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RICHARD T. MAUGHAN
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VE LLC

WHEN RECORDED, RETURN TO:
Stonegate Preserve, LLC
P. O. Box 1347
Bountiful, Utah 84011
(801) 617-2100

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APR 11 2016

Stone gate subdivision Phase 1
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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
STONEGATE SUBDIVISION, PHASE 1**

This Declaration of Covenants, Conditions and Restrictions for Stonegate Subdivision, Phase 1 located in the City of Clinton, Davis County, Utah (the "Declaration") is executed by Stonegate Preserve, LLC, a Utah limited liability company, of 801 North 500 West, Suite 204, Bountiful, Utah 84010 (the "Developer"), with reference to the following:

RECITALS

- A. Developer is the owner of certain real property located in the City of Clinton, County of Davis, State of Utah, described more particularly on Exhibit "A" attached hereto and incorporated herein by this reference (the "Tract").
- B. The Plat Map shows 8 Lots, numbered 1 through 8, located within the Tract.
- C. The Property is an area of unique natural beauty, featuring distinctive terrain.
- D. There are no common areas in the Tract.
- E. There is no homeowners association.
- F. The governing documents will be enforced by an architectural review committee.
- G. Since the completion of the Project may be in phases, the completed Project will consist of the original Phase 1 and all subsequent phases.
- H. By subjecting the Property to this Declaration, it is the desire, intent and purpose of Developer to provide a general plan for development of the land, create a community in which beauty shall be substantially preserved, which will enhance the desirability of living on that real estate subject to this Declaration, and which will increase and preserve the attractiveness, quality and value of the lands and improvements therein.

COVENANTS, CONDITIONS AND RESTRICTIONS

Now, therefore, for the reasons cited above, the Developer hereby covenants, agrees, and declares that the Property shall be subject to the following covenants, conditions and restrictions:

1. **Definitions.** The following definitions shall apply to this Declaration:
 - a. **“Accessory Building”** shall mean and refer to any structure which is (1) not the preliminary structure, (2) contains at least 120 square feet, (3) requires a building permit, (4) is not a shed, shack or other out-building (for which a building permit is not required), and (5) qualifies as such under the totality of the circumstances in the sole opinion of the ARC.
 - b. **“Additional Charges”** shall mean and refer to late fees, interest, attorneys’ fees, costs and expense.
 - c. **“Architectural Review Committee”** or **“ARC”** shall mean and refer to the person or persons appointed by the Developer to review, interpret and enforce the Project Documents, designs, plans, specifications, homes, architecture, fencing, and landscaping within the Project.
 - d. **“Builder”** shall mean an owner, developer or contractor who obtains a construction or occupancy permit or one or more Lots.
 - e. **“Capital Improvement”** shall mean and refer to all new improvements intended to add to, enhance or upgrade the nature, scope, utility, value, or beauty of the Project, as opposed to ordinary repair and maintenance.
 - f. **“City”** shall mean and refer to the City of Clinton, Utah.
 - g. **“Common Expense”** shall mean and refer to all expenses incurred by the ARC in administering and enforcing the Declaration.
 - h. **“Dwelling Unit”** shall mean and refer to both the use and architectural style of a home, residence, dwelling or living unit constructed upon a Lot. Mechanical equipment and appurtenances located within any one Dwelling Unit, or located without said Dwelling Unit but designated and designed to serve only that Dwelling 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 Dwelling 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 Dwelling Unit or serving only the Dwelling Unit, and any structural members, parts, components or any other property of any kind, including fixtures or appliances within any Dwelling Unit, which are removable without jeopardizing the integrity, soundness, safety or usefulness of the remainder of the Building within which the Dwelling Unit

is located shall be deemed to be part of the Dwelling Unit. Where the context clearly requires, the term "Dwelling Unit" may refer to a Lot.

- i. **"Entry"** shall mean the entryway into the Project.
 - j. **"Entry Monument"** shall mean the monument, planter boxes, landscaping features and other physical improvements identifying the Project located at or near the Entry or entrance to the Project.
 - k. **"Guest"** shall mean and refer to a guest, visitor or invitee to a Lot.
 - l. **"Individual Charge"** shall mean and refer to a charge levied against an Owner or Permittee for all expenses resulting from the act or omission of such Person, excepting the Owner's failure to pay any Assessment.
 - 1) The act or negligence of any Owner or Permittee shall be deemed to be the act or negligence of the Owner responsible for such Person.
 - 2) Individual Charges shall include, by way of illustration but not limitation, any expense resulting from the act or omission of any Owner or Permittee including:
 - a) The cost to repair any damage to any portion of the Tract on account of loss or damage caused by such Person; or
 - b) The cost to satisfy any expense to any other Owner or Owners or to the ARC due to any intentional or negligent act or omission of such Person, or resulting from the breach by such Person of any provisions of the Project Documents.
- While Individual Charges are not Assessments, they are secured by alien in the same manner as Assessments, as set forth below. The ARC also shall have all other remedies, both legal and equitable, described in the Project Documents available against any Owner for nonpayment.
- m. **"Managing Member"** shall mean and refer to the person appointed by the Developer to unilaterally make all day-to-day business decisions for the ARC.
 - n. **"Owner"** or **"Owners"** shall mean and refer to the record owner or owners of a fee simple title to any Lot, whether one or more natural persons or legal entities, and excluding those persons having such interest merely as security for the performance of an obligation.
 - o. **"Parking Pad"** shall mean and refer to a cement or concrete (or other construction material approved in writing by the ARC) parking pad constructed or installed on a Lot for the purpose of parking or storing of a recreational, commercial, or oversized vehicle.

p. **“Parking Pad Fence”** shall mean and refer to a cinder block, vinyl or wood (or other construction material approved in writing by the ARC) fence surrounding the Parking Pad.

q. **“Period of Developer Control”** shall mean and refer to a period of time commencing on the date this Declaration is recorded and terminating on the occurrence of the last of the following events: (1) four months after 100% of the Dwelling Units construction upon Lots owned by Developer in the Project have been sold; or (2) five years from the effective date of this Declaration; or (3) when in its sole discretion, the Developer so determines.

r. **“Permittee”** shall mean and refer to a guest, family member, renter, tenant, lessee, resident, occupant of or any Person permitted by Owner on a Lot.

s. **“Person”** shall, unless otherwise indicated, mean and refer to a natural person, corporation, partnership, trust, limited liability company, or other legal entity.

t. **“Plan Review Fee”** shall mean and refer to the nonrefundable fee to be paid to the ARC by the Owner with the submission of the Owner’s plans and specifications for review by the ARC.

u. **“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.

v. **“Plat Map”** shall mean and refer to the Final Plat Map or Maps of Stonegate Subdivision Phase I as it may be amended from time to time. The Plat Map will show the location of the Lots.

w. **“Project”** shall mean Stonegate Subdivision Phase I.

x. **“Project Documents”** shall mean and refer to this Declaration, Architectural or Design Guidelines, and any Rules and Regulations adopted by the Manager or the ARC from time to time.

y. **“Property”** shall mean and refer to the Tract.

z. **“Recreational, Oversized, or Commercial Vehicle”** shall mean and refer to any recreational, commercial, or oversized vehicle, motor homes, commercial vehicle, tractor, bobcat, non-passenger vehicle, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, trailers, including but not limited to a camper trailer, boat trailer, horse trailer, or other utility trailer of any kind, or any other recreational, oversized, or commercial transportation device of any kind so defined by the ARC.

aa. **“Repair”** shall mean and refer to merely correcting the damage done on an occasion of an 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.

2. **Area of Application.** This Declaration shall apply to all of the Property.

3. **Right to Expand Application.** The Developer shall have the exclusive, unilateral, unconditional, and irrevocable right to expand the application of this Declaration to other real property by written amendment to this Declaration duly recorded.

