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**NEIGHBORHOOD AMENDED AND RESTATED DECLARATION OF  
CONDOMINIUM  
FOR  
ORCHARD FARMS CONDOMINIUM,  
a part of the Orchard Farms Planned Residential Unit Development (PRUD)**

**LOCATED IN DAVIS COUNTY, UTAH**

**AFTER RECORDING PLEASE RETURN TO:  
Orchard Farms Multifamily Holdings, LLC  
Jim Seaberg  
978 East Woodoak Lane  
Salt Lake City, Utah 84117  
(801) 747-7440**

**NEIGHBORHOOD AMENDED AND RESTATED DECLARATION OF  
CONDOMINIUM  
FOR  
ORCHARD FARMS CONDOMINIUM,  
a part of the Orchard Farms Planned Residential Unit Development (PRUD)**

This Neighborhood Amended and Restated Declaration of Condominium for Orchard Farms Condominium, a part of the Orchard Farms Planned Residential Unit Development (PRUD) (the "Neighborhood Declaration") is executed by Orchard Farms Multifamily Holdings, LLC, a Utah limited liability company, of 978 East Woodoak Lane, Salt Lake City, Utah 84117 (the "Declarant").

**RECITALS**

- A. The Tract is an area featuring unique and distinctive terrain;
- B. By subjecting the Tract to this Neighborhood Declaration, it is the desire, intent and purpose of Declarant to create a Unit development in which beauty shall be substantially preserved, which will enhance the desirability of living on or visiting real estate subject to this Neighborhood Declaration, and which will increase and preserve the utility, attractiveness, quality and value of the lands and improvements therein.
- C. This Neighborhood Declaration affects that certain real property located in the City of Fruit Heights in Davis County, Utah identified with particularity in the metes and bounds description in Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter referred to as the "Tract" or the "Neighborhood").
- D. Declarant is the owner of the Tract.
- E. The Tract is subject to and bound by the Master Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements for Orchard Farms, a part of the Orchard Farms Planned Residential Unit Development (PRUD) recorded in the official records of the County Recorder of Davis County, Utah on May 16, 2011 as Entry No. 2598884 in Book 5274 at Pages 402-463, as amended and restated or supplemented (the "Master Declaration").
- F. Declarant has constructed or is in the process of constructing upon the Tract a Neighborhood development of Condominium Units or Apartments, as part of a larger planned residential unit development, which shall also include detached single family residences and Units Neighborhoods. This Tract shall include certain Buildings and Units or Apartments, an Entry Monument, and other improvements of a less significant nature. The Tract may include Common Area and Exclusive Common Area. The construction will be completed in accordance with the plans contained in the Final Plat and the Final Plat for the Orchard Farms Condominium Neighborhood to be recorded concurrently herewith.

G. Declarant intends to sell to various purchasers the fee title to the individual Units contained in the Tract, together with an appurtenant undivided ownership interest in the Exclusive Common Area and Common Area and Facilities, subject to the Final Plat for the Orchard Farms Condominium Neighborhood, Neighborhood Declaration and Master Declaration.

H Declarant desires, by filing this Neighborhood Declaration and Final Plat for the Orchard Farms Condominium Neighborhood, to submit the property and all improvements now or hereafter constructed thereon to the provisions, covenants, conditions, restrictions and easements set forth herein and in the Master Declaration.

I. The Tract is to be known as "Orchard Farms Condominium."

J. Since the completion of the Tract may be in phases, the completed Project will consist of the original phase and all subsequent phases.

K. The Neighborhood Declaration of Condominium for Orchard Farms Condominium was recorded in the office of the Davis County Recorder on May 29, 2012 as Entry No. 2664102 in Book 5531 at Pages 127-173 of the Official Records (the "Original Neighborhood Declaration").

L. The Declarant desires to amend and restate the Original Neighborhood Declaration pursuant to Section 17 of the Original Neighborhood Declaration.

M. All of the voting requirements have been satisfied.

### AGREEMENT

NOW, THEREFORE, for the reasons recited above and subject to the covenants, conditions, restrictions and easements set forth below and in the Master Declaration, Declarant hereby makes the following declaration for the Tract to be known as the Orchard Farms Condominium, a part of the Orchard Farms Planned Residential Unit Development (PRUD):

### DEFINITIONS

1. Definitions. When used in this Neighborhood Declaration (including in that portion hereof entitled "Recitals"), each of the following terms shall have the meaning indicated. Terms defined in the Master Declaration shall have the same meaning as set forth therein unless the context clearly requires otherwise. In the event of any conflict between the definitions set forth in the Master Declaration and the definitions set forth herein, the former shall in all respects govern and control.

1.1 The term Additional Charges shall mean and refer cumulatively to all collection and administrative costs, including but not limited to all attorneys fees, late

charges, accruing interest, service fees, filing and recordation fees, and other expenditures incurred or charged by the Subassociation.

1.2 The term Apartment or Apartment Unit shall mean and refer to a Unit.

1.3 The term Architectural Review Committee shall mean the person or persons appointed to review the designs, plans, specifications, homes, architecture, fencing, and landscaping within Orchard Farms Condominium Neighborhood (the "ARC").

1.4 The term Area of Neighborhood Responsibility shall mean and refer to that certain area and those certain improvements for which the Subassociation is responsible.

1.5 The term Area of Personal Responsibility shall mean and refer to that certain area and those certain improvements, such as the privately owned Unit, for which the Owner is responsible.

1.6 The term Articles of Incorporation shall mean and refer to the Articles of Incorporation of Orchard Farms Condominium Subassociation on file or to be filed with the State of Utah.

1.7 The term Assessment shall mean and refer to any amount imposed upon, assessed or charged an Owner, such as a Master Assessment and Neighborhood Assessment.

1.8 The term Board of Directors shall mean and refer to the governing board or management committee of the Subassociation.

1.9 The term Building shall mean and refer to any of the structures constructed in the Tract.

1.10 The term Bylaws shall mean and refer to the Bylaws of the Subassociation, a copy of which is attached hereto, marked Exhibit "B," and incorporated herein by this reference.

1.11 The term Capital Improvement or Addition shall mean and refer to a permanent addition to or the betterment of real property that enhances its capital value and improves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs.

1.12 The term City shall mean and refer to the City of Fruit Heights in Davis County, Utah.

1.13 The term Common Area and Facilities shall mean and refer to all real property located within the entire Orchard Farms Planned Residential Unit Development,

of which the Orchard Farms Condominium Neighborhood is a part, designated as "Common Area" in the Master Declaration and the Master Final Plat, which includes or is intended to include but is not limited to the following: Common access roads leading from the Entry or Entries to the Development to the Orchard Farms Condominium Neighborhood (excluding roads and driving lanes within the Orchard Farms Condominium Neighborhood), common landscaping (excluding landscaping within the Orchard Farms Condominium Neighborhood), common utilities (excluding power, gas and water within the Orchard Farms Condominium Neighborhood), monuments within the Common Area, and common parks (excluding open space within the Orchard Farms Condominium Neighborhood).

1.14 The term Community shall mean and refer to Orchard Farms Condominium Neighborhood or if the context clearly requires the Tract.

1.15 The term Community Standard shall mean and refer to the standard of conduct, maintenance, or other activity generally prevailing in Orchard Farms Condominium Neighborhood, as determined by the Board of Directors from time to time.

1.16 The term Covenant to Share Costs shall mean and refer to any contract, agreement, declaration of easement, licenses and/or covenant to share costs executed by the Declarant or the Subassociation and recorded in the Office of the County Recorder which creates easements for the benefit of the Owners subject to such Covenant to Share Costs, and/or which obligates the Subassociation to share the costs of maintaining certain real, personal or mixed property described therein.

1.17 The term Declarant shall mean and include Orchard Farms Multifamily Holdings, LLC and any person or persons who might acquire title from it to all or some of the unsold Condominium Units or Apartments through purchase, assignment or other transfer including foreclosure or deed in lieu of foreclosure; or, in the situation where, any person purchases all, or some of the remaining Condominium Units or Apartments in a sale in the nature of a bulk sale. The person acquiring any of such property from the Declarant shall be considered a Declarant with respect to that portion of the property so acquired and shall have the right to develop the property and/or sell such property in accordance with the terms and provisions of this Neighborhood Declaration and this Neighborhood Declaration; provided, however, a notice of succession shall be recorded in the Office of the County Recorder signed by both the current Declarant and by its successor in interest as the new Declarant.

1.18 The term Dedicated Streets shall mean and refer to those streets and cul-de-sacs within the Orchard Farms Condominium Neighborhood formally dedicated to the City or any other municipal or governmental body politic, entity or agency.

1.19 The term Delegate shall mean and refer to the designated Voting Representative of the Subassociation serving as a Director on the governing board of the Master Association.

1.20 The term Design Guidelines shall mean and refer to the design guidelines adopted by the Declaration for the improvements constructed within the Tract.

1.21 The term Developmental Rights shall mean and refer to the right granted hereunder to the Declarant, its agents, representatives, employees, successors and assigns, to develop and improve the Tract.

1.22 The term Dwelling or Dwelling Unit shall mean and refer to a Unit.

1.23 The term Eligible Guarantor shall mean and refer to a governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Subassociation in accordance with the Neighborhood Declaration.

1.24 The term Eligible Insurer shall mean and refer to an insurer of a mortgage or trust deed who has requested notice in writing of certain matters from the Subassociation in accordance with this Neighborhood Declaration.

1.25 The term Eligible Mortgagee shall mean and refer to a mortgagee, beneficiary under a trust deed, or lender who has requested notice in writing of certain matters from the Subassociation in accordance with this Neighborhood Declaration.

1.26 The term Eligible Votes shall mean and refer to those votes available to be cast on any issue before the Subassociation or the Board of Directors. A vote which is for any reason suspended is not an "eligible vote".

1.27 The term Exclusive Common Area shall mean and refer to all real property, personal property and fixtures in the Orchard Farms Condominium Neighborhood owned in common by the Unit Owners thereof including but not limited to the following items:

(a) The real property and interests in real property submitted hereby, including the entirety of the Orchard Farms Condominium Neighborhood and all improvements constructed thereon, excluding the individual Units and Common Area.

(b) All structural elements including but not limited to the foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances, and exits of the buildings located within the Orchard Farms Condominium Neighborhood;

(c) The basements, yards, gardens, open space, landscaping, parks and play areas, roads, driving lanes, parking amenities, sidewalks, and storage spaces located within the Orchard Farms Condominium Neighborhood;

(d) The installations of utility lines and central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning, and incinerating located within the Orchard Farms Condominium Neighborhood;

(e) The elevators, tanks, pumps, motors, fans, compressors, ducts, and in general all apparatus and installations existing for common use located within the Orchard Farms Condominium Neighborhood;

(f) All Exclusive Common Area and Facilities designated as such in the Final Plat for Orchard Farms Condominium Neighborhood;

(g) All Limited Common Areas identified or configured in the Final Plat for Orchard Farms Condominium Neighborhood or in this Neighborhood Declaration as Limited Common Area including by way of illustration but not limitation porches, decks, patios, balconies, parking spaces or other items which are reserved for the use of a certain Unit or Units to the exclusion of all other Units, as specified herein;

(h) All other parts of the Orchard Farms Condominium Neighborhood normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Orchard Farms Condominium Neighborhood managed by the Neighborhood Subassociation for the common benefit of the Unit Owners at Orchard Farms Condominium.

The Exclusive Common Area is located within the Tract as described in Exhibit "A" attached hereto and incorporated herein by this reference and is identified or depicted as such either in the Final Plat for the Orchard Farms Condominium Neighborhood or in this Neighborhood Declaration.

1.28 The term Final Plat shall mean and refer to the recorded Master Final Plat for the entire Orchard Farms Planned Residential Unit Development.

1.29 The term Final Plat for the Orchard Farms Condominium shall mean and refer to Orchard Farms Condominium Final Plat for the Orchard Farms Condominium Neighborhood, the official map of Orchard Farms Condominium Neighborhood as approved by the City and on file in the Office of the County Recorder.

1.30 The term Guest shall mean and refer to the guest, family member, invitee, licensee, and any person visiting an Owner or a Resident on a temporary basis.

1.31 The term Improvement shall mean and refer to any physical change or addition to the Land to make it more valuable.

1.32 The term Individual Charge shall mean and refer to a charge levied against an Owner by the Board of Directors resulting from the act or omission of such Person, including:

(a) Bodily injury to any Person;

(b) Property damage;

(c) Any transient occupancy tax, sales tax, use tax or other tax levied pursuant to the laws of the State of Utah and payable by such person which the Subassociation is or shall be required or entitled to collect on behalf of the levying authority, although this subsection is not considered an acknowledgment that any such tax may be levied.

Individual Charges may be assessed, secured and collected like any other Assessment.

1.33 The term Land shall mean and refer to all of the real property subject to this Neighborhood Declaration or if the context clearly requires the Master Declaration.

1.34 The term Landscaping shall mean and refer to the grass, trees, shrubs, bushes, flowers, plants, and like improvements located within the Tract, as well as the appurtenant sprinkler, irrigation and water drainage systems.

