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ERNEST D ROWLEY, WEBER COUNTY RECORDER
10-OCT-12 1200 AM FEE \$112.00 DEP SGC
REC FOR: FARR ORCHARD HOA

**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 10th day of October, 2012, by the Farr Orchard Owners Association, Inc. ("Association") after having been voted on and approved by the owners of lots ("Lot Owners" or "Members") within Farr Orchard.

RECITALS:

A. Whereas, the Farr Orchard planned unit development ("Farr Orchard") that is the subject of this Amended Declaration is situated in and upon that certain real property located in Weber County, State of Utah, as specifically described in Exhibit "A" attached hereto and incorporated herein by this reference; and

B. Whereas, Farr Orchard was created pursuant to a Declaration of Covenants, Conditions and Restrictions for Farr Orchard, recorded in the Weber County Recorders office on June 6, 2000, as entry number 1709671, in book 2075, beginning on page 2568, ("Enabling Declaration"); and

C. Whereas, the Enabling Declaration was amended and replaced by an Amended Declaration of Covenants, Conditions and Restrictions for Farr Orchard, recorded on November 17, 2004, in the Weber County Recorders office as entry number 2068853 ("2004 Amended Declaration"); and

D. Whereas, the Members of the Association desire to make this amendment to preserve and enhance the quality of life at Farr Orchard;

NOW THEREFORE, the Members of the Association hereby amend the 2004 Amended Declaration as follows:

AMENDMENT

ARTICLE I REPEAL EXISTING PROVISIONS

1.1 **Repeal of Existing Rental Provisions.** The following paragraphs in the 2004 Amended Declaration are hereby repealed:

- (a) Paragraph 6.1(b).
- (b) Paragraph 6.11.
- (c) Paragraph 14.4, including 14.4 (a) & (b).

ARTICLE II ADOPTION OF RESTRICTIONS ON RENTALS

The following is adopted as the rental policy at Farr Orchard:

WHEREAS, the Association desires to place reasonable restrictions on the number of renters who may occupy Lots at Farr Orchard and

WHEREAS, the Lot Owners at Farr Orchard desire to preserve and enhance the quality of life at Farr Orchard and have purchased their Lots at Farr Orchard for the purpose of using their Lot as an Owner occupied single family residence; and

WHEREAS, the Lot Owners have purchased a Lot in a Planned Residential Unit Development ("PRUD") because they understand the PRUD living concept was developed to create a real property interest wherein individuals could own their own real property and enjoy the benefits and stability that accompany ownership of real property, both individually and as a neighborhood, as well as the security that comes to a high density PRUD community by having residents who are Owner-occupants and are committed to the long-term welfare and good of the community, and

WHEREAS, because the Lot Owners at Farr Orchard own a shared and undivided interest in the Association common area, the Lot Owners believe the common area should be used and shared in common by those who own an interest in the common area and not with those who have no ownership interest in the common area; and

WHEREAS, the Lot Owners realize the value of their Lots is directly related to the ability to sell their Lots, that the ability to sell their Lots is directly related to the ability of

prospective borrowers to obtain financing, and that underwriting standards at financial institutions, government insurance programs and mortgage markets restrict the percentage of non Owner occupied Lots that can exist in a PRUD; and further, when too high a percentage of non Owner occupied Lots exist in a PRUD, a buyer will not be able to qualify for favorable and competitive market interest rates and financing terms, thus inhibiting a Lot Owner's ability to sell their Lots and depressing the value of all the Lots at Farr Orchard; and

WHEREAS, the Lot Owners have determined through years of collective experience that Lot Owners are more responsive to the needs of the PRUD community, take a greater interest in and care of the common area, and are generally more respectful of the PRUD rules; and

WHEREAS, as the result of a variety of economic factors beyond the control of the Association and the Owners, limited leasing of Lots may reduce the financial hardship to Owners who must move or sell their Lot due to circumstances beyond their control, while still protecting the integrity of Farr Orchard and permitting Farr Orchard to achieve the objectives described above.