4. **Description and Legal Status of the Property.** The Plat Map shows the type and location of each Lot and its Lot number. It is intended that Phase 1 will consist of up to eight (8) residential Lots, numbered Lots 1 through 8, inclusive. All Lots shall be capable of being independently owned, encumbered, and conveyed, and shall have separate property tax or parcel numbers.

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

All of Lot No. _____ contained within Stonegate Subdivision, Phase 1, as the same is identified in the Plat Map recorded in Davis County, Utah, as Entry No. 2920472 in Book 6452, at Page 32 of the official records of the County Recorder of Davis County, Utah (as said Plat Map may have heretofore been amended or supplemented) and in the Declaration of Covenants, Conditions and Restriction of Stonegate Subdivision, Phase 1, recorded in Davis County, Utah as Entry No. 2931590 in Book 6492, at Page(s) 1029-1061 of the official records of the County Recorder of Davis County, Utah (as said Declaration may have heretofore been amended).

Regardless of whether or not the description employed in any such instrument is in the above-specified form, all provisions of this Declaration shall be binding upon and inure to the benefit of any party who acquires any interest in a Lot.

6. **Meetings.** The ARC shall meet as often as is necessary at a convenient time and place. A meeting of Owners may be called by the Manager or the ARC. The ARC shall call a meeting of the Owners upon receipt of a petition signed by at least 25% of the Owners. The meeting shall be held at a time and place determined by the ARC upon at least fifteen (15) and not more than thirty (30) days prior written notice to each Owner at his last known address. The ARC shall designate the person to preside over and conduct any meeting of Owners.

7. **Maintenance Responsibility of the Owners; Area of Personal Responsibility.** Each Owner shall maintain and keep in good repair his Lot, Dwelling Unit and all improvements thereon or therein. Such maintenance responsibilities include, but are not limited to, snow removal from sidewalks and driveways, landscape maintenance, abatement of noxious weeds, replacement of dead trees, and removal of debris.

8. **Common Expenses and Voting Rights.** The common expenses of the Property, if any, shall be charged to, and the voting rights shall be available to, the Owners equally.

9. **Common Expenses.** Each Owner is responsible for and shall pay his share of the Common Assessment, if any, and any Assessments against him or his Lot, and:

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

b. **Purpose of Common Area Expenses.** The Assessments provided for herein, if any, shall be used for the general purpose of operating the ARC and administering and enforcing the Project Documents.

c. **Creation of Assessments.** Each Owner, by acceptance of a deed or other document of conveyance to a Lot, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the ARC his share of the Common Expenses, if any, and all of his Assessments.

d. **Budget.** At least thirty (30) days prior to the beginning of a new fiscal year, the ARC shall prepare and deliver to the Owners a proposed Budget which:

1) **Itemization.** Shall set forth an itemization of the anticipated Common Expenses for the twelve (12) month calendar year, commencing the following January 1.

2) **Basis.** Shall be based upon advance estimates of cash requirements by the ARC to provide for the payment of all estimated expenses growing out of or connected with the administration and enforcement of the Project Documents.

e. **Approval of Budget and Assessments.** The proposed Budget and the Assessments shall become effective unless disapproved by the affirmative written vote of at least a majority of the Owners at a meeting duly called for this purpose. Notwithstanding the foregoing, however, if the Owners disapprove of the proposed budget and Assessments or the ARC fails for any reason to establish the Budget and Assessments for the succeeding year, then and until such time as a new budget and new Assessment schedule shall have been established, the Budget and Assessments in affect for the then current year shall continue for the succeeding year.

f. **Personal Obligation of Owner.** Each Owner is liable to pay his share of the Common Expenses, all of his Assessments, and Additional Charges; provided, however, no first mortgagee or beneficiary under a first deed of trust (but not the Seller under a uniform real estate contract, land sales contract, or other similar instrument), who obtains title to a Lot pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid Assessments which accrued prior to the acquisition of title.

g. **Equitable Changes.** If the aggregate of all monthly payments on all of the Lots is too large or too small as a result of unanticipated income or expenses, the ARC may from time to time effect an equitable change in the amount of said payments.

h. **Reserve Account.** The ARC shall establish and maintain a reserve account or accounts to pay for unexpected operating expenses and capital improvements.

i. **Statement of Assessments Due.** Upon written request, the ARC shall furnish to any Owner a statement of Assessments due, if any, on his Lot. Failure to provide the certificate within ten (10) days after a written request is received by the ARC shall be deemed conclusive evidence that all Assessments are paid current. The ARC may require the advance payment of a processing charge not to exceed \$15.00 for the issuance of such certificate.

j. **Debt Collection.** An Assessment, Additional Charge or fine is a debt of the Owner at the time it is made and is collectible as such. Suit to recover a personal judgment for unpaid fines is maintainable by the ARC without foreclosing or waiving the lien security it. If any Owner fails or refuses to make any payment of an Assessment, Additional Charge or fine when due, that amount constitutes a lien on the interest of the Owner in the Property, and upon the recording of notice of lien, it is a lien upon the Owner's interest in the Property prior to all other liens and encumbrances, recorded or unrecorded, except: (1) tax and special assessment liens on the Lot in favor of any assessing unit or special improvement district; and (2) encumbrances on the interest of the Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

k. **Late Fees.** A late fee in a sum determined by the ARC may be charged on all payments received more than ten (10) days after they were due.

l. **Default Interest.** Default interest of 1.5% per month may be assessed on the outstanding balance of all delinquent accounts.

10. **Architectural Review Committee.** Since aesthetics, the integrity and harmony of the original design, and the quality of construction and materials throughout the Project is important, all architectural designs, plans, specifications, construction materials, and construction must be (i) reviewed and approved by the ARC or its designee, and (ii) consistent with the restrictions set forth herein governing the Project.

a. **General Status, Authority and Duties of ARC.** The ARC shall adopt an annual budget, pay all Common Expenses, allocate the Common Expenses among the Owners,

bill the Owners for their portion of the Common Expenses, collect the Assessments, and take all other actions necessary or incident thereto. Any instrument executed by the ARC, its legal representative or Managing Member which recites facts which, if true, would establish the power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish such power and authority in favor of any person who in good faith and for value relies upon said instrument. The ARC shall constitute a legal entity capable of dealing in its own name or in behalf of two or more Owners. The ARC and Managing Member shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Section and its decisions. Until the end of the Period of Developer's Control, the Developer shall have the exclusive, unilateral and irrevocable right to appoint the members of the Arc and the Managing Member. The ARC may adopt, repeal, modify and enforce reasonable rules and regulations.

b. **Delegation of Management Responsibilities.** The ARC may delegate some of its management responsibilities to either a professional management company or manager, or any combination thereof. The termination provision of any such contract must not require a termination penalty or any advance notice of any more than sixty (60) days, and no such contract or agreement shall be for a term greater than one (1) year. The ARC may also employ architects, engineers, landscape professionals, contractors, subcontractors, general laborers, grounds crew, maintenance personnel, bookkeepers, accountants, attorneys, administrative and clerical personnel as necessary to perform its management responsibilities.

c. **Duties, Powers and Standing.** Until the termination of the "Period of Developer Control," the ARC has the sole right and exclusive authority to resolve all architectural issues and may, in its sole discretion, designate one or more persons from time to time to act on its behalf in reviewing applications hereunder as the ARC, which before the termination of the "Period of Developer Control" shall consist of three individuals, two of whom must be appointed by Developer, and thereafter may consist of (1) a single individual, architect or engineer, or (2) a committee comprised of architects, engineers or other persons who may or may not be Owners, or (3) a combination thereof. Powers may be delegated by the ARC, provided any such delegation shall specify the scope of responsibilities delegated, and, prior to the termination of the Period of Developer Control, shall be subject to the irrevocable right of Developer to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and/or to veto any decision which Developer determines, in its sole discretion, to be inappropriate or inadvisable. The initial ARC will be made up of Alan Cottle, who shall act as the Managing Member, who shall serve until such time as his successors are qualified and appointed. Members serving on the ARC shall be appointed or elected to serve two (2) year terms. Except for members of the ARC appointed by the Developer prior to the termination of the Period of Developer Control, members of the ARC may be removed at any time by the affirmative vote of at least a majority of the Owners. Unless he forfeits or otherwise loses his seat, a member shall serve on the ARC until his successor qualifies and is properly appointed by the Developer or, after the termination of the Period of Developer Control, elected by the Owners. Members of ARC shall not be compensated for their services, although they may be reimbursed for costs advanced. Any instrument executed by the ARC or its legal representative that recites facts which, if true, would establish the power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall

conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The ARC shall constitute a legal entity capable of dealing in its own name or in behalf of two or more Owners. The ARC shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Section and its decisions, including without limitation:

(1) **Access.** The power and authority to enter into or upon any Lot to make inspections, evaluations or repairs and to do other work necessary for the proper maintenance and operation of the Project or to enforce the decisions of the ARC. Except in the case of an emergency, Owners shall be given at least twenty-four (24) hours prior notice before the ARC may exercise this power.