1.35 The term Lender shall mean and refer to a Mortgagee.

1.36 The term Limited Common Areas shall mean and refer to those areas designated in this Declaration or in the Final Plat for the Orchard Farms Condominium as reserved for the use of a certain Unit Owner to the exclusion of the other Unit Owners. Any portico, colonnade, Unit entry, doorsteps, landings, porches, balconies, decks, patios, private yard area, garages, carports, assigned parking spaces, storage locker, or other improvements intended to serve only a single Unit, shall constitute Limited Common Area appertaining to that Unit exclusively, whether or not the Final Plat for the Orchard Farms Condominium makes such a designation.

1.37 The term Majority shall mean and refer to those eligible votes of Owners or other groups as the context may indicate totaling more than 50.01% of the total eligible number.

1.38 The term Map shall mean and refer to Orchard Farms Condominium Final Plat for the Orchard Farms Condominium Neighborhood or where the context clearly requires the Final Plat.

1.39 The term Master Assessment shall mean and refer to the charge for maintenance, repair, replacement, operation and administration assessed each Owner and/or Unit by the MHOA to pay the Master Common Expenses, and shall include an amount to fund an adequate reserve fund or funds.

1.40 The term Master Association or MHOA shall mean and refer to the Master Association for the Orchard Farms Planned Residential Unit Development acting as a group in accordance with the Master Declaration.



1.41 The term Master Declaration shall mean and refer to the Master Declaration of Covenants, Conditions and Restrictions, and Reservation of Easements, and Bylaws for the Orchard Farms Planned Residential Unit Development (PRUD).

1.42 The term Master Common Expenses shall mean and refer to the Common Expenses incurred by the MHOA.

1.43 The term Neighborhood shall mean and refer to this Tract in particular and in general any residential or recreational area within the Tract which is designated by the Declarant as a Neighborhood, whether or not governed by a Neighborhood Subassociation. By way of illustration and not limitation, a Neighborhood of condominium units or apartments, town homes or apartments, detached single family residences or recreational amenities might each be designated as a separate Neighborhood or combined as one Neighborhood. A Neighborhood may be comprised of more than one housing type. In addition, a parcel of land intended for development as any of the above may constitute a Neighborhood, subject to division into more than one Neighborhood upon development. The designation of "Neighborhood" by the Declarant is subject to change by the Declarant.

1.44 The term Neighborhood Common Expense shall mean and refer to:

- (a) All sums lawfully assessed against the Owners;
- (b) The Orchard Farms Condominium Neighborhood's share of the expenses of administration of the MHOA, the expense of the administration of the Subassociation, the Orchard Farms Condominium Neighborhood's share of the expense of the maintenance, repair or replacement of the Common Area and Facilities incurred by the MHOA, and the expense of the maintenance, repair or replacement of the Exclusive Common Area ;
- (c) Expenses allocated by the MHOA or Subassociation among the Owners;
- (d) Expenses agreed upon as Neighborhood Common Expenses by the MHOA or the Subassociation;
- (e) Expenses declared Neighborhood Common Expenses by the Master Declaration or this Neighborhood Declaration; and/or
- (f) The Subassociation's share of the Master Common Expenses.

1.45 The term Neighborhood Declaration shall mean and refer to this Neighborhood Declaration of Condominium for the Orchard Farms Condominium, a part of the Orchard Farms Planned Residential Unit Development (PRUD).

1.46 The term Neighborhood Subassociation shall mean and refer to the Subassociation of Owners in the Tract acting as a group in accordance with this Neighborhood Declaration.

1.47 The term Office of the County Recorder or County Recorder shall mean and refer to the Office of the County Recorder of Davis County, Utah.

1.48 The term Owner shall mean and refer to a Person who is the owner of a fee or an undivided fee interest in a Unit, excluding a mortgagee or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.49 The term Period of Declarant's Control shall mean and refer to the period of time during which the Declarant controls the Board of Directors.

1.50 The term Permittee shall mean a Person permitted on the Property by an Owner, Resident or Guest.

1.51 The term Person shall mean and refer to a natural person, corporation, partnership, trust, limited liability company, or other legal entity.

1.52 The term Plans and Specifications shall mean and refer to any and all documents designed to guide or control the construction of an Improvement, or alterations, modifications, changes, additions and the like thereto, including without limitation all documents indicating the size, shape, configuration and/or materials, to be incorporated; all site plans, excavation and grading plans, elevation drawings, floor plans, techniques, samples of exterior colors, plans for utility services, and all other documentation or information relevant to the improvement or proposal in question.

1.53 The term Private Street, Road, Cul-de-sac, Way or Drive shall mean and refer to those streets, roads, cul-de-sacs, ways, drives or turnabouts within Orchard Farms Condominium Neighborhood not dedicated to the City or any county, state, or other governmental body politic, entity or agency.

1.54 The term Project shall mean and refer to all of the real property and improvements submitted to the Master Declaration as described in the Final Plat, unless the context clearly requires otherwise.

1.55 The term Project Documents shall mean and refer collectively to the Master Declaration, Final Plat, Master Bylaws, Master Rules and Regulations, and the Articles of Incorporation for the Master Association as well as this Neighborhood Declaration and Bylaws, the Neighborhood Rules and Regulations and the Articles of Incorporation for the Subassociation.

1.56 The term Property shall mean and refer to the Tract unless the context clearly requires otherwise.

1.57 The term Property Manager shall mean and refer to the professional manager or management company appointed or hired by the Subassociation to manage or assist in the management of the Tract and/or assist in the administration of the Subassociation. The Subassociation must employ the same property manager as the MHOA.

1.58 The term PRUD Standard shall mean and refer to the standard of conduct, maintenance, or other activity generally prevailing in the Orchard Farms Planned Residential Development as a whole, as determined by the Board of Directors for the Master Association from time to time.

1.59 The term Recreational, Oversized, or Commercial Vehicle shall mean and refer to any recreational, commercial or oversized vehicle, motor home, commercial vehicle, tractor, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other recreational or commercial transportation device of any kind.

1.60 The term Repair shall mean and refer to merely correcting the damage done sometimes by accident or fire or other cause, but more often due to the ravages of time and the deterioration resulting from ordinary wear and tear, by substituting for the damage, decayed or worn-out parts, new material, usually similar to that replaced, and so restoring the structure to its original sound condition.

1.61 The term Resident shall mean and refer to any person living or staying at the Tract, including but not limited to natural person or persons residing in a Unit.

1.62 The term Single Family shall mean and refer to one of the following: (a) a single person, (b) a group of natural persons related to each other by blood or legally related to each other by marriage or adoption, and an additional person or persons as a caretaker or as domestic help, or (c) a group of not more than three (3) unrelated persons who maintain a common household; provided, however, a group occupying a Unit as boarding house, club, fraternity or hotel shall not be considered a "single family."

1.63 The term Single Family Residence shall mean and refer to both the architectural style of a Dwelling Unit and the nature of the residential use permitted.

1.64 The term Subassociation shall mean and refer to the subassociation of Unit Owners within the Orchard Farms Condominium Neighborhood taken or acting as a group in accordance with this Neighborhood Declaration.

1.65 The term Total Votes of the Subassociation shall mean and refer to the total number of votes appertaining to all Units at the Tract.

1.66 The term Unit shall mean and refer to a separate physical part of the property intended for any type of independent use, including the air space within one or

more rooms or spaces located in one or more floors or part or parts of floors in a Building, the non-structural and non-bearing walls and doors within any such Unit, and the interior surfaces of all exterior doors and windows, and any glass located in such doors or windows, as shown on the Final Plat for the Orchard Farms Condominium Neighborhood or described herein, and a corresponding right to the use and easement of enjoyment of the Common Area and Facilities and Exclusive Common Area.

(a) Upper and Lower Boundaries of Unit. The lower boundary of any Unit is a horizontal plane, the elevation of which coincides with the elevation of the upper surface of the unfinished subfloor thereof, extended to intersect the lateral or perimetric boundaries thereof. The upper boundary of any Unit is a horizontal plane, the elevation of which coincides with the lower surface of the unfinished ceiling thereof, to include the layer of ceiling material within the Unit, extended to intersect the lateral or perimetric boundaries thereof.

(b) Lateral or Perimetric Boundaries. The lateral or perimetric boundaries of a Unit are vertical planes which coincide with the unfinished surfaces of the perimeter walls and the walls dividing the Units, including the inside surfaces of all windows, doors, and vents, extended to intersect the upper and lower boundaries of the Unit and to intersect the other lateral or perimetric boundaries thereof.

(c) Mechanical Equipment and Appurtenances. Mechanical equipment and appurtenances located within any one Unit or located without said Unit but designated and designed to serve only that Unit, such as appliances, electrical receptacles and outlets, air conditioning compressors, furnaces, water heaters, apparatus, systems or equipment, fixtures and the like, shall be considered part of the Unit; so shall all decorated surfaces of interior walls, floors and ceilings, including but not limited to all paint, wallpaper, wall coverings, windows and window frames, doors and door frames, trim, carpeting, tile and linoleum. All pipes, wires, conduits, or other utility lines or installations constituting a part of the Unit or serving only the Unit, and any structural members, parts, components or any other property of any kind, including fixtures or appliances within any Unit, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the Building within which the Unit is located shall be deemed to be part of the Unit.

(d) Construction. Where the context clearly requires a "Unit" shall be considered a "Lot".

(e) Excluded Items. The Unit shall not include any structural elements, bearing walls or support or any party walls with an adjoining Unit or Units, all of which are part of the Exclusive Common Area and shall be maintained, repaired and replaced by the Subassociation at its expense.

1.67 The term Unit Number shall mean and refer to the number, letter or combination thereof designating a particular Unit, identified on the Final Plat for the Orchard Farms Condominium Neighborhood as a "Unit Number."

1.68 The term Tract shall mean and refer to all of the real estate submitted to this Neighborhood Declaration as defined in Recital C, Section 2, Submission, and Exhibit "A" to this Neighborhood Declaration attached hereto and incorporated herein by this reference.

1.69 The term Use Restrictions shall mean and refer to the use restrictions governing the Tract.

1.70 The term Voting Group shall mean and refer to a voting group so designated by the Declarant such as a Neighborhood so designated by the Declarant.

1.71 The term Voting Representative shall mean and refer to the Director serving on the governing board of the MHOA responsible for casting the votes allocated to his or her Neighborhood Voting Group.

## SUBMISSION

### **2. Submission to Ownership in Planned Residential Unit Development (PRUD).**

2.1 **Submission.** The Declarant hereby submits the Tract (also known as the "Neighborhood"), heretofore identified with particularity in the metes and bounds description in Exhibit "A" attached hereto and incorporated herein by this reference, together with all appurtenances thereto, to be known as Orchard Farms Condominium, to this Neighborhood Declaration and to the Utah Condominium Ownership Act, Utah Code Ann., Sections 57-8-1 et. seq. (1963), as amended and supplemented (the "Act"). Declarant hereby declares that the Tract and every part thereof is and shall be held, conveyed, devised, leased, granted, encumbered, used, occupied, and otherwise transferred in any manner, subject to the provisions of this Neighborhood Declaration and the Act. Each and all of the provisions hereof are hereby declared to be in furtherance of the general plan and scheme of ownership, and are further declared to be for the benefit of the Property and every part thereof, and for the benefit of each Owner. All provisions hereof shall be deemed to run with the land as covenants running with the land, or as an equitable servitude, as the case may be, and shall bind all persons hereafter acquiring or owning any interest in the Property, however such interest may be obtained.

2.2 **Binding Effect.** All present and future Owners, Residents, Permittees and Mortgagees shall be subject to, and shall comply with the provisions of this Neighborhood Declaration and the Act.

2.3 **Agreement.** Acceptance of a deed of conveyance, or the entering into a lease, or the entering into occupancy of any Unit or accepting a mortgage on one of the Condominium Units or Apartments, shall constitute an agreement that the provisions of the Neighborhood Declaration, and amendments thereto, are accepted and ratified by such Owner, Resident, Permittee or Mortgagee, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having

at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage, or lease thereof.

### COVENANTS, CONDITIONS AND RESTRICTIONS

#### 3. The Buildings and Facilities.

(a) Orchard Farms Condominium Neighborhood consists of four (4) Buildings and eighty (80) Units. Each Building contains twenty (20) Units. Each Unit has three (3) stories and an assigned parking space or spaces as Limited Common Area. Occupancy permits have been issued. The Units are constructed principally of concrete foundations with exterior walls of stone, stucco veneer, vinyl or wood composition siding, asphalt shingle roofing, interior walls of wood studs, plywood and dry wall plaster. The Exclusive Common Area and Facilities include a swimming pool, clubhouse, park, parking areas, landscaping, roadways, walkways, common utility systems, entry and monument. The Project contains other improvements of a less significant nature. The location and configuration of the improvements referred to in the foregoing sentence are identified and depicted on the Master Final Plat and the Final Plat for the Orchard Farms Condominium Neighborhood.

(b) The initial phase of the Tract consists of four (4) Buildings as shown on the Final Plat for the Orchard Farms Condominium Neighborhood.

(c) The initial Phase of the Tract consists of eighty (80) Units as shown on the Final Plat for the Orchard Farms Condominium Neighborhood.

(d) All details involving the description and location of the Buildings and/or Condominium Units or Apartments and other like details are shown on the Final Plat for the Orchard Farms Condominium Neighborhood.

(e) The Exclusive Common Area consists or will consist of areas denoted as such on the Final Plat for the Orchard Farms Condominium Neighborhood, including by way of illustration but not limitation the swimming pool, clubhouse, leasing office, exercise facilities, open space, parking amenities, et cetera.

