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Leann H. Kilts, WEBER COUNTY RECORDER
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REC FOR: MILLER HARRISON LLC
ELECTRONICALLY RECORDED

**AMENDED AND RESTATED
DECLARATION OF PROTECTIVE EASEMENTS, COVENANTS,
CONDITIONS, AND RESTRICTIONS**

for

STONE CREEK CANYON PHASE 3

a Utah Planned Unit Development

This AMENDED AND RESTATED DECLARATION OF PROTECTIVE EASEMENTS, COVENANTS, CONDITIONS, AND RESTRICTIONS FOR STONE CREEK CANYON PHASE 3 (“Declaration”) is promulgated by the Stone Creek Canyon Owners Association, Inc. (“Association”) and becomes effective when recorded with the Weber County Recorder’s Office.

RECITALS

A. There are three (3) phases within Stone Creek Canyon. Phases 1 and 2 consist of single-family detached homes. Phase 3 consists of attached townhomes. This Declaration only concerns and pertains to Phase 3. Consequently, any declarations from Phases 1 and 2 have no effect or application on Phase 3. To the extent that Phase 1 and 2 declarations were recorded against Phase 3 lots, such are hereby removed, amended, and replaced in their entirety with this Declaration.

B. Stone Creek Canyon Phase 3, located in West Haven, Utah and described on Exhibit A (“Property”) is a residential planned unit development with attached residences made subject to certain covenants, conditions, and restrictions as originally provided in the “Declaration of Protective Easements, Covenants, Conditions and Restrictions of Stone Creek Canyon” as recorded on April 23, 2007 as Entry Number 2258250 with the Weber County Recorder (“Declaration 1”).

C. The Declaration 1 was amended by a written document entitled “Declaration of Protective Easements, Covenants, Conditions and Restrictions of Stone Creek Canyon” as recorded on May 29, 2007 as Entry Number 2267104 with the Weber County Recorder (“Amended Declaration 1”).

D. The Amended Declaration 1 was amended by a written document entitled “Amended and Restated Declaration of Protective Easements, Covenants, Conditions and Restrictions for Stone Creek Canyon Subdivision” as recorded on October 5, 2007 as Entry Number 2296680 with the Weber County Recorder (“Amended Declaration 2”).

E. The Amended Declaration 2 was amended by a written document entitled “Declaration of Protective Easements, Covenants, Conditions and Restrictions of Stone Creek Canyon Phase 3” as recorded on March 24, 2008 as Entry Number 2329658 with the Weber County Recorder (“Amended Declaration 3”).

F. As used herein, the term “Original Declaration” shall include each of the foregoing declarations, amendments or amended versions, and any other declarations, or declaration amendments or versions that were recorded against the Property prior to the recording of this Declaration, whether listed above or not.

G. The Association and the Lot Owners deem it in their best interests to adopt this Declaration to harmonize the existing governing documents; better preserve and maintain the integrity, design, and standards of the Property; remove language made moot by the developer’s turnover of the Association to the Lot Owners; eliminate confusion as to which governing documents apply; to bring the governing

documents up to date with current laws; and to ensure a more effective and efficient governance and operation of the Association.

H. This Declaration will supersede and replace the Original Declaration.

I. The Association hereby declares that the Property shall be held, transferred, conveyed, leased, encumbered, and occupied subject to the following covenants, conditions, and restrictions, which shall run with the Property and shall be binding upon all parties having or acquiring any right, title, or interest in such Property or any part thereof and shall inure to the benefit of each Lot Owner thereof.

J. This Declaration has been approved by more than 50% of the Association's voting interests as required by the Amended Declaration 2 and the Original Declaration.

K. The Association and Property are also subject to the Utah Community Association Act beginning at U.C.A. §57-8a-101.

I. DEFINITIONS

1.1. ACC shall mean and refer to the Board or, if so appointed by the Board, a committee having architectural control powers as further described in Article X.

1.2. Act shall mean and refer to the Utah Community Association Act, codified beginning at Section 57-8a-101, Utah Code Annotated, as the same may be amended from time to time.

1.3. Articles shall mean the Articles of Incorporation for the Association, as amended and restated from time to time.

1.4. Assessments shall mean any charge imposed or levied by the Association against Owners including but not limited to annual assessments corresponding with the Common Expenses as well as special assessments, individual assessments, late fees, and fines, all as provided in this Declaration.

1.5. Association shall mean and refer to the Stone Creek Canyon Homeowners Association, Inc., a Utah non-profit corporation. Failure of the Association to maintain its corporate status will not result in the dissolution of the Association. The Board may renew or reinstate the Association's corporate status as needed to maintain the Association as a nonprofit corporation.

1.6. Board or Board of Directors shall mean and refer to the Board of Directors of the Association as duly elected in accordance with the terms and conditions of the Articles and Bylaws of the Association.

1.7. Bylaws shall mean and refer to the governing Bylaws of the Association, as the same may be amended and restated from time to time.

1.8. Common Areas shall mean any land or improvement not considered part of a Living Unit or Lot; any land or improvement owned by the Association or installed for the benefit of the Owners collectively; and those Common Areas identified as such on the Plat. Common Areas include, without limitation, a pool, a clubhouse, private streets and sidewalks, together with all improvements thereon and all easements appurtenant thereto including but not limited to private utility lines, landscape easements, and personal property owned by the Association when the context so requires. Common Areas also include the central utility lines serving the Property as a whole, except for those privately owned.

1.9. Common Expenses shall mean (a) all sums lawfully assessed against Owners; (b) expenses of administration, maintenance, management, operation, repair and replacement of the Common Areas and other areas, if any, which are maintained by the Association; (c) expenses allocated by the Association among the Owners; (d) expenses agreed upon as common expenses by the Association or its Board of Directors; (e) expenses declared common expenses by the Declaration; and (f) other miscellaneous charges incurred by the Association or the Board pursuant to the Act, this Declaration, the Bylaws, or the Rules.

1.10. Declaration shall mean and refer to this Amended and Restated Declaration of Protective Easements, Covenants, Conditions, and Restrictions for Stone Creek Canyon Phase 3, and any future amendments thereto.

1.11. **Development** or **Project** shall at any point in time mean, refer to, and consist of the Stone Creek Canyon Phase 3 project then in existence.

1.12. **Director** shall mean and refer to an individual member of the Board of Directors.

1.13. **Governing Documents** shall mean and refer to the Declaration, Plat, Articles, Bylaws, and the Rules.

1.14. **Limited Common Areas** shall mean and refer to those areas reserved for the use and benefit of a certain Lot or Lots to the exclusion of other Lots, as shown by the Plat or provided herein. Limited Common Areas include the driveways, the front yard of a Living Unit, the back yard of a Living Unit as allowed by the Governing Documents, back patios and decks, front stoops and stairs, utility lines that are not the central lines serving the Property collectively but serving more than a single Living Unit, and other areas so designated on the Plat.

1.15. **Living Unit** shall mean and refer to an attached townhome structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements used in connection with such Living Unit. The Living Unit shall include, without limitation, the garage, the roof, all exterior surfaces and trims, windows, gutters, downspouts, and the foundation. The Living Unit shall also include any mechanical equipment and appurtenances located within any one Living Unit, or located without said Living Unit but designed to serve only that Living Unit, such as heating and air conditioning units, electrical receptacles and outlets, water heaters, appliances, apparatus, systems or equipment, fixtures and the like. All pipes, wires, conduits, and other utility lines or installations constituting part of the Living Unit or serving only the Living Unit regardless of location, shall be deemed to be part of the Living Unit. Where the context so allows, reference to a Living Unit shall include reference to its corresponding Lot.

