

AMENDED AND RESTATED
DECLARATION
OF
COVENANTS, CONDITIONS
AND RESTRICTIONS
FOR
FARR ORCHARD

(A RESIDENTIAL PLANNED UNIT DEVELOPMENT SUBDIVISION)

August, 2018

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EXHIBIT “A” – LEGAL DESCRIPTION

EXHIBIT “B” - BYLAWS

EXHIBIT “C” – RULES/FINE SCHEDULE

EXHIBIT “D” – MAINTENANCE CHART

EXHIBIT “E” – DEDICATION DEED

EXHIBIT “F” – AGREEMENT FOR WATER MAIN EXTENSION

EXHIBIT “G” – PET AGREEMENT

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

This Amended and Restated Declaration of Covenants, Conditions and Restrictions (“Restated Declaration”) is made and executed by the Farr Orchard Owners Association, Inc. (“Association”). The purpose of this Restated Declaration is to update, amend, replace, and restate the 2004 Declaration (as defined below), any amendments to the 2004 Declaration, and any other declaration or bylaws which govern the Project.

RECITALS:

- A. Capitalized terms in this Restated Declaration are defined in Article I.
- B. The Lot Owners or the legal entity of which they are members hold legal title to the Units, Lots and Common Area and improvements located in Weber County, Utah, more particularly described in Exhibit “A” of this Restated Declaration and includes the Common Area that are appurtenant to each Lot as shown on the Plats for Farr Orchard, Phases 1 through 3, as recorded in the office of the County Recorder for Weber County, State of Utah. The various Units and Lots described in this Restated Declaration are owned by the Lot Owners in fee simple.
- C. The planned residential unit development subdivision (“Project”) that is the subject of this Restated Declaration is situated in and upon that certain real property (“Subject Land”) located in Weber County, State of Utah, as specifically described in Exhibit “A” attached hereto and incorporated herein by this reference. Plats for Farr Orchard Phase I, Phase II, and Phase III, a residential a planned unit development subdivision (“Plat”), have been recorded in the Weber County Recorder’s Office. There are now 89 Lots in the Project, as shown on the various Plats.
- D. The Amended Declaration of Covenants, Conditions and Restrictions for Farr Orchard (“2004 Amended Declaration”) was recorded in the office of the Weber County Recorder on November 17, 2004, as entry number 2068853, and replaced all previously recorded Declarations that had been recorded against the Project.
- E. On March 29, 2006, the “Amended Declaration of Covenants, Conditions and Restrictions for Farr Orchard” was recorded in the office of the Weber County Recorder, as entry number 2169250.
- F. On March 21, 2007, the “Amended Declaration of Covenants, Conditions and Restrictions for Farr Orchard” was recorded in the office of the Weber County Recorder, as entry number 2250492.

G. October 10, 2012, the “Amended Declaration of Covenants, Conditions and Restrictions for Farr Orchard” (“2012 Amendment”) was recorded in the Office of the Weber County Recorder on, as entry number 2599904.

H. The purpose and intent of this Restated Declaration is to restate, replace and amend the 2004 Amended Declaration, all amendments to the 2004 Amended Declaration, and all prior recorded declarations, amendments and Bylaws, which shall collectively be referred to herein as the “Prior Governing Documents”, and to subject all Lots and Lot Owners within Farr Orchard to one set of covenants, conditions and restrictions as set forth in this Restated Declaration.

NOW, THEREFORE, to accomplish the Owners’ objectives, this Restated Declaration is hereby adopted. The Prior Governing Documents are hereby restated, replaced and amended by this Restated Declaration. It is the intent of the Owners that this Restated Declaration replace all Prior Governing Documents and that this Restated Declaration be the sole set of restrictive covenants governing Phases 1 through 3 of the Project. Regardless of any language herein to the contrary, the following are not renounced, rescinded, revoked, replaced or amended: the Plats (as defined herein); the submission and dedication of the real property described in Exhibit “A” to the provisions of this Restated Declaration; the ratification, approval and incorporation of Farr Orchard Owners’ Association, Inc., a Utah nonprofit corporation, and the Articles of Incorporation on file with the State of Utah; and, any other provision, paragraph, or section that is required to maintain the legal status of the Project which, if repealed, would nullify or impair the legal status of the Project.

It is hereby declared that the Property shall be held, sold, conveyed, leased, rented, encumbered and used, subject to the following Restated Declaration and its covenants, restrictions, limitations, and conditions, all of which shall constitute covenants which run with the land and shall be binding on and be for the benefit of the Association and all Lot Owners of all or any part of the Property, together with their grantees, successors, heirs, executors, administrators, devisees and assigns, all as set forth herein.