(f) The Common Area consists or will consist of areas denoted as such on the Final Plat.

(g) Adjacent to or in the vicinity of the Neighborhood are parcels which have been or, in the future, may be developed for independent residential uses such as town homes and detached single family residences. The Declarant and/or the Subassociation may enter into an agreement to share costs and the use of facilities with all or any of the owners of such adjacent or nearby parcels which allocate the right of access to and non-exclusive use and enjoyment of the Common Area and Facilities for a fee. Unless annexed in the manner set forth in this Declaration or the Master Declaration, the owners of real property adjacent to or nearby the Neighborhood shall not be entitled to vote on

Subassociation matters simply because they have been granted the privilege to use the recreational facilities and amenities.

(h) Declarant may cause the Subassociation to, and the Subassociation may from time to time, enter into user agreements, cross easements, or reciprocal use agreements for the use and enjoyment of the recreational amenities in the Neighborhood (collectively "Amenities or User Agreement(s)") with associations, owners or residents in other adjoining parcels or neighborhoods. Qualified individuals or groups associated with such other adjoining parcels or neighborhoods shall be entitled to use the recreational facilities and amenities to the extent allowed by and subject to the terms and conditions in the Amenities or User Agreement. The provisions of any Amenities or User Agreement entered into by the Board shall be subject to the approval of the Declarant, as long as the Declarant owns any of the Property. Amenities or User Agreements shall be subject to termination in the discretion of the Board, subject to the approval of the Declarant as long as Declarant owns any of the Property. All Members and their guests, as described in the Amenities or User Agreements, shall be entitled to enjoy the benefits of any Amenities or User Agreements to which the Subassociation is a party, to the extent provided in the Amenities or User Agreement. It not the purpose or intent of this Declaration or this Section to make the recreational facilities or amenities open to the general public.

#### **4. Nature and Incidents of Ownership.**

(a) In addition to a fee simple interest in a Unit, each Owner owns an equal undivided ownership interest in and a non-exclusive right to use and easement of enjoyment of the Exclusive Common Area and Common Area and Facilities. Such undivided interest in and the non-exclusive right to use and easement of enjoyment in the Exclusive Common Area and Common Area and Facilities are hereby declared to be appurtenant to the respective Condominium Units or Apartments. The percentage of ownership in the Exclusive Common Area and the Common Area and Facilities shall be used for all purposes, including, but not limited to, voting and assessment for Neighborhood Common Expenses.

(b) Title to a Unit may be held or owned by any entity and in any manner in which title to any other real property may be held or owned in the State of Utah.

(c) No part of the Exclusive Common Area and the Common Area and Facilities associated with a Unit or of the legal rights comprising ownership in or the non-exclusive right to use and easement of enjoyment of the Exclusive Common Area and the Common Area and Facilities may be separated from any other part thereof. Each Unit, the undivided interest in and/or the right to use and easement of enjoyment of the Exclusive Common Area and the Common Area and Facilities, shall always be conveyed, devised, encumbered, and otherwise affected only together and may never be separated from one another.

(d) The Exclusive Common Area shall be owned in common by all of the Unit Owners; and the Common Area and Facilities shall be owned in common by all the Owners in the entire Project; and no Owner may bring any action for partition thereof.

(e) Subject to the limitations contained in this Neighborhood Declaration, any Owner shall have the non-exclusive right to use and easement of enjoyment of the Exclusive Common Area and the Common Area and Facilities, although no Owner may bring any action for partition thereof.

(f) If any part of the Exclusive Common Area or the Common Area and Facilities encroaches or shall hereafter encroach upon a Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Exclusive Common Area and the Common Area and Facilities, or upon an adjoining Unit, an easement for such encroachment and for the maintenance of the same shall and does exist. Such encroachments shall not be considered to be encumbrances on the Exclusive Common Area, Common Area and Facilities or a Unit. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of the building on the Property, by error in the Final Plat or the Final Plat for the Orchard Farms Condominium Neighborhood, by settling, rising, or shifting of the earth, or by changes in position caused by repair or reconstruction of the Property or any part thereof.

(g) Each Owner hereby appoints the Board of Directors as his or her agent, to have access to all Exclusive Common Area and Common Area and Facilities from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Exclusive Common Area and/or Common Area and Facilities making emergency repairs therein necessary to prevent damage to the Exclusive Common Area and/or Common Area and Facilities or to another Unit. The Board of Directors shall also have such right independent of any agency relationship. Damage to a Unit resulting from the maintenance, repair, emergency repair, or replacement of any of the Exclusive Common Area and/or Common Area and Facilities or as a result of emergency repairs at the insistence of the Board of Directors or an Owner shall be either a Master Common Expense or a Neighborhood Common Expense; provided however, that if such damage is the result of negligence of the Owner of a Unit, then such Owner shall be financially responsible for all of such damage. Such damage shall be repaired and the Property shall be restored substantially to the same condition as existed prior to damage. Amounts owing by Owners pursuant hereto shall be collected by the Board of Directors by assessment as provided herein.

(h) Each Owner shall have a right and easement of ingress and egress over, upon and across the Exclusive Common Area and/or Common Area and Facilities necessary for access to his/her Unit.

(i) Each Owner shall have a right to the horizontal and lateral support of his Unit, the Building in which his Unit is located, the Exclusive Common Area, and the



Common Area and Facilities, and such rights shall be appurtenant to and pass with the title to each said Unit.

(j) The Board of Directors shall have a non-exclusive easement to make such use of the Exclusive Common Area and/or Common Area and Facilities as may be necessary or appropriate to perform the duties and functions which it is obligated or permitted to perform pursuant to this Neighborhood Declaration, including the right to construct and maintain storage and maintenance facilities in the Exclusive Common Area and/or Common Area and Facilities for use by the Board of Directors.

(k) Easements are reserved throughout the Property as may be required for utility services, access and rights of way contemplated herein.

(l) All conveyances of a Unit hereafter made, whether by Declarant or otherwise, shall be construed to grant and reserve such reciprocal easements as shall give effect to this Neighborhood Declaration, even though no specific reference to such easements appears in any such conveyance.

(m) Membership in the Subassociation is mandatory and may not be partitioned from the ownership of a Unit. Each Owner by virtue of his accepting a deed or other document of conveyance to a Unit is deemed automatically to be a member of the Subassociation.

(n) Limited Common Area may not be partitioned from the Unit to which it is appurtenant. The exclusive use of Limited Common Area is reserved to the Unit to which it is assigned on the Final Plat for the Orchard Farms Condominium.

##### **5. Description and Conveyance of a Unit.**

(a) Every conveyance or contract for the sale of a Unit and every other instrument affecting title to a Unit may describe that Unit by the number shown on the Final Plat for the Orchard Farms Condominium Neighborhood and shall include the appurtenant Limited Common Area and respective percentages or fractional undivided ownership interests in (i) the Common Area and Facilities and (ii) the Exclusive Common Area. The description shall be in substantially the following fashion:

UNIT NO. \_\_\_\_\_, as shown in the Neighborhood Declaration and on the Final Plat for the Orchard Farms Condominium Neighborhood for "Orchard Farms Condominium," Phase \_\_\_\_\_, appearing in the records of the County Recorder of Davis County, Utah, together with the appurtenant Limited Common Area and a percentage or fractional undivided ownership interest in the Common Area and Facilities, and Exclusive Common Area, and the non-exclusive right to use and easement of enjoyment in the Common Area and Facilities and Exclusive Common Area.

appurtenant thereto, as the same are established and identified in the Master Declaration and the Final Plat and the Neighborhood Declaration and Final Plat for the Orchard Farms Condominium Neighborhood referred to above.

SUBJECT TO: The Master Declaration and Master Final Plat; all liens for current and future assessments and charges imposed or levied pursuant to the Neighborhood Declaration of Condominium for Orchard Farms Condominium; mineral reservations of record and rights incident thereto; all instruments of record which affect the above-described tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible easements and rights-of-way; and all easements and rights-of-way of record; all easements, rights-of-way, encroachments, or discrepancies shown on or revealed by the Master Final Plat and/or the Final Plat for the Orchard Farms Condominium Neighborhood or otherwise existing; an easement for every pipe, line, cable, wire, utility line, or similar facility which traverses or partially occupies the above-described tract; and all easements necessary for ingress to, egress from, maintenance of, and replacement of all such pipes, lines, cables, wires, utility lines, and similar facilities.

Such description shall be construed to describe the Unit, together with the appurtenant Limited Common Area and respective percentages or fractional undivided interest in the Common Area and Facilities and the Exclusive Common Area, and to incorporate all the rights and limitations incident to such ownership contained in the Master Declaration, this Neighborhood Declaration, the respective By-Laws, and Rules and Regulations.

(b) Title to each Unit is hereby made subject to the terms and conditions hereof which bind the Declarant and all subsequent owners, whether or not it be so expressed in the deed by which any Owner acquired a Unit.

6. **Easements.** Declarant hereby reserves to itself and grants:

a. **Common Easement.** A perpetual right-of-way and non-exclusive easement over, across, and through the Orchard Farms Condominium Neighborhood, for use in common by the Declarant and Owners, subject to all of the terms, covenants, conditions and restrictions set forth herein.

b. **Private Easement.** A perpetual private non-exclusive easement for the exclusive use and benefit of the Declarant and Owners.

c. Declarant's Easement. An exclusive easement to the Declarant, for itself and its affiliates and assignees, to make such use of the Orchard Farms Condominium Neighborhood, as may be necessary or convenient to perform the duties and functions hereunder, including, by way of illustration but not limitation, the construction of the improvements, Buildings or Units within the Orchard Farms Condominium Neighborhood.

d. Construction Easements. A temporary construction easement to the Declarant, for itself and its affiliates and assignees, over, under, across, and through the Orchard Farms Condominium Neighborhood, for the purpose of doing all things that are reasonably necessary as a part of constructing any new improvements for the Orchard Farms Condominium Neighborhood, including all physical improvements as well as all Buildings and Units. The Owners do hereby acknowledge and agree that there will be construction activities, traffic, noises, odors, and vibrations which may temporarily disrupt their quiet enjoyment of their Units until all improvements are complete, and such Owners do hereby waive any right to object to such construction activity; provided, however, Declarant shall endeavor to use reasonable efforts to minimize the adverse impact of such construction activities on the Owners and Units. Declarant's construction activities pursuant to the easement granted hereunder shall not be deemed to be a violation of the Use Restrictions.

e. Locations of Facilities Easements. A non-exclusive easement to the Declarant, for itself and its affiliates and assignees, to construct, operate, maintain, repair, and replace all types of telecommunication facilities, including but not limited to, roof antennas, within suitable locations for such facilities (the "Locations of Facilities") within the Orchard Farms Condominium Neighborhood. Declarant further reserves a right of access to the Locations of Facilities over, across, under, and through the Orchard Farms Condominium Neighborhood, in order to access the Locations of Facilities to exercise the rights established herein. Declarant reserves the perpetual right to transfer by easement, license agreement, or other conveyance the rights reserved hereunder to one or more telecommunication facilities providers. Declarant may exercise all of such rights unilaterally and without the consent of any Owner.

f. Non-Exclusive Utility Easement. A non-exclusive easement to the Declarant, and its affiliates and assignees, over, across, through, and under the Property for ingress to, egress from, and installation, replacement, repair, and maintenance of all utility and service lines and systems, including, without limitation, water, sewer, gas, telephone, electricity, and cable communication that service the Property or any portion thereof as well as any such lines and systems which service property owned by the Declarant.

g. Easement of Support. Each Unit, the Common Area and Facilities, and the Exclusive Common Area shall have an easement of lateral, adjacent, subjacent and structural support from every other Unit, the Common and Facilities, and Exclusive Common Area.

h. Duty to Maintain Integrity of Established Drainage Pattern.

Within these easements and rights of way, no structure, planting, or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in, on or about the easements and rights of way, or which may obstruct or retard the flow of water through the drainage channels in the easements and rights of way. The easement and right of way area of each Building, Unit and all improvements within said area shall be maintained continuously by the Owner, excepting those improvements for which a public authority or utility company is expressly responsible. For purposes of this subsection, the term "established drainage pattern" shall mean the drainage pattern, facilities, and improvements in existence at the time the first Unit is conveyed to a purchaser by the Declarant, its successor or assign.

i. Covenant Not To Interfere.

(1) No Owner shall interfere or attempt to interfere with the land drain system or the established drainage pattern established by the Declarant and City or their successors or assigns.

(2) No Owner shall make or allow any changes or alterations whatsoever to any Building, the exterior of any Unit, or the interior of any Unit visible from any other Unit or the Exclusive Common Area without the express prior written consent of the Subassociation.

j. Damage or Waste. Each Owner shall be strictly liable for any loss, damage, or claim caused to person or property in the Orchard Farms Condominium Neighborhood, caused by his negligence or carelessness, or that of his or her family members, tenants, renters, lessees, residents, occupants, guests, visitors, invitees, or permittees of his or her Unit.

k. Encroachments. If any part of a Unit encroaches or shall hereafter encroach upon an adjoining Unit, then an easement for such encroachment and for the maintenance of the same shall and does exist. Such easements shall extend for whatever period the encroachment exists. Such encroachments shall not be considered to be encumbrances on the affected Unit. Encroachments referred to herein include, but are not limited to, encroachments caused by error in the original construction of any improvement constructed or to be constructed within the Orchard Farms Condominium Neighborhood, by error in the Plat, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Orchard Farms Condominium Neighborhood, or any part thereof.

l. Reservation of Rights. The deeds or other documents of conveyances for any Unit within the Orchard Farms Condominium Neighborhood, hereafter made, whether by Declarant or otherwise, shall be construed to grant and

reserve such easements and/or licenses as are provided herein, even though no specific reference to such easements appears in any such conveyance.