1.16. **Lot** shall mean and refer to each of the 131 individual lots within the Stone Creek Canyon Phase 3, as shown on the Plat.

1.17. **Manager** shall mean a person, persons, or entity, if any, selected by the Board to manage the affairs of the Association and Property.

1.18. **Member** shall mean and refer to a Lot Owner.

1.19. **Mortgage** shall mean any and refer to a mortgage, deed of trust, or trust deed, or the act of encumbering any Lot or any property by a mortgage, trust deed, or deed of trust.

1.20. **Mortgagee** shall mean and refer to any person or entity named as a mortgagee of a mortgage or beneficiary under or holder of a deed of trust.

1.21. **Occupant** shall mean and refer to any person, other than an Owner, living, dwelling, visiting, or staying in a Living Unit. This includes, but is not limited to, all lessees, tenants, invitees, guests, and family members, agents, and representatives living, dwelling, visiting, or staying in a Living Unit.

1.22. **Owner** or **Lot Owner** shall mean and refer to the record owner, whether one or more Persons, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation. If a Lot is subject to an executory purchase contract, the contract purchaser shall be considered the Owner unless the seller and buyer agree otherwise and inform the Board in writing of such alternative arrangement.

1.23. **Party Wall** shall mean and refer to a wall that forms part of a Living Unit and is located on or adjacent to a boundary line between two or more adjoining Lots owned by more than one (1) Owner and is used or is intended to be used by the Owners of the benefitted Living Units, which wall may be separated by a sound board between two (2) or more Living Units.

1.24. **Person** shall mean and refer to a natural individual, corporation, business entity, estate, partnership, trustee, association, joint venture, government, governmental subdivision, or agency or other legal entity capable of holding title to real property.

1.25. **Plat** shall mean and refer to the official subdivision plats of Stone Creek Canyon Phase 3 that are filed and recorded in the official records of the Weber County Recorder's Office; and any amendments recorded thereto.

1.26. **Property** shall mean and refer to the real property described in Exhibit A and defined on the Plat.

1.27. **Restrictions** shall mean the covenants, conditions, assessments, easements, liens, and restrictions set forth in this Declaration.

1.28. **Rules** shall mean and refer to the rules, resolutions, regulations, policies, etc. adopted by the Board.

II. **PROPERTY DESCRIPTION**

2.1. **Submission.** The Property, which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration, consists of the real property situated in West Haven, Weber County, State of Utah described as follows:

SEE THE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A" WHICH IS INCORPORATED HEREIN BY REFERENCE.

2.2. **Name.** The Project, as submitted to the provisions of this Declaration, shall be known as Stone Creek Canyon Phase 3, a Utah Planned Unit Development. The Project is not a cooperative nor is it a condominium.

2.3. **Description of Lots.** The Projects consists of 131 Lots, each of which includes a Living Unit and other improvements provided on the Plat or in this Declaration. The 131 Living Units are contained within 30 residential townhome-style buildings in the Project, consisting of between 2 and 6 Living Units per building. All improvements have been and shall continue to be constructed in a style and of materials architecturally compatible with the other improvements within the Project. The Lots, their locations, and approximate dimensions are indicated on the respective Plat. There is also a clubhouse building, a pool, private streets, and other improvements described elsewhere herein or as indicated on the Plat.

2.4. **Description of Common Areas.** The Common Areas of the Project are described in Section 1.8 and on the Plat.

2.5. **Description of the Limited Common Areas.** The Limited Common Areas of the Project are described in Section 1.14 and on the Plat.

III. **MEMBERSHIP AND VOTING RIGHTS**

3.1. **Membership.** Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has an ownership interest, and shall not be separated from the Lot to which it appertains.

3.2. **Voting Rights.** Each Lot is entitled to one (1) vote. The vote may be exercised by the Owner of the Lot, except as may be limited herein or by the Bylaws.

3.3. **Multiple Ownership Interests.** In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast by any of such Owners, whether in person or by proxy or by written ballot, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made or if there are conflict votes from the same Lot, the vote involved shall not be counted for any purpose other than towards the establishment of a quorum.

3.4. **Record of Ownership.** Within 10 days following the purchase of a Lot or becoming a contract buyer, such Owner shall notify the Association of the transaction and, if not done already, deposit

a reinvestment fee with the Association as further described in Section 5.17. Any Owner who mortgages his Lot or any interest therein by a Mortgagee which has priority over the lien of any Assessment provided herein shall also notify the Association of the name and address of the Mortgagee, which information shall be maintained in the records of the Association. Any costs incurred by the Association in obtaining the above information not furnished by such Owner shall be paid to the Association as an individual Assessment.

IV. PROPERTY RIGHTS IN COMMON AREAS

4.1. **Easement of Enjoyment.** Each Member shall have a right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. With respect to the Limited Common Areas within the Project, this right of easement shall only extend to the Limited Common Area appurtenant to the Member's Lot and not to other Limited Common Areas. Other easements may be provided on the Plat.

4.2. **Title to Common Areas.** Title to the Common Areas shall remain in the name of the Association.

4.3. **Limitation on Easement.** A Member's right and easement for the use and enjoyment of the Common Areas shall be subject to the following:

(a) The right of the Association to impose reasonable limitations on the number of Occupants per Owner who at any given time are permitted to use the Common Areas;

(b) The right of the Association to charge reasonable admission, deposits, and other fees for the use of the recreational facilities situated upon the Common Areas.

(c) The right of municipal, governmental, or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Property for purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service;

(d) The right of the Association to suspend voting rights and right to use the Common Areas by an Owner for any period during which any Assessment against his Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of the Rule;

(e) The right of the Association to sell, convey, dedicate, or transfer all or any part of the Common Areas, and any sewer, water and storm drain lines to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such sell, conveyance, dedication, or transfer must, however, be assented to by at least two-thirds (2/3) of the Lots.

4.4. **Association Easement.** The Association, its Board, the Manager, and other agents and contractors authorized by the Association, shall have non-exclusive easements to use the Common Areas to perform their duties as assigned by the Governing Documents. The Association shall also have a right and easement to access and use the Limited Common Areas for the purpose of carrying out its duties and fulfilling its obligations under the Declaration. The Association shall also have a right and easement upon, across, over, and under a Lot or Living Unit as needed to carry out its duties and fulfill its obligations under the Governing Documents. Other easements may be provided on the Plat or the Act.

4.5. **Easement for Utility Services.** The Project is subject to a blanket easement over, across, above, and under it for ingress, egress, installation, maintenance, repair, and replacement of utilities. Utilities include, without limitation, water, sewer, gas, telephone, electricity, data, video, and cable.

4.6. **Easement for Encroachments.** If any portion of a Common Areas structure or improvement encroaches upon any Lot, or if any structure or improvement of a Lot encroaches upon any other Lot or the Common Areas as a result of the manner in which the improvements were initially approved

and constructed or due to settling, shifting, alteration, replacement, repair, or restoration by the Association, a valid easement for encroachment and maintenance of such encroachment shall exist for the life of the improvement or structure.

4.7. **Party Wall.** Each Owner hereby acknowledges and agrees that a Party Wall may presently encroach upon or overlap the Owner's Lot. Each Owner hereby grants to the adjoining Owner of the other Lot that shares the Party Wall an easement over and upon its Lot for the purpose of maintaining the Party Wall. By accepting a deed to a Lot, each Owner hereby covenants and agrees not to do anything or to erect any barrier that will hinder, delay, or limit the maintenance of the Party Wall and the performance of each Owner's obligation to maintain and repair the Living Unit.