THEREFORE, the Lot Owners hereby adopt the following restrictions on the leasing and renting of Lots within Farr Orchard:

- 2.1 **Leasing Prohibited.** The Leasing or Renting of Lots (referred to as "Lot" or "Lots") within Farr Orchard is prohibited unless the leasing is consistent with the provisions of this Amended Declaration.
- 2.2 **Limited Leasing Permitted.** Except as otherwise provided herein, no Lot may be Leased during the first twenty-four months following the date a Lot is purchased or the Owner records a deed with Weber County indicating the Owner has received title to a Lot in Farr Orchard. Thereafter, if a Lot Owner desires to Lease a Lot, he or she may do so pursuant to the provisions of this Amended Declaration, however, under no circumstances may a Lot be Leased by an Owner for a period in excess of twenty-four months.
- 2.3 **Rental Cap.** Except as otherwise provided in Sections 2.09 and 2.10 below, the number of Lots that shall be Leased at any one time shall not exceed ten percent (10%) of the Lots in Farr Orchard. There were (at the time 2004 Amended Declaration was recorded), 18 # of Lots at Farr Orchard that were being Leased (referred to herein as the "Grandfathered Lots", and listed on Exhibit "B" attached). The Grandfathered Lots may continue to be Leased until (a) the Lot Owner transfers ownership of the Lot to another person or entity, or (b) the Lot Owner occupies the Lot. The Grandfathered Lots shall be included when computing the ten percent (10%) cap on the number of rentals.
- 2.4 **No Pets in Rentals.** Pets shall not be permitted to reside in Lots that are being Leased unless the pet is a service animal.

- 2.5 **Twenty-four Month Rule.** After an Owner has owned a Lot for twenty-four months, if less than ten percent (10%) of the Lots are Occupied by non Lot Owners, an Owner may, in compliance with the provisions set forth herein, Lease his or her Lot for a period not in excess of twelve months. At the conclusion of twelve months, the Leasing Owner must terminate the Lease of the Lot. Failure of a Lot Owner to terminate a Lease will subject the Lot Owner to the provisions of Section 2.19 below.
- 2.6 **Board Approval.** All Leases, subleases, assignments of Leases, and all renewals of such agreements, including those under 2.9 and 2.10, shall be first submitted to the Farr Orchard Board who shall determine compliance with the leasing restrictions of this Amended Declaration. Any Owner who Leases a Lot without first receiving written authorization from the Farr Orchard Board of Directors, shall be in violation of this Article and subject to the provisions of Section 2.19 below.
- 2.7 **Notification of Board.** Any Lot Owner desiring to Lease his or her Lot or to have his or her Lot occupied by a non Lot Owner shall notify the Board in writing of their intent to Lease their Lot. The Board shall maintain a list of those Lot Owners who have notified the Board of an intent to Lease their Lot and shall grant permission to Lot Owners to Lease their Lot for not more than a twelve month period, which permission shall be granted in the same order the Board receives the written notice of intent to Lease a Lot from the Lot Owners. Permission shall be granted to lease a Lot only when (a) less than ten percent (10%) of the Lots are occupied by a non Lot Owner, (b) the Lot Owner is current in the payment of all common expenses, fees and fines then due to the Association, (c) the Lot Owner has made a good faith effort to sell his or her Lot by listing the Lot for sale at fair market value for a minimum of 90 days, through a licensed Utah real estate agent, prior to the date the Owner notifies the Board of his intent to Lease his Lot, and (d) the Lot Owner has not previously Leased their Lot.
- 2.8 **Rental Fee.** The Association has observed that when rentals are allowed at Farr Orchard there are increased costs to the Association. These costs result from the increased time the Association spends responding to issues associated with the rental of Lots as well as the costs from legal consultations dealing with Lease Lots. In response to these increased expenses, the Owners of Lots that are being Leased shall be assessed an additional ten dollars (\$10.00) per month for Association Common Expenses.
- 2.9 **Leasing Permitted.** The restrictions contained herein shall not apply if a Lot Owner moves from a Lot: (a) due to temporary (less than three years) humanitarian, religious or charitable activity or service, and (b) Leases the Lot with the intent to return to occupy the Lot when the humanitarian, religious or charitable service has concluded.
- 2.10 **Restrictions Not Applicable.** The restrictions herein shall not apply: (a) to a Lot Owner who is a member of the military and is required to move from the Lot during a period of military deployment and who desires to Lease the Lot during the period of deployment. As used herein "deployment" means a temporary assignment away from the Lot Owner's assigned base or station, generally not exceeding more than 18 months; (b) to a parent,

grandparent or child who leases their Lot to a family member who is a parent, grandparent, child, grandchild, or sibling of the Owner; (c) to an Owner if an employer relocates an Owner for a period of less than two years; or (d) to a Lot Owned by a trust or other entity created for estate planning purposes, if the trust or other estate planning entity was created for the estate of the current resident of the Lot or the parent, grandparent, child, grandchild, or sibling of the current resident of the Lot.