**7. Board of Directors Rights and Obligations.**

(a) The business, property and affairs of the Subassociation shall be managed by a Board of Directors composed of three (3) individuals. Until the first regular meeting of the Subassociation is held pursuant after the termination of the Declarant's Period of Control, the Declarant alone shall be entitled to select the three (3) members of the Board of Directors. In the event a Director's seat which was filled by Declarant becomes vacant, Declarant shall have the right to select a replacement member to sit on the Board of Directors for the balance of the term associated with the vacated seat. In all other cases of vacancy the remaining Directors shall elect a replacement as provided in the By-Laws.

(b) The Board of Directors may exercise any right or privilege given to it expressly by this Neighborhood Declaration, or by law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

(c) The Board of Directors shall have the rights and obligations set forth in this Neighborhood Declaration and the By-Laws.

(d) The Board of Directors shall be responsible for the exclusive management and control of the Subassociation and the Exclusive Common Area, and all improvements thereon (including furnishings and equipment related thereto), and shall keep the same in good, clean, attractive and sanitary condition, order and repair. The Board of Directors shall be responsible for repair or replacement of Improvements to the Exclusive Common Area and shall have the exclusive right to contract for all goods, services, and insurance payments which are made for such repairs or replacement. The cost of such management, operation, maintenance, and repair by the Board of Directors shall be a Neighborhood Common Expense.

(e) The Board of Directors may obtain and pay for the services of any person or entity to manage its affairs, or any part thereof, to the extent it deems advisable, as well as such other personnel as the Board of Directors shall determine to be necessary or desirable for the proper operation of the Property, whether such personnel are furnished or employed directly by the Board of Directors or by any person or entity with whom or which it contracts. The Board of Directors may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Property; the enforcement of this Neighborhood Declaration, the By-Laws, or any Rules and Regulations. The Board of Directors may arrange with others to furnish lighting, water, snow removal, grounds maintenance and other common services. The cost of such services shall be borne as provided in paragraph 7 of this Neighborhood Declaration and in the By-Laws.

(f) The Board of Directors may acquire and hold, for the use and benefit of all Owners, tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in any such property shall be deemed to be owned by the Owners in the same proportion as their respective interests in the Exclusive Common Area.

(g) The Board of Directors may make Rules and Regulations governing the use of Unit and of the Common Area and Facilities, which Rules and Regulations shall be consistent with the rights and duties established in this Neighborhood Declaration.

(h) The Board of Directors may suspend an Owner's voting rights for the period during which such Owner fails to comply with the Rules and Regulations, or with the obligations of an Owner under this Neighborhood Declaration. Notice of non-compliance will be sent to an Owner at least ten (10) days prior to any meeting at which action may be taken by the Owners. The Board of Directors may also take judicial action against any Owner to enforce compliance with the Rules and Regulations, with other obligations, or to obtain damages for non-compliance, all to the extent permitted by law.

(i) The Board of Directors may delegate its authority, right and power, in whole or in part, to a managing Director ("Managing Member").

#### **8. Assessments.**

(a) At least thirty (30) days prior to the Annual Subassociation Meeting, the Board shall prepare and deliver to the Owners a proposed Budget which shall:

(1) Set forth an itemization of the anticipated Common Expenses (including that portion earmarked for the reserve account or accounts and the cost of maintaining the Exclusive Common Area and the Subassociation's proportionate share of the cost of maintaining Common Area and Facilities<sup>1</sup> for the twelve (12) month calendar year, commencing with the following January 1.

(2) Be based upon advance estimates of cash requirements by the Board to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Exclusive Common Area and the Common Area and Facilities, and regulation of the Subassociation, which estimate shall include but is not limited to expenses of management, grounds maintenance, taxes and special assessments, premiums for all insurance which the Board is required or permitted to maintain, common lighting and heating, common water charges, trash collection, storm drain fees, common sewer charges, sewer maintenance costs, carpeting, painting, repairs and maintenance of the Common Areas, including the Recreation Amenity, and replacement of those elements of the Common Areas, including the Recreation Amenity, that must be replaced on a periodic basis, wages for Board employees, legal and accounting fees, any deficit remaining from a previous period; the creation of a

<sup>1</sup> The Master Association will pass-through the Subassociation's the Subassociation's share of the Master Common Expenses.

reasonable contingency reserve, surplus or sinking fund, Capital Improvement reserve, and other expenses and liabilities which may be incurred by the Subassociation for the benefit of the Owners under and by reason of this Declaration. Until the Project is completed, and all Phases are added, this estimate may need to be adjusted periodically as each new Phase is completed.

(b) Owners may call a special meeting within forty-five (45) days of the meeting providing the proposed Budget to vote to disapprove the Budget, although to set it aside and to reject a proposed Budget requires the affirmative written consent of at least a majority of total ownership. If the new budget is disapproved, then the prior year's budget continues.

(c) Declarant, for each Unit owned by him within the Property, hereby covenants, and each Owner of any Unit by the acceptance of a deed therefore, whether or not it be so expressed in the deed, shall hereby covenant and agree with each other and with the Subassociation to pay to the Subassociation, for the purposes provided in this Neighborhood Declaration, in addition to any Master Assessments, all assessments, all special assessments, and other fees as provided in this Neighborhood Declaration, the By-Laws, or Rules and Regulations.

(d) It is the intent of the Declarant that each Unit shall be separately metered for sewer, water, gas and electricity. If there is a master meter (or a combination of separate meters and meters in combination with two or more Units), then the Subassociation is hereby granted the authority to divide and allocate the charges among the Units and Owners based upon their respective percentages or fractional interests in the Exclusive Common Area. Regardless, the costs of sewer, water, gas and electric service shall be paid by the individual Owners.

(e) Expenses attributable to the Exclusive Common Area and/or Common Area and Facilities as a whole shall be apportioned among all Condominium Units or Apartments in proportion to their respective undivided ownership interests. For this purpose Declarant shall be considered to own only the undivided interest in the Exclusive Common Area and/or Common Area and Facilities based upon the percentages of ownership interest of Condominium Units or Apartments not conveyed by Declarant.

(f) Annual assessments shall be made on a calendar year basis. The Board of Directors shall give written notice of each annual assessment with respect to a Unit not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the next calendar year. The first annual assessment shall be for the balance of the calendar year remaining after the date fixed by the Board of Directors. Each annual assessment shall be due and payable in monthly installments on the first day of each and every month and no separate notices of such monthly installment shall be required. Each monthly assessment shall bear interest at the rate of eighteen (18%) percent per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.

(g) In addition to annual assessments, the Board of Directors may levy in any assessment year a special assessment, payable over such a period as the Board of Directors 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 Property or any part thereof, or for any other expense incurred or to be incurred as provided in this Neighborhood Declaration. This paragraph shall not be construed as an independent source of authority for the Board of Directors to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other paragraphs of this Neighborhood Declaration. Any amounts assessed pursuant hereto shall be assessed to the Owners in proportion to their respective undivided interest in the Exclusive Common Area and/or Common Area and Facilities. Notice in writing of the amount of such special assessments and the time for their payment shall be given promptly to the Owners. Payment shall be due on the dates and in the manner provided in the notice.

(h) All sums assessed to any Unit pursuant to this section, together with interest thereon as provided herein shall be secured by a lien on such Unit in favor of the Subassociation. Such lien shall have such priorities as established by law.

(i) To establish a lien for any unpaid assessment, the Board of Directors shall prepare a written notice of lien as set forth by statute. 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 Board of Directors as provided by law. The lien shall also secure, and the Owner shall also be required to pay to the Board of Directors any assessments against the Unit which shall become due during the period of foreclosure sale or other legal sale. The Board of Directors may bid on the Unit at foreclosure or other sale and may acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof.

(j) A release of lien shall be executed by the Board of Directors and recorded in the office of the County Recorder of Davis County, Utah, upon payment of all sums secured by a lien which has been made the subject of a recorded notice of lien.

(k) An encumbrancer holding a lien on a Unit may pay, but shall not be required to pay, any amounts secured by the lien created by this Section, and upon such payment such encumbrancer shall be subrogated to all rights of the Board of Directors with respect to such lien, including priority.

(l) The Board of Directors shall report to any encumbrancer of a Unit any unpaid assessments remaining unpaid for longer than ninety (90) days after the same shall have become due; provided however, that such encumbrancer first shall have furnished to the Board of Directors written notice of such encumbrance.

(m) The amount of any annual or special assessment against any Unit shall be the personal obligation of the Owner thereof to the Subassociation. Suit to recover a judgment of such personal obligation shall be maintainable by the Board of Directors without foreclosing or waiving the lien securing the same. No Owner may void or



diminish any personal obligation by waiver of the use and enjoyment of any of the Common Area or by abandonment of a Unit.

(n) Upon payment of a reasonable fee not to exceed ten dollars (\$10) and upon written request of any Owner, or any Mortgagee, prospective Mortgagee or prospective purchaser of a Unit, the Board of Directors shall issue a written statement setting forth the amount of unpaid assessments, if any, with respect to such Unit; the amount of the current yearly assessment and the portion thereof which has theretofore been paid; and credit for advanced payments or prepaid items. Such statement shall be conclusive upon the Board of Directors in favor of persons who rely thereon in good faith. Unless such request for a statement of account shall be complied with within ten (10) days, all unpaid assessments which become due prior to the making of such request shall be subordinate to the lien of a Mortgagee which acquired its interest subsequent to requesting such statement. Where a prospective purchaser makes such a request, both the lien and unpaid assessments and the personal obligations of the purchaser shall be released automatically if the statement is not furnished within ten (10) days, and that purchaser subsequently acquires the Unit.

(o) Subject to the provisions of subparagraph (m), a purchaser of a Unit shall be jointly and severally liable with the seller for all unpaid assessments against the Unit up to the time of the conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

(p) The Board of Directors may elect to (a) terminate utilities and the right to use amenities for non-payment of Assessments and/or (b) collect rents directly from a renter if the Unit Owner who is renting the Unit fails to pay any Assessment for a period of more than sixty (60) days after it is due and payable,

(q) Anything to the contrary notwithstanding, any first mortgagee who obtains title to a Unit pursuant to the remedies in the mortgage or trust deed or through foreclosure will not be liable for more than six (6) months of the unpaid regularly budgeted assessments, dues or charges accrued before acquisition of the title to the property by the mortgage, although the first mortgagee will also be liable for any reasonable attorneys fees or costs related to the collection of the unpaid dues. All other grantees who obtain title to a Unit in a voluntary conveyance or pursuant to the remedies in a mortgage or trust deed or through foreclosure shall be jointly and severally liable with the trustor or mortgagor for all unpaid assessments, late fees, default interest and collection costs, including a reasonable attorneys fee, against the Unit for its share of the Neighborhood Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the trustor or mortgagor the amounts paid by the grantee.

(r) The Board of Directors may charge a late fee on late payments and interest shall accrue on the outstanding balance of any account at a rate to be determined by the Board of Directors.

(s) Anything to the contrary notwithstanding, Anything to the contrary notwithstanding, the Declarant shall not be obligated to pay Assessments on any Units owned by it until such time as: (1) the physical structures are substantially completed; (2) certificates of permanent occupancy are issued and the Units are sold or rented; or (3) Declarant elects in writing to pay the Assessments, whichever first occurs.

(t) Anything to the contrary notwithstanding, any first mortgagee who obtains title to a Unit pursuant to the remedies in the mortgage or trust deed or through foreclosure will not be liable for more than six (6) months of the unpaid regularly budgeted assessments, dues or charges accrued before acquisition of the title to the property by the mortgage, although the first mortgagee will also be liable for any reasonable attorneys fees and/or costs related to the collection of the unpaid dues. All other grantees who obtain title to a Unit in a voluntary conveyance or pursuant to the remedies in a mortgage or trust deed or through foreclosure shall be jointly and severally liable with the trustor or mortgagor for all unpaid assessments, late fees, default interest and collection costs, including a reasonable attorneys fee, against the Unit, and for its share of the Neighborhood Common Expenses up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the trustor or mortgagor the amounts paid by the grantee.

#### **9. Use of Condominium Units or Apartments.**

(a) Each Unit is intended for and restricted to residential use. No Unit shall be used except for residential purposes for a single family. Each Owner shall have and enjoy the privileges of fee simple ownership of his Unit. There shall be no requirements concerning who may own a Unit, it being intended that they may and shall be owned as any other property rights by any Person. The Project shall be used only for residential purposes, except as expressly set forth below, and the Exclusive Common Area and/or Common Area and Facilities shall only be used in a manner consistent with the residential nature of the Project.

(b) There shall be no obstruction of Exclusive Common Area and/or the Common Area and Facilities by Owners, Residents or Permittees without the prior written consent of the Board of Directors. The Board of Directors may, by Rules and Regulations, prohibit or limit the use of the Exclusive Common Area and/or Common Area and Facilities as may be reasonably necessary for protecting the interests of all Owners or protecting the Condominium Units or Apartments or the Exclusive Common Area and/or Common Area and Facilities. Nothing shall be kept or stored on any part of the Exclusive Common Area and/or Common Area and Facilities without the prior written consent of the Board of Directors, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Exclusive Common Area and/or Common Area and Facilities except upon the prior written consent of the Board of Directors.