4.8. **Delegation of Common Areas Use.** Any Owner may delegate his right of use and enjoyment to the Common Areas to family members, tenants, or contract purchasers who reside on the Property.

4.9. **Compliance with Restrictions and Rules.** Each Owner's right to use the Common Areas and Limited Common Areas shall be subject to the Restrictions and any Rules adopted by the Association.

V. **ASSESSMENTS**

5.1. **Covenant to Pay Assessments.** Each Owner of a Lot by the acceptance of a deed therefore, whether or not it be so expressed in the deed, hereby covenants and agrees with each other and with the Association to pay to the Association all Assessments, including all annual, special, and individual Assessments described below, and other fees, charges, levies, and fines as provided in the Governing Documents or the Act.

5.2. **Purpose of Assessments.** Assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of the Owners; the management, maintenance, care, preservation, and protection of the Project; enhancing the quality of life in and the value of the Project; payment of taxes, insurance, and other financial obligations of the Association; maintenance, repair, and improvement of the Common Areas or other areas for which the Association is responsible to maintain; establishing and funding a reserve to cover major repair or replacement of the Common Areas; and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes provided in the Governing Documents.

5.3. **Annual Budget.** The Board shall prepare, or cause the preparation of, and adopt an annual budget for the Association. The annual budget shall provide, without limitation, for the maintenance of the Common Areas and other areas required to be maintained by the Association (if any); and for the administration, management, and operation of the Association. The Board may revise the budget from time to time as the Board deems appropriate. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect until a new annual budget is adopted. The budget shall be made available at the request of an Owner within thirty (30) days after adoption. Owners may disapprove a budget according to the provisions of the Act.

5.4. **Annual Assessments.** The total annual Assessment against all Lots shall be established by the Board based on the annual budget. Annual Assessments shall be made on a calendar year basis. The Board shall give written notice of each annual Assessment not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the next calendar year. 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. At least fifteen (15) days prior to the effective date of any change in the amount of the annual Assessment, the Association shall give each Owner written notice of the amount.

5.5. **Special Assessments.** In addition to the annual Assessments, the Board may levy in any calendar year special Assessments up to five-hundred-dollars (\$500) per Lot, payable over such a period as the Board may determine for the purpose of defraying, in whole or in part any expense or expenses not reasonably capable of being fully paid with funds generated by annual Assessments; the cost of any construction, reconstruction, or repair or replacement of the Property or Common Areas; or for any other expense incurred or to be incurred as provided in this Declaration. Additional special Assessments over

five-hundred-dollars (\$500) in a calendar year may be levied if assented to by a majority of the Owners present in person or by proxy at a meeting duly called for such purpose. Notice in writing of the amount of any special Assessment and the time for its payment shall be given as soon as is reasonably possible to the Owners. Payment shall be due on the dates and in the manner provided in the notice.

5.6. **Individual Assessments.** In addition to annual and special Assessments authorized pursuant to Sections 5.4 and 5.5 above, the Board may levy at any time individual Assessments against a Lot and its Owner for: (a) administrative costs and expenses incurred by the Association in enforcing the Governing Documents against the Owner or his Occupants; (b) costs associated with the maintenance, repair, or replacement of Common Areas or other areas maintained by the Association that are caused by the neglect or actions of an Owner or his Occupants; (c) any other charge, fine, fee, expense, or cost designated as an individual Assessment in the Governing Documents or by the Board, including, without limitation, action taken to bring a Lot and its Owner into compliance with the Governing Documents; (d) nonpayment of a reinvestment fee or a required deposit; (e) costs of providing services to the Lot upon request of the Owner; and (f) attorney fees, court or collection costs, fines, and other charges relating thereto as provided in this Declaration. In addition, Individual Assessments may be levied against a Lot and its Owner specifically benefited by any made at the written request of the Owner of the Lot to be charged. The aggregate amount of any such individual Assessment shall be determined by the cost of such improvements, repairs, maintenance, or enforcement action, including all overhead and administrative costs and attorney fees, and shall be allocated among the affected Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be. Individual Assessments may be levied in advance of the performance of the work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to an Individual Assessment against the Lot(s) benefited, unless such work was necessitated by the Lot Owner's or his Occupants' negligence.

5.7. **Allocation of Assessment.** Annual and special assessments shall be levied equally among the Lots, each Lot being responsible for a 1/131st share.

5.8. **No Offsets.** Except as may be provided otherwise herein, all Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount or withholding of any amount shall be permitted for any reason, including, without limitation, a claim that the Association owes the Owner money, or that the Association is not properly exercising its duties and powers as provided in this Declaration.

5.9. **Personal Obligation and Lien.** All Assessments, together with any interest, late fees, collection costs, and attorneys' fees if collection efforts become necessary, regardless of whether a lawsuit is ultimately filed, shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such Assessment is made; and (b) the personal obligation of the Owner of such Lot at the time the Assessment falls due. No Owner may exempt himself or his Lot from liability for payment of Assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid Assessments, late payment fees, interest, and costs of collection, including attorneys' fees, which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore.

5.10. **Certificate Regarding Payment.** Upon the request of any Owner, prospective purchaser, Mortgagee, or encumbrancer of a Lot, the Association shall issue a certificate stating whether or not all Assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all Persons who in good faith rely thereon. The Association may charge the requesting Owner, prospective purchaser, Mortgagee, or encumbrancer of a Lot a reasonable fee of up to twenty-five dollars (\$25) or an amount greater as allowed by the Act.

5.11. **Default in Payment of Assessment; Enforcement of Lien.** Assessments not paid within fifteen (15) days of the due date thereof shall be deemed delinquent and subject to interest at the rate of eighteen percent (18%) per annum. In addition to the interest charge, a late fee may be imposed by the

Board in an amount established through Rules. If an Assessment or other charge levied under this Declaration becomes delinquent, the Association may exercise any or all of the following remedies:

- (a) The Association may suspend such Owners voting rights.
- (b) The Association shall have a lien against each Lot for any Assessment levied against the Lot and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the Assessment, fine, or charge is due. At any time any Assessment (of any type provided for by this Declaration or the Bylaws) or installment thereof is delinquent, the Association, by and through its Board or any Manager, may file a notice of lien in the deed records of Weber County, Utah against the Lot in respect to which the delinquency pertains. Once filed, such lien shall accumulate all future Assessments or installments, interest, late fees, penalties, fines, attorneys' fees, and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. Said lien may be foreclosed at any time as allowed by law. The lien of the Association shall be superior to all other liens and encumbrances except a lien or encumbrance recorded before the Original Declaration was recorded; a first or second security interest on the Lot secured by a mortgage or trust deed that is recorded before the Association's notice of lien; or a lien for real estate taxes or other governmental assessments against the Lot. The Association through its duly authorized agents, may bid on the Lot at any foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Lot.
- (c) The Association may bring an action to recover a money judgment for unpaid Assessments, fines, and charges under this Declaration against the Lot Owner without foreclosing or waiving the lien described in paragraph (b) above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.
- (d) If the delinquent Owner is leasing his Lot or any portion thereof, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due and the payment of such rent to the Board shall discharge such tenant for rent due, and shall discharge the Owner for such Assessments to the extent of the amount so paid.
- (e) The Association may terminate utilities paid out of the Common Expense and the right to use the Common Areas.
- (f) The Association shall have any other remedy available to it by law or in equity.