(2) **Respond to Complaints.** While the ARC will not police the development, relative to any of these covenants, it shall have the power and authority, but not the obligation, to respond to written concerns of Owners about any issue.

(3) **Execute Documents.** The authority to execute and record, on behalf of the ARC, any amendment to the Declaration which has been approved by the vote or consent necessary to authorize such amendment.

(4) **Standing.** The power to sue and be sued.

(5) **Contractual Authority.** The authority to enter into contracts which in any way concern the Project.

(6) **Promulgate Rules.** The authority to promulgate such reasonable rules and regulations as may be necessary or desirable to aid the ARC in carrying out any of its functions, including by way of illustration but not limitation: parking rules or landscaping rules.

(7) **Determine Common Expenses.** The authority to determine the Common Expenses, if any, of operating the ARC and administering the architectural guidelines in the Project Documents.

(8) **All Other Acts.** The power and authority to perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the ARC to perform its functions for and in behalf of the Owners.

d. **Composition of Architectural Review Committee.** The Architectural Review Committee shall consist of at least one (1) but no more than three (3) members who need not be Owners. The member or members of the Architectural Review Committee shall be appointed by the Developer during the Period of Developer's Control and thereafter the member or members shall be elected by the Owners.

e. **Managing Member.** Anything the contrary notwithstanding, during the Period of Developer's Control, the ARC hereby assigns and delegates all of its rights, power and authority, as set forth in the Project Documents, to a Managing Member selected or to be

selected by the Developer, who shall manage the ARC and administer the Project Documents. The Developer hereby designates Alan Cottle as the initial Managing Member of the ARC.

f. **Transfer of Control of ARC.** Unless otherwise agreed in writing, within forty-five (45) days after the ruminantion of the Period of Developer's Control, Developer shall transfer the right to the Owners to appoint at least two members of the ARC, and Developer shall facilitate and manage such transfer of control of the ARC.

g. **Default in Management of ARC.** In the event of the failure of a duly qualified and functioning ARC, the City may but is not obligated to administer and operate the ARC.

11. **Procedures for Approval of Plans and Specifications.** Architectural designs, plans and specifications showing the nature, kind, shape, color, size, materials, and locations of all proposed structures and improvements shall be submitted to the ARC for review and approval (or disapproval). In addition, information concerning irrigation systems, drainage, lighting, landscaping and other features of proposed construction shall be submitted as applicable. In reviewing each submission, the ARC may consider the proposed design, harmony of external design with existing structures and the common scheme, the location in relation to surrounding structures, topography, finish grade and elevation, among other things. Decisions of the ARC may be based on purely aesthetic considerations. Each Owner acknowledges, by acceptance of a deed or other document of conveyance, that opinions on aesthetic matters are subjective and may vary as ARC members change over time.

a. **Preliminary Architectural Drawings, Plans and Specifications.** The ARC may require, as a minimum, the following:

- (1) Plot plan to scale of entire site with buildings located and elevation of floors shown above or below a designated point on the street.
- (2) Floor plans of each floor level to scale.
- (3) Elevations to scale of all sides of the Dwelling Unit.
- (4) One major section through Dwelling Unit.
- (5) Specifications of all outside materials to be used on the exterior of the Dwelling Unit and other buildings.

b. **Final Plans and Specifications; Working Drawings.** The ARC may require, as a minimum, the following:

- (1) Plot plans to scale showing the entire site, building, garages, walks, drives, fence, carriage lights, retaining walls, with elevations of the existing and finished grade and contours including those at the outside corners of the buildings and at adjacent property lines and street fronts, and elevations of floors from a designated point on the street.

- (2) Detailed floor plans.
- (3) Detailed elevations, indicating all materials and showing existing and finished grades.
- (4) Detailed sections, cross and longitudinal.
- (5) Details of cornices, porches, windows, doors, garages, garden walls, steps, patios, fences, carriage lights, and so forth.
- (6) Specifications shall give complete description of materials to be used with supplements, addenda or riders noting the colors of all materials to be used on the exterior of the Dwelling Unit and other buildings.

c. **Plan Review Fee.** Owner shall pay to Developer, by immediately available funds, a \$100.00 nonrefundable Plan Review Fee at such time as Owner submits plans and specifications to the ARC for approval.

d. **Minimum Requirements.** Anything to the contrary notwithstanding, no Dwelling Unit or other building shall be considered "approved" or be constructed or altered unless it meets the following minimum requirements:

- (1) The Dwelling Unit or other building must strictly comply with the Design Guidelines adopted by the ARC and as they may be amended from time to time.
- (2) In the event of any conflict, inconsistency or incongruity between the Design Guidelines and any other provisions set forth herein, the former shall in all respects govern and control.
- (3) Only single family residential Dwelling Units are allowed.
- (4) The height of any Dwelling Unit shall not exceed two stories above ground.
- (5) No slab on grade Dwelling Units are permitted.
- (6) Without the express, prior written consent of the ARC, a basement is required for each Dwelling Unit.
- (7) Without the express, prior written consent of the ARC, each Dwelling Unit shall have a private garage for not less than two motor vehicles and use the garage for this purpose.
- (8) The Dwelling Unit exteriors, in their entirety, may only consist of brick, rock, fiber cement board siding, stucco, or a combination of these materials. The

minimum brick or rock on the front elevation shall be at least 150 sq.ft. unless other construction materials are approved by the ARC in writing. If brick or stone is used on the front elevation, it must be turned at the side of the home at least 18". Decorative landscape walls and/or entries, columns, or fence posts may be counted toward the minimum 150 sq.ft. brick or stone requirement. No aluminum or vinyl siding is permitted. No two homes of the same plan shall be built next to each other.

(9) All fencing shall comply with the following minimum requirements:

a) Vinyl fencing is permitted in the side and rear yard areas, with such vinyl fencing of a putty color selected by the Developer.

b) 3 or 4-slat vinyl fencing is permitted around animal enclosure areas, or internal garden areas. Such slat fencing shall be prohibited less than 50' from the rear of any Dwelling Unit.

c) Any and all other fencing materials not expressly approved in this Declaration or by the ARC in writing, including by way of illustration but not limitation, cinderblock, and other types or colors of vinyl fencing are prohibited.

d) Decorative wrought iron, no higher than 5', is permitted around the front yard area, or rear garden areas.

e) If corner lots are fenced, the fencing will be installed so water utilities are accessible from the City right of way.

f) Fencing including, by way of illustration but not limitation, all hedges, trees, bushes, shrubs or other animate or inanimate, natural or artificial object, behind entry monuments or other monuments, planter boxes or special landscaping established by the Developer is prohibited.

g) No fence or similar structure may be built in any side or rear yard with a height in excess of six feet (6').

h) If there is a dispute regarding fencing of any kind, such as what constitutes the front, side or rear yards, the decision of the ARC shall be final, binding and conclusive.