(c) Nothing shall be done or kept in any Unit or in the Exclusive Common Area and/or Common Area and Facilities which would result in the cancellation of the

insurance on the Property or increase the rate of the insurance on the Property, over what the Board of Directors, but for such activity, would pay, without the prior written consent of the Board of Directors. Nothing shall be done or kept in any Unit or in the Exclusive Common Area and/or Common Area and Facilities or any part thereof which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Exclusive Common Area and/or Common Area and Facilities and Facilities or shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Board of Directors and the other Owners harmless against all loss resulting from any such damage or waste caused by that Owner or an invitee; provided, however, that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee of any other Owner.

(d) Each Owner shall keep the exterior of his Unit in a clean, sanitary and attractive condition, and good state of repair.

(e) No Owner shall violate the Rules and Regulations as adopted from time to time by the Board of Directors.

(f) No alterations, plumbing, electrical or similar work within a Building, Unit Exclusive Common Area and/or the Common Area and Facilities shall be done by any Owner or resident without the prior written consent of the Board of Directors, except emergency repair.

(g) Notwithstanding anything herein to the contrary, until the Declarant has completed and sold all of the Condominium Units or Apartments, neither the Owners who have purchased a Condominium Units or Apartments nor the Board of Directors shall interfere with the completion of the contemplated improvements and sale of the Condominium Units or Apartments. The Declarant may make such use of the unsold Condominium Units or Apartments and the Exclusive Common Area and/or Common Area and Facilities as may facilitate such completion and sale, including but not limited to the maintenance of a sales office, the showing of the Condominium Units or Apartments, and the display of signs.

(h) Similarly situated Owners and residents shall be treated similarly.

(i) The rights of Owners and residents may display religious and holiday signs, symbols, and decorations on their Condominium Units or Apartments of the kinds normally displayed in residences located in single family residential neighborhoods shall not be abridged, except that the Subassociation may adopt time, place, and manner restrictions regulating displays which are visible from outside the Unit. Signs, symbols and decorations generally, such as wind chimes, wreaths, dream catchers, pinwheels and so forth, may be controlled by rule and may not be installed or placed so as to be visible to or heard by other residents without the express prior written consent of the Board of Directors.

(j) No rule shall interfere with the freedom of occupants of Condominium Units or Apartments to determine the composition of their households, except that the Neighborhood Declaration limits residency in a Unit to a single family and the Subassociation shall have the power to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair share use of the Exclusive Common Area and/or Common Area and Facilities, which, unless otherwise agreed in writing shall be no more than two individuals per bedroom.

(k) No rule shall interfere with the activities carried on within the confines of Condominium Units or Apartments, except that the Subassociation may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Subassociation or other Owners, that create a danger to the health or safety of occupants of other Condominium Units or Apartments, that generate excessive noise or traffic, that create unsightly conditions visible from outside the Unit, or that create an unreasonable sounds of annoyance.

(l) No resident may operate a commercial trade or business in or from his Unit with employees of any kind. No commercial trade or business may store any inventory over 250 cubic feet, and it must be contained within the Unit. No commercial trade or business may be conducted in or from a Unit unless (a) the business activity conforms to all home occupation and zoning requirements governing the Project; (b) the operator has a city issued business license; (c) the business activity satisfies the Home Occupation Guidelines adopted by the Board of Directors, as they may be modified from time to time; and (d) the resident has obtained the prior written consent of the Board of Directors. Notwithstanding the foregoing, the leasing of a Unit shall not be considered a trade or business within the meaning of this subsection.

(m) All motor vehicles and bikes shall be governed by the rules and regulations adopted by the Board of Directors.

(n) No Unit shall be used as a dumping ground. All trash, garbage, debris, rubbish or other waste shall be kept in a sealed, sanitary bag or container, and stored out of sight except for a twenty-four (24) hour period on pick-up days.

(o) Satellite dishes, aerials, antenna, or systems may only be installed in accordance with FCC regulations taking into consideration the written guidelines established for or by each Neighborhood. The Board of Directors may bar, in its sole discretion, satellite dishes, aerials, antenna, or systems, including HAM radio antenna, not expressly authorized by FCC regulations

(p) No pets, animals, livestock, or poultry of any kind may be commercially bred at the Property. Up to two domestic pets as that term is defined by City Ordinance per Unit are allowed; provided, however, pets must be properly licensed and registered. Pets may not create a nuisance. The following acts shall be considered a nuisance: (1) causing damage to the property of anyone other than the pet owner; (2) causing

unreasonable fouling of the air by odors; (3) causing unsanitary conditions; (4) running loose throughout the Property and not in a cage or on a leash and under the control of a responsible person; (5) barking, howling, whining, or making other disturbing noises in an excessive, continuous or untimely fashion; (6) molesting or harassing passersby by lunging at them or chasing passing vehicles; (7) attacking or threatening to attack people or other domestic animals; (8) otherwise acting so as to bother, annoy or disturb the sensibilities of a reasonable person or interfering with the right of residents to the peaceful and quiet enjoyment of their property; (9) the mere number of pets maintained creates an offensive or dangerous condition to the health, welfare or safety of other residents; or (10) violation of a City pet ordinance.

(q) No signs, billboards or advertising structures or devices of any kind may be built, installed or displayed on the Property or in any Unit, except one 2' x 2' "For Sale" sign may be put in one window of a Unit. No "For Rent" signs or political signs are allowed. Anything herein to the contrary notwithstanding, this signage restriction does not apply to and is not binding upon the Declarant, who is expressly authorized to employ and use whatever signs or signage it deems appropriate to market its Condominium Units or Apartments.

(r) All land use and buildings shall be in compliance with all zoning and land use ordinances as well as all regulations of the municipalities and agencies governing the Property land use and buildings.

(s) Personal property placed on a patio, deck or balcony shall be managed and controlled by rule adopted by the Board of Directors, as it may be modified from time to time and may, although the Board of Directors is not obligated to do so, allow one table, one set of chairs, and one BBQ grill, if covered and not visible to the other residents. Clotheslines, the hanging or drying of clothes, swimsuits and towels, dream catchers, wind chimes, pinwheels, the storing of bicycles, tricycles, equipment, machinery, furniture, appliances, furnishings or other items which may be considered inappropriate or unsightly by the Board of Directors in its sole discretion, shall not be allowed.

(t) No air conditioning systems or units are allowed except those initially installed by the Declarant and replacements authorized in writing by the Board of Directors. Window air conditioning units, swamp coolers or other similar refrigeration devices are not permitted.

(u) Fencing, except that installed initially by the Declarant and its replacement authorized by the Board of Directors, is not allowed.

(v) No garage or parking space may be altered in such a manner that the number of motor vehicles which may reasonably be parked therein after the alteration is less than the number of motor vehicles that could have been reasonable parked in the garage as originally designed and constructed. Without further or additional notice, the Subassociation may immobilize, tow and/or impound motor vehicles and trailers parked,

stationed or stored in violation of the Project Documents, and at the owner's sole risk and expense.

(w) No noxious or offensive activity shall be carried on, in or about the Property, nor shall anything be done or permitted thereon which may be or may become an annoyance, disturbance, bother or nuisance to the neighborhood, or which might interfere with the right of other residents to the quiet and peaceful enjoyment of their property.

(x) This Property is located by and is subject to the normal, everyday sounds, odors, and all other aspects associated with the nearby manufacturing area and an outdoor entertainment venue.

(y) No rule shall prohibit the leasing or transferring of any Unit; provided, however: The Subassociation may require that Owners use lease forms approved by the Subassociation (or include specific terms in their leases), and may impose a review or administration fee on the lease or transfer of any Unit. No Owner shall be permitted to lease his Unit for short term, transient, hotel, vacation, seasonal or corporate use, which for purposes of this section shall be considered any rental with an initial term of less than six (6) months. Daily or weekly rentals are prohibited. No Owner may lease individual rooms to separate persons or less than his entire Unit, including by way of illustration but not limitation to domestic help or a caretaker, without written notice to and the written consent of the Board of Directors. The Board of Directors is hereby granted and reserves the right to screen and approve prospective renters, and review and approve the rental agreement. Any rental agreement entered into in violation of this subsection is voidable at the option of the Board of Directors and the renter may be declared "non-conforming." No renter shall be declared non-conforming without prior written notice to the Owner giving him the opportunity to be heard at an informal hearing before the Board of Directors, and to remedy the default. A non-conforming renter shall be considered a nuisance and the Subassociation may require the Owner to permanently remove the renter (and all persons claiming a right to possession by or through him) from the Property, at the Owner's sole expense. Other than as stated in this Section, there is no restriction on the right of any Owner to lease or otherwise grant occupancy rights to a Unit.

10. **Capital Improvements.** All expenses for Capital Improvements shall be governed by and subject to the following conditions, limitations and restrictions:

(a) Any Capital Improvement or Addition to the Project which costs ten percent (10%) or less of the Total Annual Budget, and does not alter the nature of the Project, may be authorized by the Board of Directors alone (the "Capital Improvement Ceiling").

(b) Any Capital Improvement, the cost of which will exceed the Capital Improvement Ceiling, must, prior to the commencement of construction, be authorized by at least a majority of the percentage of undivided ownership interest in the Exclusive Common Area and/or Common Area and Facilities.

(c) Any Capital Improvement which would materially alter the nature of the Project (e.g., changing the roofing materials, the construction of the external Building surfaces, color scheme, etc.) must, regardless of its cost and prior to being constructed or accomplished, be authorized by at least sixty-seven (67%) percent of the undivided ownership interest in the Exclusive Common Area and/or Common Area and Facilities.

11. **Operation, Maintenance and Alterations.** Each Unit and the Exclusive Common Area and/or Common Area and Facilities shall be maintained, repaired, and replaced in accordance with the following covenants, conditions and restrictions:

(a) The Property shall be maintained in a usable, clean, functional, safe, sanitary, attractive and good condition.

(b) The Master Association is responsible for the maintenance, repair and replacement of all of the Common Area and Facilities within or serving the entire Orchard Farms development and not just the Orchard Farms Condominium Neighborhood (the "Area of Common Responsibility").

(c) The Subassociation is responsible for the maintenance, repair and replacement of (i) the Building structure, (b) the Building exterior, and (c) all Exclusive Common Area and other common elements unique to the Neighborhood (the "Area of Neighborhood Responsibility").

(d) Each Owner is responsible to maintain, repair and replace the Improvements to his or her Unit and the Limited Common Area appurtenant thereto, excluding the parking areas which for this purpose shall be considered part of the Building structure. In addition, each Owner shall also maintain any Common Area appurtenant to his or her Unit broom clean and free of debris, including any driveway, walkway, sidewalk, porch, landing, patio, deck or balcony, broom clean and free of grease spills, leaks, personal property, trash, litter and debris. The foregoing is referred to as the "Area of Personal Responsibility". No Owner shall allow his or her Unit or the Common Area adjacent thereto to detract from the health, safety or uniform appearance or design of the Project.

(e) All landscaping in the Project shall be maintained and cared for in a manner consistent with the standards of design and quality originally established by Declarant and in accordance with any City landscaping maintenance plans or ordinances. Specific additional written guidelines, standards, controls, and restrictions on landscaping may be adopted or amended by the Board of Directors from time to time. All landscaping shall be maintained in a safe, sanitary, and aesthetic condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be mowed and edged; all trees, shrubs and bushes shall be pruned, trimmed and topped. No landscaping may affect adversely the value or use of any other Unit, or to detract from the uniform design and appearance of the Project established by the Declarant.

(f) If (except in the case of an emergency) after written notice and a hearing, it is determined that any responsible party has failed or refused to discharge properly his obligation with regard to the maintenance, repair, or replacement of the real property and improvements described herein, or that the need for maintenance, repair, or replacement thereof is caused through the willful or negligent act of any person, then the Subassociation, or Board of Directors may, but is not obligated to, provide such maintenance, repair, or replacement at the defaulting or responsible party's sole cost and expense (the "Default Maintenance Cost"). The Default Maintenance Cost is the debt of such defaulting or responsible party at the time the expense is paid and shall be collectible as such. In addition, it may be considered a "Fine" against a Owner. A Fine assessed hereunder which remains unpaid after the time for appeal has expired becomes a lien against the Owner's interest in the property in accordance with the same standards as a lien for the nonpayment of Neighborhood Common Expenses hereunder.

(g) The Declarant may make changes to the design and construction of the improvements located in or on the Common Area without additional approval required, including without limitation the consent of the Board of Directors or Members of the Subassociation; provided, however, no Owner, Resident or Permittee may make any structural alterations to any Common Area, without the express prior written consent of the Board of Directors.

(h) No Owner shall do any work or make any alterations or changes which would jeopardize the soundness or safety of the Property, reduce its value or impair any easement or hereditament, without in every such case the unanimous written consent of all the other Owners being first had and obtained.

12. **Signs.**

(a) The entry monument and sign placed within the Common Area shall be maintained by the Owners in all respects. In the event of a partial or total destruction of the sign from any cause, the Owners shall rebuild the sign to restore it to its original dimensions and conditions consistent with applicable law. The Subassociation shall have the sole and exclusive right to allocate the space on said sign for any and all purposes.