- 2.11 **Grandfather Clause.** Those Lots that were occupied by non Lot Owners at the time the 2004 Amended Declaration was recorded at the Weber County Recorders Office may continue to be Occupied by non Lot Owners until the first of the following occurs: (a) the Lot Owner transfers ownership of the Lot to another person or entity, (b) the Lot Owner occupies the Lot, or (c) an officer, Owner, member, trustee, beneficiary, director, or person holding a similar position of Ownership or control of an entity or trust that holds an Ownership interest in the Lot, transfers the Lot or Occupies the Lot.
- 2.12 **Transfer of Lot.** For purposes of Subparagraph 2.11, a transfer occurs when one or more of the following occur: (a) the owner conveys, sells, or transfers a Lot by deed to any other person; (b) the owner grants a life estate in the Lot to any other person; or (c) if the Lot is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than 75% of the business entity's share, stock, membership interests, or partnership interests in a 12-month period.
- 2.13 **Tracking of Rentals.** The Board shall create, by rule or resolution, procedures to determine and track the number of rentals and Lots in Farr Orchard that are being Leased, and shall ensure consistent administration and enforcement of the rental restrictions in this Amended Declaration.
- 2.14 **Exceptions Not Applicable.** Lots that are Leased pursuant to the exceptions contained in paragraphs 2.9 and 2.10 shall not be counted toward the cap on rental restrictions.
- 2.15 **Renting and Leasing Defined.** As used herein, "Rent" (or any variation of the word) or "Lease" (or any variation of the word) means a Lot that is owned by an Owner that is Occupied by one or more Non Owners while no Owner occupies the Lot as the Owner's primary residence. The payment of remuneration by a Non Owner to an Owner shall not be required to establish that the Non Owner is Leasing a Lot. Failure of a Non Owner to pay remuneration of any kind to the Owner shall not be considered when determining if a Lot is a Rental Lot.
- 2.16 **Non Owner Defined.** As used herein, "Non Owner" means any individual or entity that is not an Owner as shown on the records of the Weber County Recorder.
- 2.17 **Occupied Defined.** As used herein, "Occupied" means to reside in the Lot for ten (10) or more days in any thirty (30) day period. A Lot is deemed to be Occupied by a Non Owner if the Lot is Occupied by an individual(s) other than the Lot Owner and the

Owner is not occupying the Lot as the Owner's primary residence.

- 2.18 **Single Family Defined.** "Single Family" means (a) a single person living alone or with the person's children, (b) up to three unrelated persons, or (d) a married husband/wife relationship with or without children.
- 2.19 **Violation.** Any Lot Owner who violates this Amended Declaration shall be subject to a complaint for damages and/or an injunction and order seeking to terminate the lease in violation of this Amended Declaration. If the Association retains legal counsel to enforce this Amended Declaration, with or without the filing of legal process, the violating Lot Owner shall be liable for all costs and expenses incurred by the Association, including but not limited to attorney fees and court costs incurred by the Board in enforcing this Amended Declaration.
- 2.20 **Temporary Defined.** Nothing herein shall prohibit an Owner from permitting a guest or visitor from residing in his or her Lot, while the Owner is present. As used in this paragraph, "temporarily" mean for a period not exceeding fifteen (15) days in any thirty (30) day period.
- 2.21 **Severability.** 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.

**ARTICLE 3
INSURANCE**

- 3.1 **Association to Insure Lots.** The Association hereby subjects itself to the following provisions of the Community Association Act, Utah Code Ann. §§ 57-8a-401 through 407, notwithstanding anything contrary contained in Article X of the 2004 Amended Declaration.

This Amended Declaration shall take effect upon recording.

[Signatures on Following Page]

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 10TH day of October, 2012.

FARR ORCHARD OWNERS ASSOCIATION

By *[Signature]*
President

STATE OF UTAH)
 :SS.
COUNTY OF WEBER)

On this 10th day of October, 2012, personally appeared before me Wilbert van der Gappen who, being by me duly sworn, did say that (s)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 (s)he duly acknowledged to me (s)he executed the same.

[Signature]
Notary Public



EXHIBIT "A"

The following Lots 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) ✓ NP

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

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