reasonable time, upon appointment and at his own expense, cause an audit or inspection to be made of the books and records maintained by the Association.

17.5 **Amendment.** Except as otherwise provided herein, this Amended Declaration may be amended if Owners holding at least fifty-one percent (51 %) of the Total Votes of the Association consent and agree to such amendment at a meeting of the Owners duly held in accordance with the provisions of the Articles, Bylaws, and this Amended Declaration, which properly approved amendments shall be evidenced by instruments which are duly recorded in the office of the County Recorder for Weber County, State of Utah.

17.6 **Effective Date.** This Declaration shall take effect upon recording.

17.7 **Agent for Service.** The person to receive service of process for the Association shall be the then current registered agent of the Association as shown on the records maintained in the office of the Division of Corporations and Commercial Code of the State of Utah.

17.8 **Limitation on Association's Liability.** The Association shall not be liable for any failure of water service or other utility service to be obtained and paid for by the Association hereunder, or for injury or damage to any person or property caused by the elements or by another Owner or person in the Project, or resulting from electricity, water, rain, snow or ice. No diminution or abatement of any assessments under this Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs, maintenance or improvements to the Project or any part thereof, or from any action taken to comply with any law, ordinance or order of a governmental authority.

17.9 **Owner's Obligations.** All obligations of an Owner under and by virtue of the provisions contained in this Amended Declaration shall continue, notwithstanding that he may be leasing, renting, or selling on contract his Lot. The Owner of a Lot shall have no obligation for expenses or other obligations accruing after he conveys title to such Lot.

17.10 **Hold Harmless of Ogden City.** The Association acknowledges that Ogden City has waived the requirement that the open canal in the Common Areas be piped or fenced, on the condition that Ogden City be held harmless for not requiring that the canal be piped or fenced. Accordingly, the Association shall assume all obligations related to, and shall indemnify, defend, release and hold harmless Ogden City, its officers, employees, and agents, from and against all loss, damage, personal

injury or death, all suits, claims, demands or actions, liabilities, judgments, costs and attorney's fees, relating to, arising from, or attributable to, directly or indirectly, in whole or in part to, (I) the granting of the waiver that such canal be piped or fenced, (ii) the failure to pipe or fence such canal, or (iii) the open and accessible condition of such canal.

17.11 **Conditional Use Permit; Restriction or Amendments or Site Modifications.** It is hereby acknowledged and understood that this Planned Residential Unit Development (PRUD) has been granted a Conditional Use Permit by Ogden City based upon its compliance with Ogden City zoning ordinances. Amendments to the Declaration; substantive changes to the Plat, the Common Areas, the approved site plan, or landscaping plan, or trial system plan; or failure to maintain improvements or design elements which qualified the development for bonus density points, may require an amendment to the Conditional Use Permit and failure to seek such amendment may result in ordinance violation or a revocation of the Conditional Use Permit. In particular, but not by way of limitation, any amendment to the Declaration or Plan, or changes to the site which involve any of the following changes to density bonus requirements shall require an amendment to the Condition Use Permit:

- (a) Removal of or changes to the theme lighting used throughout the Project for street lighting, lighting of walkways, entrances and building exteriors;
- (b) Removal of the entry way signs;
- (c) Changes to the minimum elements provided in the approved landscaping plans for the Common Areas and along the streets, including removal of any of the installed trees below the required levels or failure to maintain the required irrigation system;
- (d) Removal of any of the approved amenities within the Common Areas as provided in the approved site plan, including the trail system within the Common Areas;
- (e) Removal or enclosure of the garages required for each dwelling unit;
- (f) Failure to maintain the common theme established for architectural details of all buildings.

17.12 **City Access.** The City of Ogden and any other governmental or quasi-governmental body having jurisdiction over the Project shall have a right of access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained with the Common Area for the purpose of providing police and fire protection, providing emergency medical services, transporting school children, and providing any other governmental or municipal service.

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CERTIFICATION

It is hereby certified that owners holding more than fifty-one (51%) of the total votes of the Association have voted to approve this Amended Declaration.

IN WITNESS WHEREOF, this 16 day of November, 2004

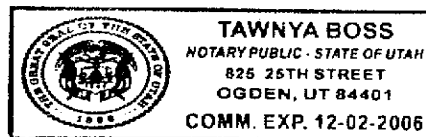
FARR ORCHARD OWNERS ASSOCIATION

By [Signature]
President

STATE OF UTAH)
 :SS.
COUNTY OF WEBER)

On this 16 day of November, 2004, personally appeared before me Tawnya Boss who, being by me duly sworn, did say that he is President of the Farr Orchard Owners Association and that the within and foregoing instrument was signed in behalf of said Owners Association and he duly acknowledged to me he executed the same.

Tawnya Boss
Notary Public



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EXHIBIT "A"

The following units in the buildings indicated, in Farr Orchard, Amended PRUD, Ogden City, Weber County, Utah

Lots 1 through 35, Farr Orchard Phase 1, Amended PRUD, Ogden City, Weber County, Utah. (Tax I.D. # 13- 219-0001 through 0035) F

Lots 36 through 63, Farr Orchard Phase 2, Amended PRUD, Ogden City, Weber County, Utah. (Tax I.D. # 13-223-0001 through 0028) F

Lots 64 through 89, Farr Orchard Phase 3, Amended PRUD, Ogden City, Weber County, Utah. (Tax I.D. # 13-226-0001 through 0026) F

November 11, 2004D