(b) Any signs comprising a part of a central directory to the Condominium Units or Apartments or business development, or individual signs attached to individual Condominium Units or Apartments shall conform in all respects to the Bylaws as administered by the Board of Directors.

(c) The requirements of Article 7, Section (q) apply to any and all signs.

13. **Insurance.**

(a) **Generally.** The Association must maintain the following insurance coverage, at least to the extent it is reasonably available:



(1) Property insurance on ALL structures, including ALL Common Area and Facilities, and Units; and

(2) Public liability insurance.

(3) If any provision of this Section is held to be (a) inconsistent, incongruent or in conflict with the insurance requirements as set forth in the Act or (b) illegal, invalid, or unenforceable under any present or future law, then that provision will be fully severable. This Section will be construed and enforced as if the (a) inconsistent, incongruent or in conflict with the insurance requirements as set forth in the Act or (b) illegal, invalid, or unenforceable provision had never comprised a part hereof, and the remaining provisions of this Section will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Section. Furthermore, in lieu of each such (a) inconsistent, incongruent or in conflict with the insurance requirements as set forth in the Act or (b) illegal, invalid, or unenforceable provision, there will be added automatically, as a part of this Section, a provision as similar in terms to such (a) inconsistent, incongruent or in conflict with the insurance requirements as set forth in the Act or (b) illegal, invalid, or unenforceable provision as may be possible and be legal, valid and enforceable.

(b) Denial or Cancellation of Coverage. If property or liability insurance is not reasonably available, then fair and reasonable notice must be given to the owners within seven (7) days.

(c) Additional Coverage. The Association may purchase additional or greater coverage.<sup>2</sup>

(d). Property Insurance. The Property Insurance coverage must include:

(1) All common area; and

(2) The Unit, including ALL fixtures, floor coverings, wall coverings, cabinets, heating and plumbing fixtures, windows, any (other) item permanently attached.<sup>3</sup>

(3) The Property Insurance must be for at least 100% of the FULL replacement cost of the item at the time insurance is purchased and at the renewal date. The Subassociation shall obtain an "Agreed Amount Endorsement" or its equivalent from its insurance carrier.

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2 Such as Earthquake Insurance, fidelity bond (e.g., a sum equal to 3 months' assessments and all of the money in reserve or contingency funds), directors and officers insurance, coverage for defamation, and coverage for defense of housing discrimination claim, etc..

3 The tongue and cheek rule of thumb is can it be removed in 10 minutes with a screw driver and pliers without damaging the structure.

(4) The Association is not obligated to insure detached Units; that is, a Unit if the Unit is **NOT** physically attached to another Unit or to an above-ground structure that is part of the Common Area.

(5) When a claim is covered by the Association's Property Insurance **AND** the Unit Owner's Property Insurance, the Association's Property Insurance is considered **PRIMARY**. The Unit Owner's insurance may apply to the deductible.

(6) If a Unit Owner makes a claim on the Association's Property Insurance policy, then the Owner is responsible for the deductible.

(7) If two (2 ) or more Unit Owner's make a claim arising out of a single event, then each Owner is responsible for payment of his or her portion of the deductible based upon his or her percentage of the loss .

(8) If a Unit Owner fails to pay his or her share of the loss/deductible, then the Association may assess an assessment against the Owner/Unit, and file a lien against the Unit to secure payment.

(9) For each such claim the Association must set aside the amount of the deductible or \$10,000.

(10) Also, the Association must give notice to ALL Unit Owners of (a) the amount of the deductible and (b) their obligation to pay the Association's deductible if a claim is filed, and (c) provide follow-up notice of any change to the amount of the deductible.

**(11) THE ASSOCIATION IS NOT OBLIGATED TO SUBMIT A CLAIM TO ITS PROPERTY INSURANCE CARRIER IF THE GOVERNING BOARD DETERMINES THAT IN ITS REASONABLE BUSINESS JUDGMENT THE AMOUNT OF THE CLAIM IS UNLIKELY TO EXCEED THE INSURANCE DEDUCTIBLE AND, IF SO, THE UNIT OWNER'S INSURANCE POLICY PROVIDES THE PRIMARY COVERAGE, OR IF THE UNIT OWNER IS UNINSURED, THEN HE OR SHE WILL BE LIABLE FOR THE LOSS UP TO THE AMOUNT OF THE DEDUCTIBLE.**

(12) When the Association receives insurance proceeds from its Property Insurance carrier, the association receives the insurance proceeds in trust for the Owner(s) and the Association.

(e) Liability Insurance.

(1) The Association must obtain public liability insurance.

(2) The Association may purchase more public liability insurance than is required by the governing documents.

(3) Each Unit Owner is considered an "insured" under the public liability policy purchased by the Association.

(f) Worker's Compensation Insurance.

(g) Fidelity Bond. The Association shall obtain insurance or a fidelity bond covering an employee dishonesty in an amount equal to three (3) months of HOA fee income plus the amount of funds held in the reserve account.

(h) Unit Owner's Insurance. EACH UNIT OWNER IS REQUIRED TO PURCHASE ADEQUATE LIABILITY INSURANCE COVERAGE AND INSURANCE OF THE CONTENTS OF HIS UNIT, INCLUDING BUT NOT LIMITED TO ALL HOUSEHOLD FURNITURE AND FURNISHINGS, PERSONAL PROPERTY, BELONGINGS AND EFFECTS, CLOTHING, APPAREL AND JEWELRY. A CERTIFICATE OF INSURANCE SHALL BE PROVIDED TO THE SUBASSOCIATION UPON WRITTEN REQUEST.

(i) Duplication and Splitting of Coverage. If a peril or hazard is covered by an insurance policy obtained by the Master Association, then the Subassociation is not required to purchase duplicate coverage. The Subassociation is hereby granted the authority to authorize its insurance agent to split coverage and otherwise proactively maximize coverage and minimize costs.

14. Casualty Damage or Destruction

(a) All of the Owners irrevocably constitute and appoint the Board of Directors their true and lawful agent in their name, place and stead for the purpose of dealing with the Property upon its damage or destruction. Acceptance of a deed from the Declarant or from any Owner shall constitute appointment of the Board of Directors as attorney in fact for the limited purposes as herein provided.

(b) As attorney in fact, the Board of Directors shall have full and complete authority, right and power to make, execute, and deliver any contract, deed or other instrument with respect to the interest of a Owner which may be necessary or appropriate to exercise the powers herein granted. Repair and reconstruction of the improvements as used in the succeeding subparagraphs means restoring the Property to substantially the same condition in which it existed prior to damage, with each Unit and the Common Area having substantially the same vertical and horizontal boundaries as before.

(c) In the event of casualty damage or destruction all insurance proceeds shall be paid to the Subassociation who shall use all such insurance proceeds for the restoration and repair of the property. In the event the insurance proceeds are insufficient, then the Board of Directors may obtain the necessary funds by special assessments pursuant to this Neighborhood Declaration.

(d) As soon as practicable after receiving estimates, the Board of Directors shall diligently pursue completion of the repair or reconstruction of the part of the Property damaged or destroyed, but only if the Property is damaged or destroyed to the extent of 75% or less than the value thereof. In the event the Property is destroyed or damaged to the extent of more than 75% of the value thereof, the Owners shall, at a meeting within one hundred (100) days after such damage or destruction duly called by the Board of Directors for the purpose, determine whether or not said premises should be rebuilt, repaired or disposed of. Unless Owners representing at least 80% of the undivided interest in the Common Area agree to the withdrawal of the Property from the provisions of the Act and this Neighborhood Declaration and to its subsequent disposal, the Property shall be repaired, rebuilt or restored to substantially the same condition it was in immediately prior to destruction or damage. The Board of Directors 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. Such repair or reconstruction shall be substantially in accordance with the original plans and specifications of the Property or may be in accordance with any other plans and specifications the Owners may approve, provided that in such latter event the number of cubic feet and the number of square feet of any Unit may not vary by more than 5% from the number of cubic feet and the number of square feet for such Unit as originally constructed pursuant to the original plans and specifications, and the location of any building shall be substantially the same as prior to damage or destruction. The same easements for encroachments as declared in Section 4 shall apply under the provisions of this Section.

(e) The proceeds of any insurance collected shall be available to the Board of Directors for the purpose of repair or reconstruction. If the proceeds of insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, the Board of Directors may levy in advance a special assessment sufficient to provide funds to pay the estimated or actual costs of repair or reconstruction. Such assessment shall be allocated and collected as provided in this Neighborhood Declaration. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction.

(f) The insurance proceeds held by the Board of Directors and the amounts received from assessments provided for in Section 7 constitute a fund for the payment of cost of repair and reconstruction after casualty. It shall be deemed that the first money disbursed in payment for cost or repair of reconstruction shall be made from insurance proceeds; if there is a balance after payment of all costs of such repair or reconstruction, such balance shall be distributed to the Owners in proportion to the contributions each Owner made pursuant to the assessments the Board of Directors made under Section 7 of this Neighborhood Declaration.

(g) If 75% of the Owners and all holders of first mortgages on Condominium Units or Apartments agree not to rebuild, as provided herein, the Property may be removed from the provisions as prescribed therein. Withdrawal shall be in accordance with the Utah Statutes.

15. **Duty of Owner to Pay Taxes on Unit Owned.**

Each Unit and its appurtenant percentage of interest in the Common Area in the Property is subject to separate assessment and taxation of each taxing authority and the special district(s) for all types of taxes and assessments authorized by law, and that as result thereof no taxes will be assessed or levied against the Property as such. Accordingly, each Owner will pay and discharge any and all taxes and assessments which may be assessed on that Unit. In the event the taxing authority sends a tax bill to the Subassociation for property taxes and assessments on the Exclusive Common Area or Common Area and Facilities, the Subassociation is hereby granted the authority to prorate the charges and pass them on to the Unit Owners based upon their respective percentages or fractional undivided ownership interests in the Exclusive Common Area and/or Common Area and Facilities.

16. **Computation of Percentage Interest in Common Area; Common Profits, Common Expenses and Voting Rights.** The common profits of the Orchard Farms Condominium Neighborhood shall be distributed among, the common expenses shall be charged to, and the voting rights shall be available to, the owners of Units at the Orchard Farms Condominiums according to their respective percentage or fractional undivided interests in the Common Areas and the Exclusive Common Area.

(a) The respective percentage or fractional undivided ownership interest in the Exclusive Common Area which is appurtenant to a Unit shall be equal and uniform for all Units located within the Orchard Farms Condominium Neighborhood, and shall be equal to one (1) divided by the total number of Units in the Neighborhood.

(b) The respective percentage or fractional undivided ownership interest in the Common Area which is appurtenant to a Unit shall be equal and uniform for all Units and Lots located within the entire Orchard Farms Planned Unit Development.

17. **Amendment of this Neighborhood Declaration.**

(a) **General.** Except as provided elsewhere in this Neighborhood Declaration, including by way of illustration but not limitation to sections pertaining to the annexation or withdrawal of land, any amendment to this Neighborhood Declaration shall require the affirmative written vote or consent of at least sixty-seven percent (67%) of the Total Votes of the Subassociation cast either in person or by proxy at a meeting duly called for such purpose or otherwise approved in writing by such Owners without a meeting. Any amendment authorized pursuant to this Section shall be accomplished through the recordation in the Office of the County Recorder of an instrument executed by the Subassociation. In such instrument an officer or delegate of the Subassociation shall certify that the vote required by this Section for amendment has occurred.

(b) Initial Declarant Right to Amend. The Declarant alone may amend or terminate this Neighborhood Declaration prior to the closing of a sale of the first Unit.

(c) Unilateral Right to Amend Under Certain Conditions. Notwithstanding anything contained in this Neighborhood Declaration to the contrary, this Neighborhood Declaration may be amended unilaterally at any time and from time to time by Declarant if such Amendment is (1) necessary to correct typographical errors or inadvertent omissions; (2) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; or (3) reasonably necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Condominium Units or Apartments subject to this Neighborhood Declaration; provided, however, any such Amendment shall not materially adversely affect the title to any Unit unless any such Owner shall consent thereto in writing.

(d) Declarant's Right to Amend Unilaterally Prior to Termination of Declarant's Right to Control. Prior to the expiration of the Period of Declarant's Control, Declarant may unilaterally amend this Neighborhood Declaration for any other purpose; provided, however, any such Amendment shall not materially adversely affect the substantive rights of any Owner hereunder, nor shall it adversely affect title to any property without the consent of the affected Owner.

(e) To Satisfy Requirements of Lenders. Anything to the contrary notwithstanding, Declarant reserves the unilateral right to amend all or any part of this Neighborhood Declaration to such extent and with such language as may be requested by a State Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Neighborhood Declaration or approval of the sale of Condominium Units or Apartments, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Unit, or any portions thereof. Any such amendment shall be effected by the recordation by Declarant of a written Amendment duly signed by the Declarant, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the change, modification or amendment requested by such agency or institution. Recordation of such an Amendment shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Amendment, when recorded, shall be binding upon all Condominium Units or Apartments and all persons having an interest therein. It is the desire of Declarant to retain control of the Subassociation and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of hereof deletes, diminishes or alters such control in any manner whatsoever in the opinion of Declarant, Declarant shall have the unilateral right to amend this Neighborhood Declaration to restore such control.

(f) Declarant's Rights. No provision of this Neighborhood Declaration reserving or granting to Declarant the Developmental Rights shall be amended without the prior express written consent of Declarant, which consent may be withheld, conditioned or delayed for any reason or for no reason at Declarant's sole and exclusive discretion.