5.12. **Reimbursement of Tax Collection by County Authorized.** It is recognized that under the Declaration the Association will own the Common Areas and that it will be obligated to pay property taxes to Weber County to the extent taxes are required on such Common Areas. It is further recognized that each Owner of a Lot as a Member of the Association will be required to reimburse the Association for his pro rata share of such taxes paid. Notwithstanding anything to the contrary contained in the Declaration, Weber County shall be authorized to collect such pro rata share of taxes directly from each Owner by inclusion of said share with the tax levied on each Lot.

5.13. **Power of Sale.** The Association shall have all rights of foreclosure granted by the Act, both judicially and nonjudicially. The Owners hereby convey and warrant pursuant to U.C.A. §57-1-20 and §57-8a-302 to the Association's attorney of record, with power of sale, the Lot and all improvements to the Lot for the purpose of securing payment of Assessments under the terms of the Declaration.

5.14. **Reserve Account.** The Association shall establish a reserve account to fund long-term maintenance, repairs, and replacement of the Common Areas and comply with any statutory requirements regarding obtaining a reserve analysis. The Board shall not be personally liable for failure to fund the reserve unless willful or intentional misconduct is proven in a court of law.

5.15. **Association Responsibility after Foreclosure.** If the Association takes title to a Lot pursuant to a foreclosure (judicial or non-judicial), it shall not be bound by any of the provisions related to the Lot that are otherwise applicable to any other Owner, including but not limited to obligations to pay Assessments, taxes, or insurance, or to maintain the Lot.

(e) Any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Project.

6.4. **Specific Powers and Duties.** The powers and duties of the Association shall include, without limitation, the following:

(a) **Maintenance and Services.** The Association shall provide maintenance and services for the Project as provided in Article VII and other provisions of this Declaration.

(b) **Insurance.** The Association shall obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws of the Association. The Association shall have no obligation to obtain or maintain any insurance covering the personal property of any Owner(s).

(c) **Rulemaking.** The Association, through its Board of Directors, shall make, establish, promulgate, amend, and repeal Rules governing the conduct of persons and the operation and use of the Property as it may deem necessary or appropriate in order to assure a clean, aesthetically pleasing, peaceful, and orderly use and enjoyment of the Property.

(d) **Assessments.** The Association shall adopt budgets and impose and collect Assessments as provided in Article V of this Declaration.

(e) **Enforcement.** The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of the Governing Documents of the Association.

(f) **Title to Common Areas.** The Association shall hold title to all Common Areas and pay all real property taxes levied upon any portion of the Common Areas, unless paid by the Owners, provided that the Association shall have the right to contest or compromise any such taxes.

(g) **Employment of Agents, Advisers, and Contractors.** The Association, through its Board, may employ the services of any person or corporation as managers, hire employees to manage, conduct, and perform the business, obligations, and duties of the Association, employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, Managers, landscape architects, accountants, recreational experts, architects, planners, lawyers, reserve study specialists, and what is convenient for the management, maintenance, and operation of the Property. Any agreement with a Manager shall not exceed a term of two (2) years, renewable by agreement of the parties for a successive two (2) year term.

6.5. **Liability.** A Director or officer of the Association shall not be liable to the Association or any Member thereof for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for intentional or willful misconduct. In the event any Director or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law, except where the Director or officer is found by a court of law to have acted willfully or intentionally in carrying out his/her duties.

6.6. **Board of Directors.** Except where a matter or vote is specifically reserved to the Owners, the Board of Directors shall act in all instances on behalf of the Association.

6.7. **Registered Agent.** The registered agent of the Association shall be as provided in the entity filings with the Utah State Department of Commerce, Division of Corporations and Commercial Code. The Board may change the registered agent without Owner vote or approval.

VII. MAINTENANCE

7.1. **Association Maintenance.** The Association shall maintain, repair, and replace all Common Areas together with all improvements thereon and all easements appurtenant thereto, including but not limited to the clubhouse, pool, and the private streets, curbs, and gutters unless the maintenance

thereof is assumed by a public body or as otherwise stated herein. The Common Areas shall be maintained in a safe condition and in a good and workmanlike manner such as to carry out the purpose for which such areas are intended. The Association shall also be responsible to maintain, repair, and replace the following portions of the Living Units: roofs, exterior surfaces (except window frames and windows), foundations, gutters, downspouts, and soffit and fascia. The snow removal upon the Limited Common Area driveways, front steps, and stoops may, without obligation, be undertaken by the Association in the sole discretion of the Board, but the Association shall have no maintenance, repair, or replacement responsibilities for the foregoing. The Association shall have no obligation to maintain backyard areas nor any landscaping that the Association cannot reasonably access. The Association shall also have no obligation to perform any maintenance and/or repair on any landscaping installed by an Owner without the Association's express agreement to maintain such landscaping. Further descriptions of the Association and Owner maintenance, repair, and replacement responsibilities are contained in the "Maintenance Allocation Chart" attached hereto as Exhibit "C". Unless the maintenance, repair, and replacement obligation is expressly assigned to the Association herein or expressly assumed by the Association, such obligation shall be fulfilled by the Owners.

7.2. **Owner Maintenance.** Except for those parts assigned to the Association, each Owner has the obligation to maintain, repair, and replace the Living Unit. This includes, without limitation, the garage and garage door, exterior doors and door frames, windows and window frames, all mechanical devices; appurtenant electrical, plumbing, and heating devices and systems; and ventilating and air conditioning systems. Owners shall be responsible for the maintenance and repair of all utility lines (sewer, water, gas, electricity, etc.) that solely service their Lot or Living Unit, even if such utility lines are outside the boundaries of the Lot or Living Unit. Limited Common Area driveways; front steps and stoops; and back steps, patios, and decks shall be maintained, repaired, and replaced by the Owners. The snow removal thereupon shall also be performed by the Owners except as expressly assumed by the Association. The Living Unit and Limited Common Areas shall be kept in a clean, safe, aesthetically pleasing, and workmanlike manner. Living Unit and Limited Common Area maintenance, repair, and aesthetic standards shall be established by the ACC and all Owners are subject thereto. As further provided in Article X, at the discretion of the ACC, any maintenance, repair, and replacement work for exterior elements assigned to Owners may be managed and performed by the Association, and the costs of such maintenance, repair, and replacement work shall be levied against the responsible Unit Owner as an individual Assessment as reasonably determined by the ACC.

7.3. **Party Wall/Shared Utility Lines.** By acceptance of a deed to a Lot, each Owner hereby acknowledges, agrees, and understands that it is essential that the Party Wall be maintained in good condition and repair to preserve the integrity of the Living Units as they are used and occupied by Owners. Each Owner hereby covenants and agrees not to do anything or to erect any barrier that will hinder, delay, or limit the maintenance of the Party Wall. With respect to the surface components of the Party Wall, each Owner agrees to maintain and keep in good condition and repair, including the making of replacements as needed, all surface components which face into such Owners' respective Living Unit. With respect to pipes, conduits, ducts, and other utility service lines and connections which benefit only one or more, but fewer than all, of the Owners, the Owner(s) benefited solely thereby shall be fully and personally responsible for the cost of maintaining such items in good condition and repair, including the making of replacements as needed. In the event that the need for maintenance or repair of the Party Wall is caused through the willful or negligent act of any Owner or his/her Occupant, the cost of such maintenance or repairs shall be the sole and exclusive expense of such Owner. With respect to structural components of the Party Wall, except as may be otherwise provided in the immediately preceding sentences, the Owners benefitted by the Party Wall agree to share equally in the cost of maintenance and upkeep thereof in good condition and repair, including the replacement thereof as necessary.