The statements set forth in the above recitals are hereby approved and accepted as being accurate and shall constitute part of this Restated Declaration.

ARTICLE I DEFINITIONS

1.1 **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.

1.2 **Articles** or **Articles of Incorporation** shall mean and refer to the Articles of Incorporation of the Farr Orchard Owners Association, Inc., a Utah nonprofit corporation, which have been filed with the Utah State Department of Commerce, Division of Corporations and Commercial Code.

- 1.3 **Association** shall mean Farr Orchard Owners Association, Inc., a Utah nonprofit corporation, organized to be the governing body of the Project.
- 1.4 **Board of Trustees** or **Board** shall mean the Board of Trustees of the Association.
- 1.5 **Bylaws** shall mean and refer to the Bylaws of the Association attached hereto as Exhibit “B” as amended from time to time. The Bylaws are also being amended in conjunction with the adoption of this Restated Declaration. By adopting this Restated Declaration, the Bylaws, as amended, are also approved and adopted by the Members of the Association.
- 1.6 **Common Areas** or **Common Areas and Facilities** shall mean all of the Subject Land except all Lots, including without limiting the generality of the foregoing, all streets, parking areas, open spaces, and other undesignated areas shown on the Plat as Common Areas, together with all equipment, facilities, fixtures, and other personal property and real property improvements located thereon and/or owned by the Association for the use and benefit of all Owners, including without limiting the generality of the foregoing, all streets, curb and gutter improvements, playgrounds, trees, bushes and other landscaping, and all equipment, fixtures, facilities, and other personal property and real property improvements hereafter purchased in accordance with this Restated Declaration with monies from the Common Expense Fund. The Common Areas shall be owned by the Association, and all Common Areas shall be managed and controlled by the Association for the common use and enjoyment of the Owners as more fully described in this Restated Declaration.
- 1.7 **Common Expense Fund** shall mean the fund created or to be created pursuant to the provisions of Article X of this Restated Declaration and into which all funds of the Association shall be deposited.
- 1.8 **Governing Documents** shall mean and include this Restated Declaration, the Association Bylaws, which are attached hereto as Exhibit “B”, and any rules adopted by the Board.
- 1.9 **Lot** shall mean each individual parcel of real property shown on the Plat as a Lot, together with all improvements located thereon and all appurtenances thereunto appertaining.
- 1.10 **Manager** shall mean the person, firm, or company, if any, designated from time to time by the Association to manage, in whole or in part, the affairs of the Association and the Project.
- 1.11 **Member** shall mean a member of the Association.
- 1.12 **Mortgage** shall mean any mortgage, deed of trust, or other security instrument by which a Lot or any part thereof is encumbered.
- 1.13 **Mortgagee** shall mean (i) any person named as the mortgagee or beneficiary under any Mortgage, or (ii) any successor to the interest of such person under such Mortgage.

- 1.14 **Owner** shall mean any person or entity or combination thereof at any time owning a Lot within the Project, as shown on the records of Weber County, State of Utah. The term “Owner” shall not refer to any Mortgagee (unless such Mortgagee has acquired title for other than security purposes) or to any person or entity purchasing a Lot under contract until such contract is fully performed and legal title conveyed.
- 1.15 **Plat** shall mean the Plat for Farr Orchard Phase I, Phase II, or Phase III, a residential planned unit development, as recorded in the office of the County Recorder for Weber County, State of Utah.
- 1.16 **Project** shall mean all Lots and all Common Areas, collectively.
- 1.17 **Rules** shall mean (a) any rules listed in Exhibit “C” to this Restated Declaration, as well as any amendments to Exhibit “C” made by the Board in accordance with the Act as more fully described in Section 13.8 below, or (b) any additional rules created by the Board as permitted by the Act.
- 1.18 **Subject Land** shall mean the land upon which the Project is situated, as more particularly described in Exhibit “A”.
- 1.19 **Total Votes of the Association** shall mean the total number of votes appertaining to the Lots in the Project. There are 89 Lots in the Project. Because each Lot Owner has one vote, there are 89 Total Votes of the Association.
- 1.20 **Unit** shall mean and refer to each physically constructed dwelling or building containing a residence located as an improvement on a Lot.