(10) If a residence is a rambler with a basement, then the main floor area, exclusive of the garage, porch or basement areas, shall not be less than 1,500 finished square feet.

(11) If a residence is a two-story or multi-level home, exclusive of the garage, porch or basement areas, then there shall be at least 1,800 finished square feet.

- (12) Each residence shall have an attached 2 or 3 car garage.
- (13) The front yard setback shall be as per the City of Clinton Zoning Ordinance, but in no event less than 35 feet if facing a main street, or 30 feet if facing a side street.
- (14) Side yard setbacks shall be as per the City of Clinton Zoning Ordinance, but in no event less than 10 feet on each side on an interior lot.
- (15) The side yard setbacks on a corner lot shall be as per the City of Clinton Zoning Ordinance, but in no event less than 35 feet if adjacent to a main street, or 20 feet if facing a side street.
- (16) The rear yard setbacks shall be as per the City of Clinton Zoning Ordinance, but in no event less than 30 feet.

e. **No Waiver of Future Approvals.** The approval of the ARC of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Board of Directors, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matters whatever subsequently or additionally submitted for approval or consent.

f. **Variance.** The ARC may authorize variances from compliance with any of the Architectural guidelines when circumstances such as topography, natural obstructions, hardship, aesthetic, or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (1) be effective unless in writing, (2) be contrary to the restrictions set forth in the body of this Declaration, or (3) estop the ARC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit or the terms of financing shall not be considered a hardship warranting a variance.

g. **Limitation of Liability.** Neither the Developer nor the ARC, or any of their employees, agents, representatives or consultants shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the provisions of this Declaration, nor for any structural or other defects in any work done according to such plans and specifications. By accepting a deed or other document of conveyance to a Lot, each Owner agrees to and shall defend, indemnify, save and hold the Developer and the ARC, and their employees, agents, representatives or consultants, harmless from any and all loss, damage or liability they may suffer, including defense costs and attorney fees, as a result of any claims, demands, actions, costs, expenses, awards or judgments arising out of their review or approval of Architectural designs, plans and specifications.

h. **Professional Architects and Designers.** Designs submitted for approval must be prepared by Architects or by qualified residential designers of outstanding ability whose previous work must be available for inspection and evaluation as a part of the approval process.

i. **Cottle Homes Catalogue.** Any and every home design, plan, or specification contained within the then current Cottle Homes Catalogues shall be considered approved and qualify for construction, and no other consent shall be required.

j. **Contractors.** Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration may be excluded by the ARC from the Subdivision, subject to the notice and the opportunity to be heard. In the event of sanctions after notice and hearing, neither the ARC nor the Developer, nor their employees, agents, representatives nor consultants shall be held liable to any person for exercising the rights granted by this Section.

12. **Enforcement of Architectural Guidelines.** Any construction, installation, alteration, or other work done in violation of this Declaration shall be considered to be non-conforming.

a. **Removal of Non-Conforming Improvements.** Upon written request from the ARC an Owner shall, at his own cost and expense, remove such non-conforming construction, alteration, or other work and shall restore the land to substantially the same condition as existed prior to the non-conforming construction, alteration, or other work.

b. **Default.** Should an Owner fail to remove and restore as required hereunder, the ARC shall have the right to enter property, remove the violation, and restore the property to substantially the same condition as existed prior to the construction, alteration or other work, without being deemed to be a trespasser.

c. **Enforcement Rights.** Developer hereby reserves and the ARC is hereby granted a non-exclusive easement over, across, through, above and under the Lots for the purposes of enforcing the Project Documents.

13. **Landscaping.** All Lot landscaping, grading, and drainage shall be completed strictly in accordance with the landscaping guidelines required by the City and/or the Developer or, upon the termination of the Period of Developer's Control, the ARC and so as to comply with and not impair all applicable ordinances and flood control requirements. The foregoing notwithstanding, all landscaping shall comply with the Clinton City Zoning Ordinance Regulations. In the event of a conflict between this document and the Clinton City Ordinances, such Ordinances shall control for all purposes.

a. **Front Yard.** All front yard sod and automatic sprinkler/irrigation systems must be installed within six (6) months of the date of closing on the purchase of the Lot. Developer shall provide front yard sod. The remainder of the front, side and rear Lot landscaping, including the installation of an automatic sprinkler/irrigation system, planting of

trees and laying of sod must be completed within nine (9) months of the date of closing on the purchase of the Lot.

b. **Trees, Planting in Park Strip.** All trees planted on the park strip on the front of the Lot shall be selected from the City of Clinton's approved list. All other planting, or other installation on the park strip on the front of the Lot, shall be in accordance with Clinton City Zoning Ordinances. All other tree planting in the front, side and rear of the Lot shall be in accordance with Clinton City Zoning Ordinance requirements.

c. **Maintenance.** Trees, lawns, shrubs, or other plantings placed on a Lot shall be properly nurtured, maintained and replaced.

d. **Weed and Disease Control.** Any weeds or diseased or dead lawn, trees, ground cover, bushes or shrubs shall be removed and replaced.

e. **Pruning.** All trees, bushes and shrubs shall be pruned, trimmed and topped as necessary.

f. **Concrete and Impermeable Surfaces.** Concrete, cement or masonry products, pavers, brick, stone, cobblestone, tile, terrazzo, slabs, slate, rocks, pebbles, gravel, permeable pavements and so forth, or other artificial or impermeable surfaces (collectively "controlled surfaces") may be installed or constructed as landscaping in the front, side or rear yards of a Lot with the prior written consent of the Developer or upon the termination of the Period of Developer's Control of the ARC. The foregoing notwithstanding, all such installations or construction shall comply with the Clinton City Zoning Ordinances and, in the event of a conflict between this Declaration and the Clinton City Ordinances, such Ordinances shall control for all purposes.

g. **Controlled Surfaces.** Front, side or rear yards constructed primarily or substantially of controlled surfaces are prohibited.

h. **Property Valuation.** The landscaping of a Lot may not adversely affect the value or use of any other property or detract from the original design scheme and appearance of the Property.

i. **Minimum Standards.** All landscaping shall be maintained and cared for in a manner consistent with the quality of design and construction originally established by Developer.

j. **Default.** If the ARC, or the City, upon the termination of the Period of Developer's Control, determines that any Owner has failed or refused to maintain his landscaping or that the need for maintenance, repair, or replacement of the Common Area and Facilities is caused by the willful or negligent act of any Owner, and the claim, damage, loss or liability is not covered or paid by insurance, either in whole or in part, then the ARC or the City may, but is not obligated to, provide such maintenance, repair or replacement at the Owner's sole cost and expense, subject to the following:

(1) **Notice.** Except in an emergency situation, the ARC shall give the Owner written notice of its intent to provide necessary maintenance, repair, or replacement at Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by the ARC. The Owner shall have ten (10) days after receipt of notice within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days. If the ARC determines that an emergency situation exists which threatens imminent and substantial harm to person or property, then prior notice and the opportunity to cure the default is not necessary or required. The ARC may, but is not obligated to, provide any such required maintenance, repair, or replacement in the manner described above. Such costs as are incurred by the ARC hereunder shall be considered an Individual Charge.

(2) **Remedies.** In addition, should any Owner fail to comply with the required landscaping requirements, the Developer, City, ARC and/or an aggrieved Owner shall have the right to seek an order from a court of proper jurisdiction requiring specific performance to comply with the provisions hereof or to recover damages, or both, and shall also have the authority but not the obligation to complete the landscaping or restore the property to its original condition without being guilty of a trespass, and require the Owner to pay the reasonable cost of labor and materials. The costs and expenses incurred, including a reasonable attorney's fee, whether or not a lawsuit is filed, shall be considered the personal obligation of the Owner and shall constitute a lien on the interest of the Owner in such property, enforceable at law or equity, until payment is made.