7.4. **Owner Maintenance Neglect.** The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage, or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon (including a Living Unit) if for any reason the Owner fails to maintain and repair such Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon

such Lot in violation of this Declaration or any Rules of the Association. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoy any breach or threatened breach of this Declaration or any Rules promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such Rules.

7.5. **Association Maintenance Caused by Owner Negligence.** In the event that the need for Association maintenance or repair is caused through the willful or negligent acts of an Owner or his Occupants, the Board may cause such repairs to be made by the Association and the cost of such maintenance or repair work shall be added to and become an individual Assessment to which such Lot is subject.

7.6. **Services.** The Association shall provide or contract for such services as the Board of Directors may reasonably deem to be of benefit to the Property, including, without limitation, garbage/trash/snow removal for Common Areas.

VIII. INSURANCE

8.1. **Insurance.** The Board of Directors shall obtain insurance as required in this Declaration, the Act, or other applicable laws. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies. Insurance premiums shall be a Common Expense.

8.2. **Property Insurance.**

(a) **Hazard Insurance.** The Association shall maintain a blanket policy of property insurance covering the entire Project, including the Common Areas and all buildings including all Living Units, fixtures, and building services equipment as provided in the Act. The Association may maintain broader coverage if afforded by the insurance contract.

i. The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an “all in” or “all inclusive” insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in or to the Living Unit or any Limited Common Areas or otherwise permanently part of or affixed to Common Areas, Living Units, or Limited Common Areas, including but not limited to floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, windows.

ii. At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by “special form” property coverage.

iii. The blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy (including the Living Units) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.

iv. The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost; and (2) a Replacement Cost Endorsement under which the insurer agrees to pay up to one hundred percent (100%) of the Property’s insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.

v. Each property policy that the Association is required to maintain shall also contain or provide for the following: (i) “Inflation Guard Endorsement,” if available, (ii) “Building Ordinance or Law Endorsement,” (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction), and (iii) “Equipment Breakdown,” if the project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installation, which shall provide that the insurer’s minimum liability per accident at least equals the lesser of two million dollars (\$2,000,000) or the insurable value of the building containing the equipment.

(b) Owner Responsibility for Payment of Deductible. If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner:

i. the Association’s policy provides primary insurance coverage;
 ii. notwithstanding Subsection (b)(i) above, and subject to Subsection (b)(iii) below:

- 1) the Owner is responsible for the Association’s policy deductible;
 and
- 2) the Owner’s policy, if any, applies to that portion of the loss attributable to the Association’s policy deductible.

iii. An Owner that has suffered damage to any combination of a Living Unit or a Limited Common Area appurtenant to a Living Unit (“Living Unit Damage”) as part of a loss, resulting from a single event or occurrence, that is covered by the Association’s property insurance policy (“Covered Loss”) is responsible for an amount calculated by applying the percentage of total damage resulting in a Covered Loss that is attributable to Living Unit Damage (“Living Unit Damage Percentage”) for that Living Unit to the amount of the deductible under the Association’s property insurance policy; and

iv. If an Owner does not pay the amount required under Subsection (b) above within 30 days after substantial completion of the repairs to, as applicable, the Living Unit or the Limited Common Area appurtenant to the Living Unit, the Association may levy an assessment against the Owner for that amount.

(c) Association’s Obligation to Segregate Property Insurance Deductible. The Association shall keep in a segregated bank account an amount equal to the Association’s property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.

(d) Association’s Right to Not Tender Claims that are Under the Deductible. If, in the exercise of its business judgment, the Board of Directors determines that a claim is likely not to exceed the Association’s property insurance policy deductible: (a) the Owner’s policy is considered the policy for primary coverage to the amount of the Association’s policy deductible; (b) an Owner who does not have a policy to cover the Association’s property insurance policy deductible is responsible for the loss to the amount of the Association’s policy deductible; and (c) the Association need not tender the claim to the Association’s insurer.

(e) Notice Requirement for Deductible. The Association shall provide notice, in any manner allowed by the Act or in the Governing Documents, to each Owner of the Owner’s obligation under Subsection (b) above for the Association’s policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

8.3. **Flood Insurance.** The Association may, without obligation, purchase flood insurance to cover water and flooding perils for the Common Areas not otherwise covered by blanket property insurance as the Board of Directors deems appropriate. Owners are responsible to purchase flood insurance covering water and flooding perils for their Living Unit and corresponding Limited Common Areas that is not otherwise covered by the Association's blanket property insurance policy.

8.4. **Earthquake Insurance.** The Association may, without obligation, purchase earthquake insurance as the Board of Directors deems appropriate.

8.5. **Comprehensive General Liability (CGL) Insurance.** The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than Two Million Dollars (\$2,000,000) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which should preclude the insurer from denying the claim of an Owner because of the negligence acts of the Association or another Owner.

8.6. **Director's and Officer's Insurance.** The Association shall obtain Directors' and Officers' liability insurance protecting the Board of Directors, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Project's Documents, and breach of contract (if available). This policy may in the discretion of the Board: (1) include coverage for volunteers and employees, (2) include coverage for monetary and non-monetary claims, (3) provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims, and (4) provide coverage for defamation. In the discretion of the Board of Directors, the policy may also include coverage for any Manager and any employees of the manager and may provide that such coverage is secondary to any other policy that covers the Manager or any employees of the Manager.

8.7. **Insurance Coverage for Theft and Embezzlement of Association Funds.** The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (1) provide coverage for an amount of not less than the sum of three (3) months' of the annual Assessment in addition to the prior calendar year's highest monthly balance on all operating and reserve funds, and (2) provide coverage for theft or embezzlement of funds by: (a) officers and Directors of the Association, (b) employees and volunteers of the Association, (c) any Manager of the Association, (c) officers, directors, and employees of any Manager of the Association, and (d) coverage for acts.

8.8. **Worker's Compensation Insurance.** The Board of Directors shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law and as the Board of Directors deems appropriate.

8.9. **Certificates.** Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association and upon written request, to any Owner or Mortgagee.

8.10. **Named Insured.** The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under all property and CGL insurance policies.

8.11. **Association has the Right to Negotiate All Claims and Losses and Receive Proceeds.** Insurance proceeds for a loss under the Association's property insurance policy are payable to an insurance trustee if one is designated, or to the Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any remaining proceeds after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Living Units. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-

in-fact for the purpose of negotiating all losses related thereto, including the collection, receipt of, and appropriate disposition of all insurance proceeds; the execution of releases of liability; and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of the Owner.

8.12. **Insurance Trustee.** In the discretion of the Board of Directors or upon written request executed by at least a majority of Owners, the Board of Directors shall hire and appoint an insurance trustee (“Insurance Trustee”), with whom the Association shall enter into an insurance trust agreement, for the purpose of exercising such rights under this paragraph as the Owners or Board of Directors (as the case may be) shall require.

8.13. **Owner Act Cannot Void Coverage Under Any Policy.** Unless an Owner is acting within the scope of the Owner’s authority on behalf of the Association and under direct authorization of the Association, an Owner’s act or omission may not void an insurance policy or be a condition to recovery under a policy.

8.14. **Waiver of Subrogation against Owners and Association.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association and the Owners and their respective agents and employees.