(g) Consent of Eligible Mortgagee. The consent of Eligible Mortgagees holding at least sixty seven percent (67%) of the undivided ownership interest of the Owners in the Tract in the Common Area and Facilities and shall be required to any amendment which would terminate the legal status of the Tract; and the consent of Eligible Mortgagees holding at least fifty-one (51%) percent of the undivided ownership interest of the Owners in the Tract in the Common Area and Facilities shall be required to add to or amend any material provision of this Neighborhood Declaration or the Plat Final Plat for the Orchard Farms Condominium Neighborhood which establishes, provides for, governs, or regulates any of the following, which are considered as "material":

- 1) voting rights;
- 2) increases in assessments that raise the previously assessed amount by more than twenty-five (25%) percent, assessment liens, or the priority of assessments liens;
- 3) reduction in reserves for maintenance, repair, and replacement of the Common Area and Facilities;
- 4) responsibility for maintenance and repairs;
- 5) reallocation of interests in the Common Area and Facilities, or rights to their use;
- 6) redefinition of any Unit boundaries;
- 7) convertibility of Condominium Units or Apartments into Common Area and Facilities or vice versa;
- 8) expansion or contraction of the Tract, or the addition, annexation, or withdrawal of property to or from the Tract;
- 9) hazard or fidelity insurance requirements;
- 10) imposition of any restrictions on the leasing of Condominium Units or Apartments;
- 11) imposition of any restrictions on an Owner's right to sell or transfer his Unit;

12) a decision by the Subassociation to establish self-management if professional management had been required previously by the Project Documents or by an Eligible Mortgage holder;

13) restoration or repair of the Tract (after damage or partial condemnation) in a manner other than that specified in the documents;

14) any provisions that expressly benefit mortgage holders, insurers or guarantors; and

15) any provisions required by Utah State Department of Real Estate (or similar agency), FHA, VA, the FHLMC or FNMA, any other federal, state or local governmental agency or a federally chartered lending institution, which in all respects shall govern and control.

(h) Material Amendment. Any addition or amendment shall not be considered material for purposes of this Section if it is for the clarification only or to correct a clerical error.

(i) Notice to Eligible Mortgagee. Notice of any proposed amendment to any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Neighborhood Declaration or the Plat Final Plat for the Orchard Farms Condominium Neighborhood is required shall be mailed postage prepaid to the address for such Mortgagee shown on the list maintained by the Subassociation. Any Eligible Mortgagee who does not deliver to the Board of Directors or the Subassociation a negative response to the notice of the proposed amendment within thirty (30) days from the date of such mailing shall be deemed to have approved the proposal. The foregoing consent requirements shall not be applicable to amendments to this Neighborhood Declaration and the Plat Final Plat for the Orchard Farms Condominium Neighborhood or the termination of the legal status of the Project as a Planned Residential Unit Development (PRUD) if such amendments or such termination are made or accomplished in accordance with the provisions of this Neighborhood Declaration regarding Condemnation or Substantial Obsolescence.

(j) Termination of Condominium Ownership Status. The Orchard Farms Condominium ownership structure shall not be terminated without the express prior written consent of all Unit Owners. This subsection may not be amended without the express prior written consent of all Unit Owners.

18. Expansion of the Tract.

(a) Reservation of Option to Expand. Declarant hereby reserves the option to expand the Tract to annex additional real estate and include additional Condominium Units or Apartments in the Tract. This option to expand may be exercised from time to time, at different times and in any order, without limitation, provided however, the option



shall expire five (5) years from the date following the first conveyance of a Unit in Phase I to a purchaser unless sooner terminated by Declarant's recorded Waiver of such option, there being no other circumstances which will cause the option to expire prior to said five (5) years. Such right may be exercised without first obtaining the consent or vote of Unit Owners and shall be limited only as herein specifically provided. Such Condominium Units or Apartments shall be constructed on any or all portions of the Additional Land described on Exhibit "C" or other real estate.

(b) Supplemental Neighborhood Declarations and Supplemental Final Plat for the Orchard Farms Condominium Neighborhoods. Such expansion may be accomplished by the filing for record by Declarant in the office of the County Recorder of Davis County, Utah, no later than five (5) years from the date this Neighborhood Declaration is recorded, a Supplement or Supplements to this Neighborhood Declaration containing a legal description of the site or sites for new Condominium Units or Apartments, together with supplemental Final Plat for the Orchard Farms Condominium Neighborhood or Final Plat for the Orchard Farms Condominium Neighborhoods containing the same information with respect to the new Condominium Units or Apartments as was required on the Final Plat for the Orchard Farms Condominium Neighborhood with respect to the Phase I Condominium Units or Apartments. The expansion may be accomplished in phases by successive supplements or in one supplemental expansion.

(c) Expansion of Definitions. In the event of such expansion the definitions used in this Neighborhood Declaration automatically shall be expanded to encompass and refer to the Tract as so expanded. The term "Property" shall mean the real property initially submitted under the Neighborhood Declaration, plus any Additional Land added to the Tract by a Supplemental Neighborhood Declaration or by Supplemental Neighborhood Declarations, and reference to this Neighborhood Declaration shall mean this Neighborhood Declaration as so supplemented. All conveyances of Condominium Units or Apartments after such expansion shall be effective to transfer rights in the Tract, with additional references to the Supplemental Neighborhood Declaration and the Supplemental Final Plat for the Orchard Farms Condominium Neighborhood. The recordation in the office of the Davis County Recorder of a Supplemental Final Plat for the Orchard Farms Condominium Neighborhood incident to any expansion shall operate automatically to grant, transfer, and convey to then Owners of Condominium Units or Apartments in the Tract as it existed before such expansion the respective undivided interests in the new Common Area added to the Tract as a result of such expansion. Such recordation shall also operate to vest in any then mortgagee of any Unit in the Tract as it existed, interest so acquired by the Owner of the Unit encumbering the new Common Area added to the Tract as a result of such expansion.

(d) Neighborhood Declaration Operative on New Condominium Units or Apartments. The new Condominium Units or Apartments shall be subject to all the terms and conditions of this Neighborhood Declaration and of a Supplemental Neighborhood Declaration, and the Condominium Units or Apartments therein shall be subject to ownership within a Planned Residential Unit Development (PRUD) with all the incidents pertaining thereto as specified herein, upon recording the Supplemental Final Plat for the

Orchard Farms Condominium Neighborhood and Supplemental Neighborhood Declaration in the said office of the Davis County Recorder.

(e) Right of Declarant to Adjust Ownership Interest in Common Area. Each deed of a Unit shall be deemed to irrevocably reserve to the Declarant the power to appoint to Owners, from time to time, the percentages in the Common Area set forth in Supplemental or Neighborhood Declaration. The proportionate interest of each Owner in the Common Area after any expansion of the Tract shall be an undivided interest of the Tract as expanded. A power coupled with an interest is hereby granted to the Declarant, its successors and assigns, as attorney in fact to shift percentages of the Common Area in accordance with Supplemental or Neighborhood Declarations recorded pursuant hereto and each deed of a Unit in the Tract shall be deemed a grant of such power to the Declarant. Various provisions of this Neighborhood Declaration and deeds and mortgages of the Condominium Units or Apartments may contain clauses designed to accomplish a shifting of the Common Area. None of said provisions shall invalidate the other, but each shall be deemed supplementary to the other toward the end that a valid shifting of the Common Area can be accomplished. Notwithstanding anything to the contrary herein, no change in the percentage of undivided interest in the Common Area may be effected more than five (5) years after the effective date of the Neighborhood Declaration.

(f) Revised Schedule. Accordingly, upon the recordation of a Supplemental Neighborhood Declaration and Supplemental Final Plat for the Orchard Farms Condominium Neighborhood incident to any expansion, the revised schedule of undivided interests in the Common Area contained therein shall automatically become effective for all purposes and shall fully supersede any similar schedule which was contained in any Neighborhood Declaration associated with any prior phase. In the event the provisions of the separate instruments relating to the Tract conflict irreconcilably, the terms of that instrument which was recorded most recently shall control.

(g) Other Provisions Concerning Expansion. If the Tract is expanded as hereinbefore contained, then it is further provided that:

(1) All or any part of the Additional Land may be added to the Tract without any limitations whatsoever save and except that all additional Condominium Units or Apartments created must be restricted to multi family residential housing limited to one family per Unit.

(2) Portions of the Additional Land may be added to the Tract at different times without any limitations.

(3) Declarant shall have the right without further conveyance or documentation to build roads and access ways to the Additional Property through the easement areas as shown on the Final Plat for the Orchard Farms Condominium Neighborhood. The Subassociation of Owners shall not allow anything to be built upon or interfere with said easement areas.

(4) No assurances are made concerning:

a. The locations of any improvement that may be made on any portion of the Additional Land that may be added to the Tract.

b. Type, kind or nature of improvement which may be created on any portion of the Additional Land, except that the common facilities, Buildings and Condominium Units or Apartments will be comparable to the Phase I facilities on a per Unit basis and will be of a similar quality of materials and construction to Phase I and will be substantially completed prior to annexation.

c. Whether any Condominium Units or Apartments created on any portion of the Additional Land will be substantially identical to those within the initial Tract except that Condominium Units or Apartments will be constructed of an equal or better quality of materials and construction than the Condominium Units or Apartments in Phase I.

d. Type, size, or maximum number of Common Area and Facilities which may be created within any portion of the Additional Land added to the Tract.

(5) Notwithstanding anything to the contrary which may be contained herein, the Neighborhood Declaration is not intended, and shall not be construed so as to impose upon Declarant any obligation respecting, or to restrict Declarant in any way with regard to:

(a) the submission of any portion of the Additional Land to the provisions of the Act as Land under this Neighborhood Declaration;

(b) the creation, construction, or addition to the Tract of any additional property;

(c) the carrying out in any particular way or within any particular time of any development which may be undertaken except as herein mentioned; or

(d) the taking of any particular action with respect to the Additional Land, the Tract, or any Land.

(6) Phase 1 of the Condominium Neighborhood is completed and there are four (4) Buildings and eighty (80) Units, twenty (20) Units per Building. Because it is now anticipated that there will only be one phase the maximum ownership interest of a Unit in the Exclusive Common Area is 1/80 or 0.0125%. If there are additional phases, then the number of Buildings and Units actually constructed and the actual ownership interest of each Unit in the Exclusive Common Area will change.

19. **Transfer of Management.**

Declarant may at any time relinquish its reserved right to select the Directors and may elect to transfer the management of the Tract to a Board of Directors elected by the Owners. Upon the termination of the Period of Declarant's Control, or sooner if the Declarant so elects, Declarant shall notify Owners in writing of the effective date of such transfer (the "Transfer Date"). Thereupon, the Owners shall call a meeting to elect the Directors to take office as of the Transfer Date. Declarant covenants to cooperate with the Owners in effecting an orderly transition of management. Moreover, Declarant shall cause all obligations for Neighborhood Common Expenses of the Subassociation prior to the Transfer Date to be paid in full on or before such date, and shall transfer any Subassociation funds to the newly elected Board of Directors.

20. **Working Capital Fund.**

A working capital fund shall be established by the Declarant equal to or greater than two (2) months' Assessments for each Unit. Each Unit's share of the working capital fund shall be paid by the buyer of a Unit, collected by the title company, and transferred to the Subassociation at the time of closing of the sale of each Unit. If the working capital contribution is paid for by the Declarant, in cash or kind, then the Declarant shall be reimbursed for such contribution by the buyer of such Unit at the time of closing. The purpose of the working capital fund is to insure that the Board of Directors will have cash available to satisfy unforeseen expenses or to acquire additional equipment or services necessary for the operation, control and regulation of the Tract. Sums paid into the working capital fund are not to be considered as advance payments or regular monthly payments of Neighborhood Common Expenses. Thereafter, the Board of Directors may continue the working capital fund by charging a reasonable transfer or impact fee when Condominium Units or Apartments are sold or rented.

21. **Reinvestment Fee.** The Subassociation may charge a reinvestment fee in accordance with Utah law.

22. **Separate Taxation.**

Each Unit and its percentage of undivided interest in the Exclusive Common Area shall be considered to be a parcel and shall be subject to separate assessment and taxation by each assessing unit and special district for all types of taxes authorized by law, including ad valorem levies and special assessments. Neither the Building or Buildings, the property nor any of the Exclusive Common Area and/or Common Area and Facilities may be considered a parcel for tax purposes.

23. **Enforcement and Right to Recover Attorneys Fees.**

(a) **General Remedies.** Should the Subassociation, Manager, Board of Directors or an aggrieved Owner be required to take action to enforce the Project Documents, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including a reasonable attorneys fee, which may arise or accrue.

(b) **Additional Remedies.** In addition, the Board of Directors may impose the following sanctions after proper notice and the opportunity to be heard:

- (1) imposing fines;
- (2) suspending an Owner's right to vote;
- (3) suspending any Person's right to use any of the Exclusive Common Area and/or Common Area and Facilities; provided, however, nothing herein contained shall authorize the Board of Directors to limit ingress or egress to or from a Unit;
- (4) exercising self-help or taking action to abate any violation of the Orchard Farms Condominium Neighborhood Documents in a non-emergency situation;
- (5) exercising self-help in any emergency situation (specifically including but not limited to the towing of vehicles that are in violation of the parking rules);
- (6) requiring an Owner at his sole expense to remove any structure or improvement in the Common Area and Facilities, and upon the failure of the Owner to do so, the Board of Directors or its designee shall have the right to enter the property and remove the violation and restore the property to its original condition, and such action shall not be deemed a trespass;
- (7) without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the Project Documents; and
- (8) levying Individual Charges to cover costs and expenses incurred by the Subassociation to bring an Owner into compliance.