14. **Accessory Buildings.** Accessory buildings will be permitted on the Lots. The design, construction, installation, or placement of an Accessory Building must be approved in advance by the ARC and is subject to the following guidelines. Any Accessory Building constructed, installed or placed on a Lot without the express written consent of the ARC shall be considered non-conforming. If there is a dispute of any kind whatsoever, such as whether a structure is an Accessory Building, the decision of the Developer or, upon the termination of the Period of Developer's Control, the ARC shall be final, conclusive and binding, and decisions may be made for purely aesthetic reasons.

a. **Uniformity of Appearance.** Any detached Accessory Building must confirm in design and construction materials with the primary residential Dwelling Unit.

b. **Height.** No Accessory Building may exceed one story in height, subject to the requirements of the City zoning ordinances.

c. **Setbacks.** Accessory Buildings shall be located so that such Accessory Building does not encroach upon any easements and is in full compliance with Clinton City Zoning Ordinances, and City Fire Department requirements.

d. **Tin Sheds.** Tin sheds are not permitted in the Project.

15. **Easements and Rights of Way.** Developer hereby reserves to itself and grants to the ARC a nonexclusive, perpetual right-of-way and easement over, across and through the Project, subject to all of the terms, covenants, conditions and restrictions set forth herein.

a. **Common Use of Easement.** Said easement is to be used in common by the Developer, ARC and Owners, subject to all of the terms, covenants, conditions and restrictions set forth herein.

b. **Private Easement.** The easement created is intended to be used as a private nonexclusive easement for the exclusive use and benefit of Developer, ARC, and Owners.

c. **Encroachments.** If any part of a Lot or Dwelling Unit encroaches or shall hereafter encroach upon the roads, or upon an adjoining Lot or Dwelling Unit, 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 either on the roads, Lots or Dwelling Units. 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 Project, by error in the Plat Map, by settling, rising or shifting of the earth, or by changes in position caused by repair or reconstruction of the Project or any part thereof.

d. **Construction Easements.** The Developer hereby reserves for itself and its affiliates and assignees a temporary construction easement over the roads and all common areas in the Project for the purpose of doing all things that are reasonably necessary as a part of constructing any new improvements for the Project including all physical improvements as well as all Lots and Dwelling 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 Lots or Dwelling Unit until all improvements are complete, and such Owners do hereby waive any right to object to such construction activity; provided, however, Developer shall endeavor to use reasonable efforts to minimize the adverse impact of such construction activities on the Owners. Developer'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.** Developer reserves a nonexclusive easement for itself and its affiliates and assignees to construct, operate, maintain, repair and replace all types of telecommunication facilities within suitable locations for such facilities (the "Locations of Facilities") within the Project. Developer further reserves a right of access to the Locations of Facilities over, across and through roads, or other common elements of the Project in order to access the Locations of Facilities to exercise the rights established herein. Developer reserves the perpetual right to transfer by easement, license agreement or other conveyance the rights reserved hereunder to one or more telecommunication facilities providers. Developer may exercise all of such rights unilaterally and without the consent of any Owner, mortgagee or the ARC. The ARC, on behalf of all Owners, agrees to execute such further and additional instruments as may be requested by Developer documenting the rights hereunder, in form satisfactory to the Developer, and any assignee of its rights hereunder.

f. **Entry Monument, Drainage, Utilities Easement.** Easements regarding the Entry Monument, if any, and corresponding utility and drainage systems and facilities, and irrigation are reserved hereby and on the recorded Plat. An Owner may not do any landscaping, grading or work, or install any structure, building, improvement, planting, or other object, natural or artificial, or materials which may damage or interfere with the installation and maintenance of utilities, Entry Monument, if any, 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. If a drainage channel is altered by an Owner, the Developer and/or the ARC expressly reserve the right to enter onto the property to restore the area at the cost of the Owner, and without being guilty of a trespass. In addition, the easement and right of way area of or on each Lot, including by way of illustration but not limitation, the Entry Monument, if any, in whole or in part, utilities, drainage systems and facilities, and irrigation, and all improvements within said area shall be maintained continuously by the Owner of the property, at his sole expense, excepting those improvements for which a public authority or utility company is expressly responsible.

g. **Joint or Common Utility Easements with Neighboring Subdivisions or Developments.** The Developer for itself and/or its successors in interest (including but not limited to the ARC), hereby reserves the irrevocable and exclusive right, without any additional consent required, to enter into easement agreements with or to convey to owners or Developers of adjoining subdivisions, projects or developments any and all reasonable and necessary utility easements or rights of way for access, ingress, egress, transportation, cable, utilities, gas, water, power, sewer, storm drain systems, and so forth under, over, across or through the Project.

Easements and rights of way for the installation and maintenance of utilities, drainage systems and facilities, and irrigation are reserved, as set forth herein and in the legal descriptions of the Project.

h. **Maintenance Duty of Owner.** The easement and right of way area of each Lot and all improvements within said area shall be maintained continuously by their Owners, excepting those improvements for which a public authority or utility company is expressly responsible.

16. **Slope and Drainage Control.** No structure, plant, improvement or other material may be placed or permitted to remain, or other activities undertaken which may damage or interfere with established Lot ratios, create erosion or sliding problems, or which may change the direction of flow of drainage channels, or obstruct or retard the flow of water through the channels.

a. **Maintenance.** The slope control of each Lot and all improvements therein shall be maintained continuously by the Owner of the Lot, excepting those improvements for which a public authority or utility company is expressly responsible.

b. **Strict Compliance Required.** It shall be the responsibility of the Owner to see that his Lot strictly conforms to the grading and drainage plan established by the Developer, City and/or Davis County.

c. **No Obstructions.** 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.

17. **Use Restrictions and Nature of the Project.** The Lots are subject to the following use restrictions which shall govern both the architecture and the activities within the Project:

a. **Private Residence.** No Lot shall be used except for residential purposes.

b. **Business Use.** No resident may operate a commercial trade or business in or from his Dwelling Unit or Accessory Building with employees of any kind or with customers who are not residents of the Project, or which create or maintain a nuisance. No commercial trade or business may store any inventory over 250 cubic feet, and it must be contained within the Dwelling Unit or Accessory Building. No commercial trade or business may be conducted from a Dwelling Unit or Accessory Building unless (1) the business activity conforms to all home occupation and zoning requirements governing the Project; and (2) the operator has a city issued business license. Notwithstanding the foregoing, the leasing of a Lot shall not be considered a trade or business within the meaning of this subsection.

c. **Storage and Parking of Vehicles.** The driving, parking, standing, and storing of motor vehicles in, on or about the Project is governed and regulated by the following, which may be amended from time to time by the ARC:

1. No motor vehicle or trailer, including but not limited to, any car, automobile, truck, van or any other transportation device of any kind may be parked or stationed in such a manner so as to block access to any driveway or Dwelling Unit or to create an obstacle or potentially dangerous condition.

2. No Resident shall repair or restore any vehicle of any kind in, on or about any Lot, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.

3. No garage 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 reasonably parked in the garage as originally designed and constructed.