8.15. **Owner Insurance Obligation.** Each Owner is responsible to maintain adequate insurance to cover the Association’s deductible on a claim the Association tenders to its hazard insurance policy as described in Section 8.2(b) above. Each Owner shall also maintain insurance that would provide coverage against their Living Unit in the event that the Association elects not to tender an insurance claim to the Association’s policy under Section 8.2(d) above. Each Owner shall provide evidence of such insurance to the Board of Directors upon request, or as further provided by the Rules. The Association may, without obligation, purchase insurance on behalf of an Owner who fails to comply with his/her insurance requirements and levy the premium costs against the Owner as an Individual Assessment. Nothing herein shall limit an Owner’s ability to purchase additional insurance coverage as such Owner sees fit, including coverage for loss of use or for personal property. The Association shall not provide insurance coverage against a resident’s personal property or any other item or coverage type not expressly required to be obtained by the Association in this Article VIII.

8.16. **Applicable Law.** This Declaration is specifically subjecting the Association to the insurance requirements required by U.C.A. §57-8a-405, and any amendments thereto and thereafter enacted by law. It is the intent of this provision that any future changes to the insurance laws applicable to Project shall apply to this Association.

IX. USE RESTRICTIONS

9.1. **Use of Common Areas.** The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Living Units.

9.2. **Use of Lots and Living Units.** All Lots are intended to be improved with Living Units and are restricted to such use. Except as may be approved to the contrary, each Living Unit shall be used only as a single-family residence. No gainful occupation, profession, trade, or other nonresidential use shall be conducted on any Lot or Living Unit without the prior written consent of the Board and applicable governmental entities. However, the Board shall not approve commercial activities otherwise prohibited by this Section unless the Board determines that only normal residential activities would be observable outside of the Living Unit and that the activities would not be in violation of applicable local ordinances. No Lot or Living Unit shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Living Unit, so as to create a nuisance or interfere with the rights of any Owner, or in any way which would result in an increase in the cost of any insurance covering the Common Areas. The use of a Living Unit for residential leasing purposes shall not be considered a business or commercial use.

9.3. **Offensive or Unlawful Activities.** No noxious, illegal, or offensive activities shall be carried on upon any Lot, Living Unit, or Common Area, nor shall anything be done or placed on any Lot or Common Area which interferes with or jeopardizes the quiet enjoyment of other Lots, Living Units, or the Common Areas, or which is a source of annoyance to residents. No unlawful use shall be made of a Lot or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. No use shall be made of any Living Unit which shall cause the improvements within the Development or any part thereof to be uninsurable against loss by fire or other perils included in insurance contracts, or cause such insurance to be canceled or suspected, or cause any company issuing such insurance to refuse renewal thereof.

9.4. **Recreational Vehicles.** No boats, trailers, motorhomes, large trucks, commercial vehicles, or the like, as determined by the Board, belonging to Owners or other residents of the Property shall be parked within the Development, unless in the Unit's garage, except as expressly allowed by the Board in the Rules. No motor vehicle of any kind shall be repaired, constructed, or reconstructed within the Project, unless done within the Unit's garage.

9.5. **Pets.** Up to two (2) domestic household pets are allowed at any given time at a Living Unit, whether such pet belongs to an Owner or an Occupant. Whenever a pet is allowed to leave a Lot, it shall be kept on a leash or in a cage. No animals may be bred for commercial purposes. No pets shall make an unreasonable amount of noise or otherwise become a nuisance. Any exterior structure for the care, housing, or confinement of any such pets shall be approved by the Board in advance and maintained by the Owner. All pet waste shall immediately be picked up by its owner. Owners are strictly responsible for the behavior and actions of their pets and the pets of their Occupants and the Owners hereby agree to hold the Association harmless for any damage or injury caused such pet(s). Owners of pets must also abide by all applicable city/county pet municipal laws and ordinances.

9.6. **Machinery and Equipment.** No machinery or equipment of any kind shall be placed, used, operated, or maintained on or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance, or construction of a Living Unit or appurtenant structures.

9.7. **Maintenance and Repair.** No Living Unit, building, structure, improvement (including interiors thereof), or landscaping upon any Lot or Limited Common Area shall be permitted to fall into disrepair and, subject to the requirements herein as to approval by the Board, each such building, structure, improvement, or landscaping at all times shall be kept in good condition and as appropriate, adequately painted or otherwise finished by its Owner.

9.8. **Nuisances.** No rubbish or debris of any kind shall be placed upon or adjacent to any Lots, so as to render such Lot or portion thereof unsanitary, unsightly, offensive, or detrimental to other Owners. No Living Unit or Lot shall be used in such manner as to obstruct or interfere with the enjoyment of Occupants of other Living Units or Lots. Without any of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices (except security devices used exclusively for security purposes) shall be located or placed on Lots, Limited Common Areas, or in Living Units. Living Units, Lots, and Limited Common Areas shall be kept and maintained in a clean and sanitary state so as not to attract rodents and other pests. In the event that rodents and other pests result from unclean and unsanitary conditions within a Living Unit, the Association may contract with a rodent and pest removal company and assess the resulting costs against the Owner of the Living Unit as an individual Assessment.

9.9. **Signs.** No signs whatsoever shall be placed or maintained within the Project, including upon any Lot, except as otherwise allowed by the Board in the Rules.

9.10. **Trash Containers and Collection.** All garbage and trash shall be placed and kept in covered containers of a type and style which shall be approved by the Board. Such containers shall be maintained as not to be visible from the street view except to make them available for collection and then only for a time period not to exceed twenty-four (24). Each Owner must at all times and at their expense provide garbage cans and plastic liners therefore, unless the Association elects to provide the same.

9.11. **Smoke and Carbon Monoxide Detectors.** Each Living Unit shall have an operable carbon monoxide detector and smoke detectors as required by building code. The Board may, but is under no obligation to, enter a Living Unit to ensure that it is in compliance with this Section and Section 9.12 below.

9.12. **Unit Heating.** Owners shall heat Units to no less than fifty-degrees (50° F) at all times to prevent pipes from freezing.

9.13. **Smoking.** Smoking is prohibited when the smoke becomes a nuisance or annoyance to other Owners or Occupants, as reasonably determined by the Board. The Board may establish Rules regulating or prohibiting smoking throughout the Development as needed to protect residents from the harmful effects of second-hand smoke.

9.14. **No Patio / Deck Storage.** No observable outdoor storage of any kind shall be permitted on patios, front yards, porches, etc., except for patio furniture, portable barbecue grills in good condition which may be maintained on backyard patios, and other items expressly allowed by the Board. Said patio furniture shall conform with standards set by the ACC.

9.15. **Window Coverings.** Every Owner shall be obligated to ensure that window coverings are installed within the Living Unit. Only curtains, drapes, shades, shutters, and blinds may be installed as window covers, and all such window covers shall be approved in advance by the Board. No window shall be covered by paint, blankets, rugs, foils, sheets, and the like. The Board may adopt Rules regulating the type, color, and design of any window coverings that can be viewed from outside the Living Unit.

9.16. **Parking.** Parking shall be subject to and governed by Association Rules. The Board may adopt Rules relating to the size and dimensions of the vehicles parked within the Project; relating to the admission and temporary parking of vehicles within the Project; payment of a fee to use certain parking stalls; the right to remove or cause to be removed any vehicles that are improperly parked; the time and manner that Common Areas parking spaces may be used; the levying of fines to Owners and Occupants who violate, or whose invitees violate, such Rules; and any other parking Rules the Board deems necessary.