24. **Service of Process.**

Until changed by amendment to this Neighborhood Declaration, the name of the person to receive service of process and the place of his residence is:

Jim Seaberg  
978 East Woodoak Lane  
Salt Lake City, Utah 84117

25. **Mortgagees.**

Notwithstanding all other provisions hereof:

(a) The liens created hereunder upon any Unit shall be subject to and subordinate to, and shall not affect the rights of the holder of the indebtedness secured by any recorded first mortgage (meaning a mortgage or a trust deed with first priority over other mortgages) where such interest was made in good faith and for value, provided that after the foreclosure of any such mortgage there may be a lien on the interest of the purchaser at such foreclosure sale to secure all assessments made pursuant to this Neighborhood Declaration after the date of such foreclosure sale, which lien shall have the same effect and be enforced in the manner as provided herein. All other mortgages shall have such rights and priorities as established by law.

(b) No amendment to this paragraph shall affect the rights of the holder of any such mortgage who does not join in the execution thereof.

(c) No lender or mortgagee may be subject to or bound by any mandatory mediation or arbitration.

26. **Indemnification of Board of Directors.**

Each member of the Board of Directors shall be entitled to be indemnified and held harmless by the Owners against all cost, expenses, and liabilities whatsoever, including attorney's fees, reasonably incurred by him in connection with any proceeding to which he may become involved by reason of being or having been a member of the Committee.

27. **Severability.**

If any provision, paragraph, sentence, clause, phrase, or word of this Neighborhood Declaration should under any circumstance be invalidated, such invalidity shall not affect the validity of the remainder of the Neighborhood Declaration, and the application of any such provision, paragraph, sentence, clause, phrase, or word in any other circumstances shall not be affected thereby.



**EXHIBIT "A"**  
**LEGAL DESCRIPTION OF ORCHARD FARMS CONDOMINIUM**

The land referred to in the foregoing document as Orchard Farms Condominium is located in Davis County, Utah and is described more particularly as follows:

Fee Simple to all Condominium Units, as described in the "Neighborhood Amended and Restated Declaration of Condominium for Orchard Farms Condominium" as recorded as Entry No. 2664102 in the official land records for Davis County Recorder's Office, Davis County, Utah together with all rights, access and easements described or granted therein and as shown or depicted on the Final Plat for Orchard Farms Condominium Neighborhood for the "ORCHARD FARMS CONDOMINIUM" as Entry No. 5153 in the plat records of the Davis County Recorder's Office, Davis County, Utah ("Final Plat").

TOGETHER WITH an undivided interest in and to the non-exclusive right to use and enjoy the Common Area and Facilities under the Master Amended and Restated Declaration of Covenants, Conditions and Restrictions and Reservation or Grant of Easements, Orchard Farms Planned Residential Unit Development ("Master Declaration"), the Exclusive Common Areas and each Limited Common Area under the Neighborhood Amended and Restated Declaration of Condominium for Orchard Farms Condominium and as the same are established therefore or depicted or shown on the Final Plat for Orchard Farms Condominium Neighborhood for the "Orchard Farms Condominium" as referenced above.

TOGETHER WITH all rights, access and easements granted in the Master Declaration and the Final Plat as referenced above.

TOGETHER WITH all rights, access and easements granted in and a non-exclusive easement for access over and across Snap Dragon Lane (a private road) pursuant to the Neighborhood Amended and Restated Declaration of Condominium for Orchard Farms Condominium, dated May 29, 2012 recorded as Entry No. 2664102 in the records of the Davis County Recorder's Office, Davis County, Utah.

SUBJECT TO: The Master Declaration and Master Plat as referenced above.



**EXHIBIT "B"**  
**BYLAWS OF THE**  
**ORCHARD FARMS CONDOMINIUM SUBASSOCIATION**

**ARTICLE I**  
**NAME AND LOCATION**

**Section 1 .01 Name and Location.** The name of the Subassociation is Orchard Farms Condominium Subassociation (the "Subassociation"). The principal office of the corporation shall be located at 978 East Woodoak Lane, Salt Lake City, UT 84117, but meetings of Members and Board of Directors may be held at such places within the State of Utah, as may be designated by Board of Directors.

**ARTICLE II**  
**DEFINITIONS**

**Section 2.01 Definitions.** Except as otherwise provided herein or as may be required by context, all terms defined in Paragraph 1 of the Neighborhood Declaration shall have such defined meanings when used in these Bylaws.

**ARTICLE III**  
**MEETINGS OF MEMBERS OF THE SUBASSOCIATION**

**Section 3.01 Annual Meeting.** The Subassociation shall meet as often as it deems reasonably necessary but not less than annually at a convenient time and place.

**Section 3.02 Special Meetings.** Special meetings of Subassociation may be called at any time by the President or by a majority of the Directors or by the written request of at least twenty-five percent (25%) of the Owners.

**Section 3.03 Notice of Meetings.** Written notice of each meeting of the Subassociation shall be given to each Owner by or at the direction of the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to said Owner addressed to the Owner's address last appearing on the books of the Subassociation, or supplied by such Owner to the Subassociation for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

**Section 3.04 Quorum.** A majority of the Owners present shall constitute a quorum for any action except as otherwise provided in the Articles, the Neighborhood Declaration, or these Bylaws.

**Section 3.05 Proxies.** At all Subassociation meetings, each Owner may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall

be revocable and shall expire, if not previously revoked, eleven (11) months after the date it is given by the Owner.

**Section 3.06 Action Taken Without a Meeting.** The Association shall have the right to take any action in the absence of a meeting which it could take at a meeting. Any action so approved shall have the same effect as though taken at a meeting of the Association.

#### ARTICLE IV BOARD OF DIRECTORS AND TERM OF OFFICE

**Section 4.01 Number.** The affairs of the Subassociation shall be managed by a Board of Directors comprised of three (3) natural persons. Each Member must be duly qualified and appointed or elected.

**Section 4.02 Replacement.** If a Member resigns or is otherwise unable or unwilling to serve, then the remaining Members shall appoint a replacement to complete his term of office.

**Section 4.03 Term of Office.** Each Directors shall serve a term of at least two (2) years.

**Section 4.04 Compensation.** No Member shall receive compensation for any service he may render to the Subassociation as a member of the Board of Directors, although he may be reimbursed for his actual expenses incurred in the performance of his duties and may enter into an independent contract to provide other services. A Member may enter into a separate and independent contract with the Subassociation to provide additional services for a fee.

**Section 4.05 Regular Meetings.** The Board of Directors shall meet as often as it deems reasonably necessary at a convenient time and place.

**Section 4.06 Special Meetings.** Special meetings of Board of Directors may be called at any time by the President or by a majority of the Directors.

**Section 4.07 Notice of Meetings.** Written notice of each meeting of the Board of Directors shall be given to each Director by or at the direction of the Secretary or person authorized to call the meeting by hand-delivery, mail, e-mail, fax or by posting on the Community bulletin board. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

**Section 4.08 Quorum.** A majority of the Directors present, in person or by proxy, shall constitute a quorum for any action except as otherwise provided in the Articles, the Neighborhood Declaration, or these Bylaws.

**Section 4.09 Action Taken Without a Meeting.** The Board of Directors shall have the right to take any action in the absence of a meeting which it could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Board of Directors.

**Section 4.06 Voting.** Each Member shall have one vote.

#### **ARTICLE V POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

**Section 5.03 Powers.** The Subassociation shall have all of the powers of a Utah non-profit corporation, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws and this Neighborhood Declaration. The Subassociation shall have the power to perform any and all lawful acts which may be necessary or proper for, or incidental to, the exercise of any of the express powers of the Subassociation. Without in any way limiting the generality of the foregoing, the Subassociation may act through its Board of Directors and shall specifically have the powers and duties set out in this Article V, including

**Section 5.03.1 Assessments.** The power and duty to levy Assessments on the Owners, and to enforce payment of such assessments in accordance with the Neighborhood Declaration.

**Section 5.03.2 Subassociation Property.** The right to own and/or lease the Subassociation Property and the duty to maintain and manage the Common Area and Facilities and improvements thereon. In particular the Subassociation shall:

- a. Maintain and repair in an attractive, safe and functional condition the Common Area and Facilities;
- b. Pay all taxes and assessments levied upon the Common Area and Facilities and all taxes and assessments payable by the Subassociation;
- c. Obtain any water, sewer, gas and electric services needed for the Common Area and Facilities; and
- d. Do each and every other thing reasonable and necessary to operate the Common Area and Facilities and the Subassociation.

#### **ARTICLE VI OFFICERS AND THEIR DUTIES**

**Section 6.01 Enumeration of Officers.** The officers of the Subassociation shall be a president and secretary, plus such other officers as the Board of Directors may from time to time by resolution create. The same individual may not hold the office of president

and secretary at the same time. The officers need not be Members of the Board of Directors.

**Section 6.02 Election of Officers.** The Board of Directors shall elect or appoint officers at the first meeting of the Board of Directors during each calendar year.

**Section 6.03 Term.** Each officer of the Subassociation shall hold office for one (1) year unless he shall sooner resign, or shall be removed or otherwise disqualified to serve.

**Section 6.04 Special Appointments.** The Board of Directors may elect such other officers as the affairs of the Subassociation may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may from time to time determine.

**Section 6.05 Resignation and Removal.** Any officer may be removed from office with or without cause by a majority vote of the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

**Section 6.06 Vacancies.** A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

**Section 6.07 President.** The president shall (a) preside at all meetings of the Board of Directors, (b) see that orders and resolutions of the Board of Directors are carried out and (c) sign all contracts.

**Section 6.08 Secretary.** The secretary shall (a) record the votes and keep the minutes of all meetings and proceedings of the Board of Directors and of the Subassociation, (b) keep the corporate seal of the Subassociation and affix it on all papers requiring said seal, (c) serve notice of meetings of the Board of Directors and of the Subassociation, (d) keep appropriate current record showing the Members of the Subassociation together with their addresses and (e) perform such other duties as may be required by the Board of Directors.

## ARTICLE VII SUBCOMMITTEES

**Section 7.01 Subcommittees.** The Board of Directors may appoint such subcommittees as deemed appropriate in carrying out its purpose.

## ARTICLE VIII BOOKS AND RECORDS

**Section 8.01 Books and Records.** The books and records shall be kept with detailed accounts of the receipts and expenditures affecting the Tract, and the administration of the Tract, specifying the maintenance, repair and any other expenses incurred. The books and records, including any invoices, receipts, bills, proposals, documents, financial statements, and vouchers accrediting the entries thereupon shall be available for examination by the Owners, their duly authorized agents or attorneys, during general business hours on working days at the times and in the manner that shall be set and announced by the Board of Directors for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting practices.

**Section 8.02 Signatures.** All checks, drafts, contracts, and legally binding agreements shall be signed by persons authorized by the Board of Directors.

**Section 8.03 Bookkeeping.** The accounting and financial statements for Subassociation must be kept and prepared by either the property manager or an independent bookkeeper or accountant, who may not be a member of the Board of Directors or an officer of the Subassociation. A monthly profit and loss statement, balance sheet, and check register shall be sent or delivered designee by the bookkeeper or accountant to each Member and Subassociation or their designee. The accountant or bookkeeper shall prepare and file all tax returns for the Subassociation.

**Section 8.04 Audit.** Either a (a) majority vote of the Directors or (b) majority vote of all of the Owners is necessary and sufficient to require either a Compilation Report, Reviewed Statement or Audited Statement of the MHOA, the cost of which shall be considered a Neighborhood Common Expense.

## ARTICLE IX AMENDMENTS

**Section 9.01 Amendment to Bylaws.** These Bylaws may only be amended (a) unilaterally by the Declarant until the expiration of the Period of Declarant's Control or (b) the affirmative vote of a majority of the Owners or (c) the affirmative vote of a majority of the Directors.

**Section 9.02 Conflict Between Articles, Bylaws and Neighborhood Declaration.** In the case of any conflict between the Neighborhood Declaration and these Bylaws, the Neighborhood Declaration shall in all respects govern and control.

**ARTICLE X  
MISCELLANEOUS**

**Section 10.01 Miscellaneous.** The fiscal year of the Subassociation shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.  
IN WITNESS WHEREOF, the Declarant has hereunto set his hand this 31 day of December, 2012.

DECLARANT:  
ORCHARD FARMS MULTIFAMILY HOLDINGS, LLC

By: *Jim Seaberg*  
Name: Jim Seaberg  
Title: Manager

**ACKNOWLEDGMENT**

STATE OF UTAH                    )  
  ss:  
COUNTY OF SALT LAKE    )

The foregoing instrument was acknowledged before me this 31 day of December, 2012 by Jim Seaberg, the Manager of ORCHARD FARMS MULTIFAMILY HOLDINGS, LLC, a Utah limited liability company, and said Jim Seaberg duly acknowledged to me that said ORCHARD FARMS MULTIFAMILY HOLDINGS, LLC executed the same.

*Donna Perkins*  
NOTARY PUBLIC