4. All garages shall be used primarily for the parking and storage of vehicles.

5. Parking on the street is prohibited.
6. All motor vehicles parked so as to be visible from the street or another Lot must be undamaged (less than \$1,000 to repair), in good mechanical condition, registered and licensed.
7. Except as otherwise expressly permitted, motor vehicles may not be “stored” so as to be visible from the street or another Dwelling Unit. This includes, by way of illustration and not limitation, unregistered, unlicensed, abandoned, disabled, or damaged vehicles.
8. Recreational, Commercial, and Oversized Vehicles may be stored on a properly constructed Parking Pad provided (a) the Vehicle is in good running condition and property licensed and registered, (b) the Parking Pad is located in the rear yard (i.e., behind the front of the house), and (c) a proper Parking Pad Fence has been installed. Eighteen-wheel semi-trailers and similar oversized transportation devices are not allowed.
9. Vehicles parked in violation of this Declaration may be immobilized, impounded, or towed by the ARC or its designee without further notice and at the owner’s sole risk and expense.
 - d. **Garbage and Refuse Disposal.** No Lot 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.
 - e. **Aerials, Antennas, and Satellite Systems.** All exterior aerials, antennas and satellite dishes (collectively “antenna”) must be position so that they are screened from view from the street. No antenna shall be erected, maintained, or used in, on or about any Dwelling Unit, outdoors and above ground, whether attached to or on top of any building, structure, Dwelling Unit, which is visible from the street without the prior written consent of the Developer or ARC. If there is a conflict between this subsection and the FCC guidelines, the latter shall in all respects govern and control. In making its decisions, the Developer and/or ARC shall abide by and be subject to all relevant local, state and federal laws, including but not limited to all FCC guidelines, rules and regulations as they may be amended or supplemented from time to time.
 - f. **Animals and Pets.** The City allows animals on Lots based upon the size of the Lot. Animals as that term is defined by City Ordinance are allowed. No pets, animals, livestock, or poultry of any kind may be commercially bred within the Project. Domestic pets permitted by City Ordinance are allowed; provided, however, pets must be properly licensed and registered. Pets may not create a nuisance. The following acts may constitute 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 Project 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; or (9) the mere number of pets maintained creates an offensive or dangerous condition to the health, welfare or safety of other residents.

g. **Laws.** Nothing shall be done or kept in, on or about any Lot 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.

h. **Damage or Waste.** Each Owner shall repair any damage he or any other residents, guests, or invitees of his Lot may cause to another Owner, Lot, or Dwelling Unit, and promptly restore the property to its original condition.

i. **Signs.** No signs, billboards or advertising structures or devices of any kind may be built, installed or displayed on the Property or any Lot except for a single sign with a maximum size of 2' x 2' for the specific purpose of advertising the sale of the Dwelling Unit; provided, however, this restriction does not apply to and is not binding upon the Developer, who may use whatever signs it deems appropriate to market its Lots. "For Rent" or "For Lease" signs on a Lot, or showing from a Dwelling Unit are prohibited.

j. **Zoning.** 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 Project land use and buildings.

k. **Nuisances.** 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.

l. **Temporary Structures.** No structure of a temporary nature or character, including but not limited to any trailer, shack, shed, tent, garage, barn or other out-building shall be used on any Lot at any time as a residence.

m. **Entry Monument.** If an Owner purchases a Lot which includes a common improvement, including by way of illustration but not limitation an Entry, Entry Monument, planter, planter box, planter strip, perimeter fence, wall, street light, exterior lighting or other landscaping treatment of any kind, such Owner shall, at his sole expense, maintain such common elements in good condition, and may not improve his property or place any plant, hedge, tree, bush, shrub, or object, natural or artificial, behind, to the side or in front of such improvement or feature so as to impair, obstruct, block or impede the view or purpose of the Entry, Entry Monument or other improvement, planter box, landscaping strip, or any such special landscaping feature.

n. **Chimes and Musical Sound Makers.** Chimes, dream catchers, bells, tubes or other objects hung vertically outside the Dwelling Unit which ring, strike or otherwise produce musical sounds which can be heard by other residents are prohibited.

18. **Owner-Occupied.** In order to maintain the value of the purchased property and subdivision, a Dwelling Unit must be owner-occupied for a period of at least one (1) year after closing. The term "owner-occupied" shall mean a Dwelling Unit occupied by one of the following: (a) the vested owner (as shown on the records of the Davis County Recorder); (b) the vested owner and/or his spouse, children or siblings; or (c) the shareholder, partner, member, trustor, beneficiary or other legal representative of an institutional owner (provided such person holds a beneficial interest in such legal entity of at least 50.0%) and/or his spouse, children or parents.

19. **Leases.** Each Owner agrees, by the acceptance of a deed or other document of conveyance to a Lot, that in order to maintain the value of the purchased property and the subdivision, the leasing and renting of Dwelling Units is subject to the following covenants, conditions and restrictions:

a. **Restrictions.** No Owner shall be permitted to lease his Dwelling Unit for short term, transient, hotel, vacation, seasonal or corporate use purposes. For purposes of this section, the term "short term" shall be considered to be any rental with an initial term of less than six (6) months. Daily or weekly rentals are expressly prohibited. No Owner may lease individual rooms to separate persons or less than his entire Dwelling Unit.

b. **Signage.** "For Rent" or "For Lease" signs are prohibited.

c. **Approval of Lease Forms.** The ARC must approve in writing all lease and rental agreements as to form. Any lease or rental agreement not so approved shall be considered "non-conforming" and, as such, voidable by the ARC. The ARC may also require that Owners use lease forms or addenda pre-approved by the ARC, or include specific terms in their leases; and the ARC may impose a review or administration fee on the lease of any Lot.

d. **No Other Restrictions.** Other than a stated in this Section, there is no restriction on the right of any Owner to lease or otherwise grant occupancy rights to his Dwelling Unit.

20. **Delegation of Management Responsibilities.** The Property may be managed by a professional manager, selected by the Developer or, upon the termination of the Period of Developer's Control, the ARC. The agreement for professional management of the Project, and any contract for goods and services, or any lease which is entered into by the ARC shall provide, or be deemed to provide hereby, that either party may terminate the contract with cause upon at least thirty (30) days prior written notice to the other party; and no contract may be for an initial term greater than one (1) year.

21. **View Impairment.** Neither the Developer nor the ARC guarantees or represents that any view over and across any property, including any Lot or Building will be preserved

without impairment. Neither the Developer nor the ARC shall have the obligation to prune or thin trees or other landscaping except as set forth herein. Any express or implied Developer representations for view purposes or for the passage of light and air are expressly disclaimed.

22. **Common Utilities.** The Developer may provide water and power utility services to the Entry, Entry Monument, if any, and any other common elements at its expense (the "Common Utility Service.") Such Common Utility Service shall be maintained and paid for by the ARC as a Common Expense.

23. **Insurance.** The Developer and/or ARC will obtain and maintain, until all Lots are sold by Developer and the Period of Developer's control is terminated, insurance against loss or damage for public liability and property.

24. **Destruction, Condemnation and Obsolescence.** Upon the occurrence of any damage or destruction to the Tract or any part thereof, or upon a complete or partial taking of the Tract under eminent domain or by grant or conveyance in lieu thereof, restoration shall be undertaken by the Developer promptly without a vote of the Owners in the event of minor destruction and in the event of substantial destruction upon the affirmative vote of a majority of the Owners. Developer, as attorney-in-fact for each Owner, shall represent the interest of all of the Owners in any condemnation proceeding or in negotiations, settlements, and agreements with the condemning authority for the acquisition of all or any part of the common elements. Any action to terminate the legal status of the Tract after substantial destruction or condemnation occurs shall be agreed to by Owners who represent at least sixty-seven percent (67%) of the total votes in the Tract and by at least a majority of the eligible mortgage holders.

25. **Consent or Vote Without a Meeting.** In any case in which this Declaration requires the vote of an Owner for authorization or approval of an act or a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners who collectively hold the required percentages, subject to the following conditions: (a) a copy of the notice and ballot must be given to each Owner, (b) all necessary ballots and consents must be obtained prior to the expiration of thirty (30) days from the time the written notice and ballot are issued to Owners, (c) any change in ownership of a Lot which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose, and (3) if approved, written notice of the approval must be given to all Owners at least ten (10) days before any action is required by them.