9.17. **Renting of Living Units.** Notwithstanding anything to the contrary contained in this Declaration, the leasing or renting of any Living Unit within the Project shall be governed by this Section. An Owner may “rent” his/her Living Unit subject to the limitations and requirements of this Section. For purposes of this Section only, the term “rent” in any grammatical form includes lease, sublet, or otherwise permit or allow others to reside therein for legal consideration payable to the Owner or to others at the Owner’s request or direction, or allow others to reside therein alone for charitable purposes without the owner in residence. No Living Unit may be rented for a period of less than six (6) consecutive months and an Owner may not rent less than the entire Living Unit. A Living Unit may not be rented except by written agreement that requires the tenants to abide by the Governing Documents and specifically provides that a violation of any provision of the Governing Documents is a breach under the rental agreement. A copy of the rental agreement shall be provided to the Board upon request. The Board may adopt by resolution, Rules that establish the contents or form of rental agreements; that requests certain information regarding tenants such as names, contact information, vehicle descriptions, and so forth; and any other Rules deemed necessary by the Board to implement this Section. Pursuant to Rules adopted under this Section, if the Board determines that a tenant has violated a provision of the Governing Documents, after notice and an opportunity for a hearing as provided by the Act, the Board may assess fines against the Owner and/or require an Owner to terminate a rental agreement. If an Owner fails to terminate a rental agreement upon request of the Association, the Association, in its sole discretion, may proceed with eviction proceedings on behalf of and with the authority of the Owner, in which case the Owner shall be responsible to reimburse the Association for all attorneys’ fees and costs it incurs for taking such action. Said attorneys’ fees and costs shall be assessed against the Owner as an individual Assessment.

X. ARCHITECTURAL CONTROLS

10.1. **Architectural Review Committee.** The Board may appoint a three (3) member architectural review committee (“ACC”), the function of which shall be to ensure that all improvements and landscaping within the Property are in harmony with existing surroundings and structures. The ACC

need not be composed of Owners. If the ACC is not appointed, the Board shall perform the duties required of the ACC.

10.2. **Architectural Controls.**

(a) **Exterior Changes.** No exterior construction work or changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the ACC. By way of illustration, but not of limitation, this includes repairs or replacement to windows, doors, garages, and etc.. Also by way of illustration, but not of limitation, the following are considered exterior changes: painting, landscaping, lighting, repairs, excavation, patio covers, screens, doors, evaporative coolers, window air conditioners, fireplaces, skylights, storage buildings, solar collectors, decks, balconies, shade screens, awnings, window coating or tinting, furniture, decorative alterations or other work that in any way alters the exterior appearance of the Property. The ACC may designate the design, color, style, model and manufacturer of any exterior improvement or alteration that is acceptable for the Project. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values.

(b) **Structural Interior Changes.** No interior structural changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the ACC. By way of illustration, but not of limitation, the following are considered interior structural changes: moving, removing, adding, or altering walls, ceilings, doorways, windows, skylights, venting, and the like. The ACC is entitled to ensure that such changes will not jeopardize the structural integrity of the building or become a nuisance or safety issue to other residents.

(c) **Management over Owner Maintenance, Repair, and Replacement Responsibilities.** The ACC shall oversee, manage, and ensure that the Owners are fulfilling their responsibilities pertaining to the maintenance, repair, and replacement of the Living Units, Limited Common Areas, Party Wall, and any other areas for which the Owners are responsible (collectively referred in this Section 10.2 as the "Owner Responsible Areas"). This management and oversight includes the ACC having authority to secure bids and execute contracts for the maintenance, repair, and replacement of the Owner Responsible Areas on behalf of the Association and Owners, and to assess each Living Unit's proportionate share, as reasonably determined by the ACC, to the corresponding Living Unit Owner as an individual Assessment. Owners shall comply with the demands and requirements of the ACC, who is authorized to create Rules further setting forth procedures and guidelines for the regulation, management, and maintenance of the Property. In the event that the ACC elects to manage and perform maintenance, repair, or replacement work on the Living Units, Limited Common Areas, or Party Walls on behalf of the Owners, Owners cannot opt-out of such services and are required to pay the individual Assessments levied against them by the Association. This will allow the Association to ensure aesthetic uniformity, quality, competitive pricing, and so forth.

10.3. **Liability for Damages.** The ACC shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect made pursuant to this Article X.

XI. ENFORCEMENT

The Association and any Owner shall have the right to enforce, by proceedings at law or in equity, each provision of this Declaration, including the right to prevent any violation of such, and the right to recover damages and other sums for such violation(s). The Association or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Bylaws and the Rules and any respective amendments thereto. The prevailing party in any action for the enforcement of any provisions of the Governing Documents (including but not limited to litigation and the appeal thereof) shall be entitled to collect court costs and reasonable attorneys' fees. If the Association is required to retain legal counsel due to an Owner or his Occupant's breach of the Governing Documents, the Association shall be entitled to collect its attorneys' fees and costs against such Owner or his Occupant by levying an individual Assessment, regardless of whether a lawsuit is filed or not.

XII. RIGHTS OF FIRST MORTGAGEE

Notwithstanding anything to the contrary contained herein, the following provisions shall apply:

12.1. **Mortgagee Foreclosure.** Nothing herein shall impair the rights of the first Mortgagee of a Lot to: (1) foreclose or take title to a Lot pursuant to the remedies provided in the Mortgage; (b) accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor; or (c) sell or lease a Lot acquired by a Mortgagee.

12.2. **Title in Mortgagee.** Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage will not be liable for such Lot's Assessments or charges which accrue prior to the acquisition of title of such Lot by the Mortgagee, except for the Assessments levied during the immediate six (6) prior months, unless disallowed by law. Mortgagees shall be responsible for Assessments or charges levied by the Association while holding title to a Lot.

12.3. **Mortgagees' Rights to Inspect Association Records.** The holders of first Mortgages shall have the right upon reasonable notice and during business hours to inspect and copy at their own expense all books and financial records of the Association.

XIII. RIGHT OF ENTRY

The Association acting through the Board or its duly authorized agent shall have the right at all times upon reasonable notice of at least 48 hours to enter upon or into any Lot or Living Unit, without trespass, and regardless of whether or not the Lot Owner or Occupant thereof is present at the time, to abate any infractions, to fulfill its responsibilities, to exercise its rights, to make repairs or correct any violation of any of the Declaration or Rules, and in connection therewith shall have the further right to assess all costs incurred against the Owner, such Assessment to be secured by a lien provided in Article V. Notice shall not be necessary in case of an emergency originating in or threatening such Living Unit or any other part of the Project, including the sound or sight of running water in a Living Unit reasonably believed to be damaging property, the smell or sight of smoke in a Living Unit, abnormal or excessive noise, and foul smell. Owners shall also maintain up-to-date emergency contact information records with the Association, including any local representative an Owner may have. Owners shall be responsible for any costs incurred by the Association as a result of entering a Living Unit under this Section and shall indemnify and hold harmless the Association for all damages related to such entry, except for such damages resulting from recklessness or bad faith.

XIV. MISCELLANEOUS

14.1. **Notices.** Any notice required or permitted to be given to any Owner or Member under the provisions of this Declaration shall be deemed to have been properly furnished if personally delivered, emailed, mailed, or as otherwise allowed by the Act. If emailed or mailed, the notice shall be sent to the Person who appears as a Member or Owner, at the latest email or mailing address for such person appearing in the records of the Association at the time of mailing or emailing. If no mailing address has been provided, the Lot owned by said Owner shall be used for notice purposes. Owners are required to register and keep up to date, all email, telephone, and mailing addresses.