26. **Developer's Sales Program.** Notwithstanding anything to the contrary, until the termination of the Period of Developer's Control neither the Owners nor the ARC shall interfere or attempt to interfere with Developer's completion of improvements and sale of all of its remaining Lots and Dwelling Units, and Developer shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Lots and Dwelling Units owned by it:

a. **Sales Office and Models.** Developer shall have the right to maintain one (1) or more sales offices and one (1) or more model Lots or Dwelling Units at any one time. Such offices and/or models may be one or more of the Lots owned by it, or one or more of any

separate structures or facilities placed on the Property for the purpose of aiding Developer's sales effort, or any combination of the foregoing sales offices must comply with the City of Clinton ordinances and criteria.

b. **Promotional.** Developer shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners or similar devices at any place or places on the Property.

c. **Relocation and Removal.** Developer shall have the right from time to time to locate or relocate any of its sales offices, models, or signs, banners or similar devices, but in connection with each such location or relocation shall observe the limitations imposed by the preceding portion of this Section. Within a reasonable period of time after the happening of the occurrence, Developer shall have the right to remove from the Project any signs, banners or similar devices and any separate structure or facility which was placed on the Property for the purpose of aiding Developer's sales effort.

d. **Limitation on Improvements by Owners and the ARC.** Until the termination of the Period of Developer's Control, neither the Owners nor the ARC shall, without the written consent of Developer, make any improvement to the Project or alteration to any improvement created or constructed by the Developer.

e. **Relocation Rights and Encroachments.** In the development of the Project and/or future phases of the Project, Developer shall have the right to make adjustments in the number of Lots or the location of Lots and the streets, with the approval of the City of Clinton. If any portion of a Lot encroaches or comes to encroach upon another Lot or Lots as a result of construction, reconstruction, repair, shifting, settling or movement, an easement for such encroachment is created hereby and shall exist so long as such encroachment exists.

f. **Developer's Rights Assignable.** All of the rights of Developer under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment.

27. **Fines.** The ARC may fine an Owner or Permittee for material violations of these covenants, conditions and restrictions. The Owner or Permittee may appeal a fine issued by requesting a hearing with the ARC within thirty (30) days of delivery of a written notice of the fine. A fine assessed 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 other Common Expenses or Individual Charges, if any.

28. **Assignment of Rents.**

a. **Generally.** If an Owner who is leasing his Dwelling Unit fails to pay any assessment for a period of more than sixty (60) days after it is due and payable, the ARC may demand that the renter pay to the ARC directly all future lease payments due the owner, commencing with the next monthly or other periodic payment, until the amount due to the ARC is paid in full; provided, however, the ARC must give the owner written notice of the assignment

of rents and this notice shall: (1) provide notice to the renter that full payment of remaining lease payments will commence with the next monthly or other periodic payment unless the assessment is received within the time period provided in the notice; (2) state the amount of the assessment due, including any interest or late payment fee; (3) state that any costs of collection, not to exceed \$150, and other assessments that become due may be added to the total amount due; and (4) provide the requirements and rights described herein.

b. **Notice.** If the Owner fails to pay the amount of the assessment due by the date specified in the notice, the Manager or ARC may deliver written notice to the renter, in accordance with this Section 28, that demands future payments due to the owner be paid to the ARC pursuant hereto. A copy of the notice must be mailed to the Owner at his last known address as shown on the books and records of the ARC. The notice provided to the renter must state:

(1) that due to the Owner's failure to pay the assessments within the time period allowed, the owner has been notified of the ARC's intent to collect all lease payments due to the ARC pursuant hereto;

(2) that until notification by the ARC that the assessment due, including any interest or late payment fee, has been paid, all future lease payments due to the Owner are to be paid to the ARC; and

(3) payment by the renter to the ARC in compliance herewith will not constitute a default under the terms of the lease agreement. If payment is in compliance with this Subsection 28, suit or other may not be initiated by the Owner against the renter for failure to pay.

Within thirty (30) days of payment in full of the assessment, including any interest or late payment fee, the ARC must notify the renter in writing that future lease payments are no longer due to the ARC. A copy of this notification must also be mailed to the Owner.

29. **Interpretation.** To the extent Utah law is consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the term "shall" is mandatory and the term "may" is permissive, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

30. **Covenants to Run with Land.** This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Developer and all parties who hereafter acquire any interest in a Lot, or the Property, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or resident of a Lot shall comply with, and all interests in all Lots shall be subject to the terms of this Declaration

and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

31. **Enforcement and Right to Recover Attorneys' Fees.** Should the ARC, Manager, or an aggrieved Owner be required to take action to enforce or construe the Declaration or any rules and regulations adopted from time to time, or to pursue any remedy provided hereunder or by applicable law, including a claim for injunctive relief or damages, whether such remedy is pursued by filing suit or otherwise, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs, and expenses which may arise or accrue. The City is granted the right but not the obligation to enforce the Declaration.

32. **Limitation of Liability.** The covenants, conditions and restrictions set forth in this Declaration, together with any rules and regulations adopted by the ARC are established for the benefit of the Property and the Owners. Any damage, loss, claim or liability which might arise due to any decision, act, or failure to act of Developer, ARC, or any of their members, shall be exempt from any civil claim or action, including negligence, brought by any person owning or having an interest in any Lot. The ARC (and its members) and Managing Member shall be indemnified, save and held harmless from any such action or failure to act, and exempt from any civil claim or action resulting from any act or failure to act (whether intended or implied) while functioning as a member of the ARC or as the Managing Member, or for decisions that they may render during the course of their service, unless said party is guilty of gross negligence.

33. **Mortgage Protection.** Nothing herein contained, and no violation of these covenants, conditions and restrictions, shall invalidate or impair the lien of any mortgage or deed of trust, given in good faith and for value. The lien or claim against a Dwelling Unit or Lot for unpaid Assessments shall be subordinate to any Mortgage recorded on or before the date such Assessments become due.

34. **Combination of Lots.** An Owner of two or more adjoining Lots shall have the right, upon approval of the ARC and the mortgagees of said Lots, to combine one or more adjoining Lots or portions thereof and to alter or amend the Plat Map to reflect such combination.

a. **Documentation.** Such combinations may be accomplished by the Owner recording a deed or an amendment or amendments to the Plat Map, describing the change. All costs and expenses required in such amendments shall be borne by the unit owner desiring such combination.

b. **Approval.** All such deeds and/or amendments must be approved by the ARC, and by its attorneys, if the ARC determines such legal review is necessary, to insure the continuing legality of this Declaration the Plat Map. The cost of such review by the attorneys shall be borne by the person wishing to combine the Lots.

c. **Percentage Interest.** Any such deeds and/or amendments of the Plat Map shall reflect the changes occasioned by the alteration. Such changes shall include a change in the percentage of undivided interest in the Project.

35. **Amendments.** Except as provided elsewhere in this Declaration, including by way of illustration but not limitation to sections pertaining to the annexation or withdrawal of land, any amendment to this Declaration shall require the affirmative written vote or consent of at least sixty-seven percent (67%) of the Total Votes in the Project 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 ARC. In such instrument an officer or delegate of the ARC shall certify that the vote required by this Section for amendment has occurred.

a. **Initial Developer Right to Amend.** The Developer alone may amend or terminate this Declaration prior to the closing of a sale of the first Lot.

b. **Unilateral Right to Amend Under Certain Conditions.** Notwithstanding anything contained in this Declaration to the contrary, this Declaration may be amended unilaterally at any time and from time to time by Developer 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 Lots subject to this Declaration; provided, however, any such Amendment shall not materially adversely affect the title to any Lot unless any such Owner shall consent thereto in writing.

c. **Developer's Right to Amend Unilaterally Prior to Termination of Developer's Right to Control.** Prior to the expiration of the Period of Developer's Control, Developer may unilaterally amend this Declaration for any purpose; provided, however, any such Amendment shall not materially adversely affect the substantive rights of any Owner, nor shall it adversely affect title to any property without prior consent of the affected Owner.

d. **To Satisfy Requirements of Lenders.** Anything to the contrary notwithstanding, Developer reserves the unilateral right to amend all or any part of this 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 Declaration or approval of the sale of Lots, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot, or any portions thereof. Any such amendment shall be effected by the recordation by Developer of an Amendment duly signed by the Developer, specifying the federal, state or local governmental agency of the federally chartered lending institution requesting the amendment and setting forth the amendatory language 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 Lots and all persons having an interest therein. It is the desire of Developer to retain control of the ARC and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions hereof deletes, diminishes or alters such control in any manner whatsoever, in the opinion of Developer, Developer shall have the unilateral right to amend this Declaration to restore such control.