14.2. **Amendment.** Except as otherwise provided herein, this Declaration and/or the Plat may be amended only upon the affirmative vote of at least a majority of the Lot Owners. Amendments to the Declaration shall be proposed by either a majority of the Board or by at least forty percent (40%) of the Lot Owners. The proposed amendment must be reduced to writing and must be included in the notice of any meeting at which action is to be taken thereon, or in the notice if action is taken without a meeting as allowed by applicable laws. Any amendment(s) shall be effective upon recordation in the office of the recorder of Weber County, State of Utah. In such instrument the Board and/or president of the Association shall certify that the vote required by this Section for amendment has occurred. If a Lot is owned by more than one Owner, the signature of any one Owner shall be sufficient to constitute approval for that Lot under this Section. If a Lot is owned by an entity or trust, the signature of any one officer, trustee, or agent of the entity

shall be sufficient to constitute approval for that Lot under this Section. No acknowledgment of any signature shall be required.

14.3. **Consent in Lieu of Voting.** In any case in which this Declaration requires authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in the Association, as allowed by applicable law. Action may also be taken through the use of a written ballot as allowed by applicable law.

14.4. **Dissolution.** The Association may only be dissolved by the affirmative assent in writing from 100% of the Lot Owners and first Mortgagees.

14.5. **Interpretation and Severability.** 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 constructed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any party thereof, and any gender shall include the other gender. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

14.6. **Covenants to Run with Land.** This Declaration and all 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 Association and all parties who hereafter acquire any interest in a Lot or in the Common Areas shall be subject to the terms of this Declaration and the provisions of any Rules, agreements, instruments, and determinations contemplated by this Declaration; and failure to comply with any of the foregoing shall be grounds for an action by the Association or an aggrieved Owner for the recovery of damages, or for injunctive relief, or both. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

14.7. **No Waiver.** Failure by the Association or by any Owner to enforce any Restriction or provision herein contained, or contained in the Bylaws or the Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction or provision.

14.8. **Security.** The Association shall in no way be considered an insurer or guarantor of security within or relating to the Property, including any Common Areas in which the Association may have an obligation to maintain, and the Association shall not be held liable for any loss or damage by reason of any failure to provide adequate security or any ineffectiveness of security measures undertaken. Owner or Occupant agree by purchasing a Lot in this Association that Association, and the Board, are not insurers of the safety or well-being of Owners or Occupants or of their personal property, and that each Owner or Occupant assumes all risks for loss or damage to persons, the Lots, the Common Areas, and to the contents of improvements located thereon to the extent not insured by the Association. EACH OWNER AND OCCUPANT UNDERSTANDS AND ACKNOWLEDGES THAT THE ASSOCIATION AND THE BOARD HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE SECURITY OF THE PROJECT.

14.9. **Effective Date.** The Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Weber County, Utah.

[SIGNATURE PAGE TO FOLLOW]

CERTIFICATION

IN WITNESS WHEREOF, the Association's Board of Directors hereby certifies that the foregoing Declaration was duly approved by more than a majority of the Association's voting interests as required by the prior Declaration. The Board of Directors hereby authorizes the President of the Association to execute this document on behalf of the Board of Directors.

DATED this 20th day of August, 2020.

Stone Creek Canyon Homeowners Association, Inc.

By: _____
Its: President

State of Utah)
) ss.
County of Weber)

On the 20 day of August 2020, personally appeared before me Rob Smith who by me being duly sworn, did say that she/he is the President of Stone Creek Canyon Homeowners Association, Inc., and that the foregoing instrument is signed and executed by authority of its board of directors after having received the consent of its members.

Notary Public Kimberley Lee

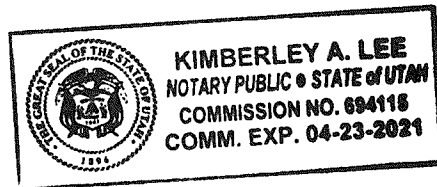


EXHIBIT A Legal Description

Project Legal Description:

BEGINNING AT A POINT 1711.14 FEET NORTH 00 DEG 42' 44" EAST ALONG SECTION LINE 939.90 FEET AND SOUTH 89 DEG 36' 24" EAST FROM THE SOUTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 10, TOWNSHIP 5 NORTH, RANGE 2 WEST SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE NORTH 00 DEG 42' 44" EAST 935.03 FEET; THENCE SOUTH 89 DEG 16' 32" EAST 680.89 FEET; THENCE SOUTH 00 DEG 34' 29" WEST 454.11 FEET TO THE WESTERLY RIGHT-OF-WAY LINE; THENCE SOUTH 43 DEG 49' 14" WEST ALONG SAID WESTERLY LINE 656.76 FEET; THENCE NORTH 89 DEG 36' 24" WEST 233.17 FEET TO A POINT OF BEGINNING.

CONTAINS 529,041 SQ. FT. 12.15 ACRES

Lot Legal Descriptions and Parcel Numbers (131 Lots):

All units in **STONE CREEK CANYON PHASE 3 (PUD)**; including; **STONE CREEK CANYON PHASE 3 UNIT 16 1ST AMENDMENT (A PLANNED UNIT DEVELOPMENT)**; **STONE CREEK CANYON PHASE 3 (PUD) 2ND AMENDMENT**; **STONE CREEK CANYON PHASE 3 – 3RD AMENDMENT**:

Unit	Parcel No.	Unit	Parcel No.	Unit	Parcel No.
1A	084990001	9A	084990030	15D	084800025
1B	084990002	9B	084990031	15E	084800026
1C	084990003	9C	084990032	15F	084800027
1D	084990004	9D	084990033	16A	084840001
2A	085540001	10A	085540016	16B	084840002
2B	085540002	10B	085540017	16C	084840003
2C	085540003	10C	085540018	16D	084840004
2D	085540004	10D	085540019	16E	084840005
2E	085540005	10E	085540020	16F	084840006
3A	084990010	11A	085540021	17A	084990039
3B	084990011	11B	085540022	17B	084790050
4A	084990012	11C	085540023	17C	084790051
4B	084990013	11D	085540024	18A	084790052
4C	084990014	11E	085540025	18B	084790053
5A	085540006	12A	085540026	18C	084790054
5B	085540007	12B	085540027	18D	084790055

5C	085540008	12C	085540028	18E	084790056
5D	085540009	12D	085540029	18F	084790057
5E	085540010	12E	085540030	19A	084790058
6A	085540011	13A	085540031	19B	084790059
6B	085540012	13B	085540032	19C	084790060
6C	085540013	13C	085540033	19D	084790061
6D	085540014	13D	085540034	19E	084790062
6E	085540015	14A	085540035	19F	084790063
7A	084990025	14B	085540036	20A	084790064
7B	084990026	14C	085540037	20B	084790065
8A	084990027	15A	084800022	20C	084790066
8B	084990028	15B	084800023	20D	084790067
8C	084990029	15C	084800024	21A	085000018

Unit	Parcel No.	Unit	Parcel No.	Unit	Parcel No.
21B	085000019	25A	085540047	28D	084990052
21C	085000020	25B	085540048	29A	085540057
21D	085000021	25C	085540049	29B	085540058
22A	084800040	25D	085540050	29C	085540059
22B	084800041	25E	085540051	29D	085540060
22C	084800042	26A	085540052	29E	085540061
22D	084800043	26B	085540053	30A	084990058
22E	084800044	26C	085540054	30B	084990059
23A	085540038	26D	085540055	30C	084990060
23B	085540039	26E	085540056	30D	084990061
23C	085540040	27A	084990045	Common Area	084990062
23D	085540041	27B	084990046	Common Area	085540062
24A	085540042	27C	084990047		
24B	085540043	27D	084990048		
24C	085540044	28A	084990049		
24D	085540045	28B	084990050		
24E	085540046	28C	084990051		