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

36. **Developer's Sales Program.** Anything to the contrary notwithstanding, for so long as Developer continues to own any of the Lots, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Developer from any obligations of an Owner to pay Assessments, except as herein otherwise provided, as to each Lot owned by Developer in accordance with the Declaration. Until the Developer has sold all of its property in the Tract, neither the Owners nor the ARC shall interfere or attempt to interfere with the completion of improvements and sale of all remaining Lots, and Developer shall have the following rights in furtherance of any sales, promotions or other activities designed to accomplish or facilitate the sale of all Lots owned by Developer.

a. **Sales Office and Model Dwelling Units.** Developer shall have the right to maintain one (1) or more sales offices and one (1) or more model Dwelling Units at any one time. Such office and/or models may be one or more of the Lots owned by the Developer, one or more separate structures or facilities placed on the Property for the purpose of aiding Developer's sales effort, or any combination of the foregoing.

b. **Promotional.** Developer shall have the right to maintain a reasonable number of promotional, advertising and/or directional signs, banners or similar devices at any place or places in the Tract.

c. **Relocation and Removal.** Developer shall have the right from time to time to locate or relocate any of its sales offices, models, or signs, banners or similar devices. Until 120 days after the date of closing of Developer's last Lot in the Tract, Developer shall have the right to maintain any signs, banners, or similar devices and any separate structure or facility which was placed within the Tract for the purpose of aiding Developer's sales effort.

37. **Limitation on Improvements by Owners and/or ARC.** Until 120 days after the date of closing of the sale of Developer's last Lot in the Tract, neither the Owners nor the ARC shall, without the written consent of Developer, make any improvement to or alteration to the property, other than such repairs, replacements, or similar matters as may be necessary to property maintain the Lots as originally created or constructed by Developer.

38. **Expansion of Subdivision.**

a. **Reservation of Option to Expand.** Developer hereby reserves the option to expand the Tract to annex, add and/or include additional land, common elements and Lots (the "Additional Land"). This option to expand may be exercised from time to time, at different times and in any order, without limitation. Such right may be exercised by Developer unilaterally and without first obtaining the consent or vote of the ARC or Owners, and shall be limited only as herein specifically provided. Such Lots shall be created on any or all portions of the Additional Land.

b. **Supplemental Declarations and Supplemental Maps.** Such annexation or expansion may be accomplished by the filing for record by Developer in the Office of the County Recorder, a Supplement, or Supplements, to this Declaration containing a legal description of the site or sites for new Lots, together with supplemental Plat Map or Maps containing the same information with respect to the new Lots as was required on the Plat Map with respect to the Phase I Lots. 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 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 Declaration, plus any Additional Land added to the Tract by a Supplemental Declaration or by Supplemental Declarations, and reference to this Declaration shall mean this Declaration as so supplemented. All conveyances of Lots after such expansion shall be effective to transfer rights in the Tract, with additional references to the Supplemental Declaration and the Supplemental Map. The recordation in the Office of the County Recorder of a Supplemental Map incident to any expansion shall operate automatically to grant, transfer and convey to then Owners of Lots in the Tract as it existed before such expansion the respective undivided interests in the new common elements, if any, added to the Tract as a result of such expansion. Such recordation shall also operate to vest in any then mortgagee of any Lot in the Tract as it existed, interest so acquired by the Owner of the Lot encumbering any new common elements added to the Tract as a result of such expansion.

d. **Declaration Operative on New Lots.** The new Lots shall be subject to all the terms and conditions of this Declaration and of a Supplemental Declaration, and the Lots therein shall be subject to the incidents of common ownership with all the provisions and protective covenants pertaining to a planned residential development as specified herein, upon recording the Supplemental Map and Supplemental Declaration in the said Office of the County Recorder.

e. **Right of Developer to Adjust Ownership Interest.** Each deed of a Lot shall be deemed to irrevocably reserve to the Developer the power to appoint to Owners, from time to time, the percentages in the Project. The proportionate interest of each Owner in the Project 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 Developer, its successors and assigns, as attorney in fact to shift percentages of ownership in accordance with Supplemental Declarations recorded pursuant hereto and each deed of a Lot in the Tract shall be deemed a grant of such power to the Developer. Various provisions of this Declaration and deeds and

mortgages of the Lots may contain clauses designed to accomplish a shifting of the percentages of ownership. 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 percentages of ownership can be accomplished.

Accordingly, upon the recordation of a Supplemental Declaration and Supplemental Map incident to any expansion, the revised schedule of undivided interests in the common elements, if any, contained therein shall automatically become effective for all purposes and shall fully supersede any similar schedule which was contained in any 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.

f. **Other Provisions Concerning Expansion.** If the Tract is expanded as hereinbefore contemplated, 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 Lots created must be restricted to single family residential housing limited to one family per Dwelling Unit.

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

3. Developer shall have the right without further conveyance or documentation to build roads and access ways to the Additional Property through the Developer areas as shown on the Map, if any. The ARC shall not allow anything to be built upon or interfere with said Developer 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 improvements which may be created on any portion of the Additional Land, except that the common facilities, if any, Dwelling Units and Lots will be comparable to the initial facilities on a per Lot basis and will be of a similar quality of materials and construction and will be substantially completed prior to annexation.

(c) Whether any Lots created on any portion of the Additional Land will be substantially identical to those within the initial Tract except that Lots will be constructed of an equal or better quality of materials and construction as the initial Tract.

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

submission of any portion of the Additional Land to the provisions of this 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.

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39. **Duration.** The covenants, conditions and restrictions of this Declaration shall endure for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

DATED the 26th day of January, 2016.

DEVELOPER:
STONEGATE PRESERVE, LLC
a Utah limited liability company
By its Manager
Cottle Capital Group, LLC

By: *Alan Cottle*
Alan Cottle, Manager

ACKNOWLEDGMENT

State of Utah)
 : ss.
County of Davis)

The foregoing instrument was acknowledged before me this 26th day of January, 2016, by Alan Cottle, the Manager of Cottle Capital Group, LLC, the Manager of STONEGATE PRESERVE, LLC, a Utah limited liability company, and said Alan Cottle duly acknowledged to me that said STONEGATE PRESERVE, LLC executed the same.

Sherry I. Fenn
NOTARY PUBLIC
Residing at: *Layton, UT*
My Commission Expires: *07-21-2018*

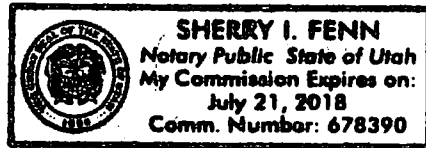


EXHIBIT "A"

PROPERTY DESCRIPTION

The following described real property is located in Davis County, Utah:

Stonegate Subdivision Phase I:

Beginning at the North Quarter Corner of Section 29, Township 5 North, Range 2 West, Salt Lake Base and Meridian, and running:

Thence East 660.55 feet along the section line;

Thence South 0°04'44" West 383.00 feet;

Thence South 68°27'24" West 8.61 feet;

Thence South 0°00'38" West 182.25 feet;

Thence West 239.25 feet;

Thence South 126.52 feet;

Thence West 413.58 feet to the quarter section line;

Thence North 0°04'13" East 694.93 feet along the quarter section line to the point of beginning.

Contains 9.787 acres.