ARTICLE II DIVISION OF PROJECT

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

- 2.2 **Subdivision into Lots.** Pursuant to the Plat, the Subject Land is divided into Lots as more particularly described on the Plats. The Owner of each Lot, regardless of the size, purchase price or location of the Lot, shall have the right to use, the Common Areas. The Common Areas, as more particularly shown on the Plats, are to be held and administered in accordance with the provisions of this Restated Declaration.

ARTICLE III IMPROVEMENTS

- 3.1 **Description of Improvements.** The Project consists of 89 Lots as shown on the Plats. Each of the Lots shall, when improved, contain one detached single-family building, or one attached single-family dwelling in a building containing two, three or four single family dwellings, which buildings shall be principally constructed of wood frame, aluminum siding, rock wainscoting, sheetrock interiors and asphalt shingle roofs, and such other materials as allowed by current building codes.
- 3.2 **Description and Legal Status of Lots.** The Plats show the number of each Lot. All Lots shall be capable of being independently owned, encumbered, and conveyed.

ARTICLE IV NATURE AND INCIDENTS OF OWNERSHIP

- 4.1 **Ownership and Maintenance of Lots.** Each Owner shall have the exclusive right to construct, improve, reconstruct and repair the house and other improvements located on his Lot, except as hereinafter provided relating to the Association's duty to insure, maintain and repair portions of the Units. All construction, improvements, reconstruction and repair must comply with applicable land use planning, regulations and common architectural design approval including, but not limited to, a minimum of R-19 wall insulation and R-38 ceiling insulation, and a two-car garage for each detached single-family dwelling, and a one car garage with a slab for each attached single-family dwelling. Each Owner shall have the maintenance responsibilities regarding the Owner's Unit as set forth in the Maintenance Chart Attached hereto as Exhibit "D". In the event of conflict between the provisions of this Restated Declaration and the Maintenance Chart, the Maintenance Chart shall control. Each Lot, and the improvements located thereon, being the sole and exclusive property of the Owner thereof, shall be maintained and repaired by the Owner and shall be kept in a clean and sanitary condition and in a state of good repair, except as hereinafter provided.
- 4.2 **Title.** Title to a Lot within the Project may be held or owned by any person or entity or any combination thereof and in any manner in which title to any other real property may be held or owned in the State of Utah, including without limitation, joint tenancy or tenancy in common.

- 4.3 **Prohibition Against Subdivision of Lot.** No Owner, by deed, plat or otherwise, shall subdivide or in any manner cause his Lot to be subdivided, partitioned or separated into physical tracts or parcels smaller than the whole Lot as shown on the Plat.
- 4.4 **Ownership and Use of Common Areas.** The Association shall own all Common Areas for the common use and enjoyment of the Owners, and the Association shall have the exclusive right and obligation to manage and maintain all Common Areas, and to repair, replace and reconstruct any existing or new Common Areas. The Owner, pursuant to action taken in accordance with this Restated Declaration and the Articles and Bylaws, may determine from time to time, subject to any required governmental approval, what improvements will be constructed or located on the Common Areas. Each Owner shall have an irrevocable license and easement to use, occupy and enjoy all Common Areas in common with all other Owners. Except as otherwise provided in this Restated Declaration, each Owner shall be entitled to the nonexclusive use of the Common Areas in any manner that does not hinder or encroach upon the rights of other Owners and is not contrary to any Rules promulgated by the Association. Each Owner will be responsible for an equal share of the taxes, insurance, maintenance and other costs and expenses relating to the Common Areas.
- 4.5 **Exclusive Use of Common Areas.** Any porches, patios, driveways and other areas immediately contiguous to a Lot are reserved for the exclusive use of the Owner of that Lot, and such Owner's invitees and guests.
- 4.6 **Maintenance of Landscaping and Sidewalks.** As more fully described in the Maintenance Chart attached as Exhibit "D", all areas located outside the Lots shall be maintained, cleaned, repaired and reconstructed by the Association ("Maintained Areas"), and shall be re-landscaped, rebuilt, replaced, repaired or materially altered only with the review, approval and consent of the Board of Trustees of the Association, and in accordance with the provisions of this Restated Declaration. Without limiting the generality of the foregoing, the Association shall (a) maintain, clean, repair and keep in a sanitary condition and in a state of good repair all Maintained Areas; (b) remove all snow from all streets, sidewalks and driveways located in the front of houses located on the Lots; and (c) re-landscape, re-construct and repair all Maintained Areas at such time as the same are in a state of disrepair and require replacement. Notwithstanding the foregoing to the contrary, (i) the Association shall not be obligated to remove snow from any driveways, patios or porches located in the rear of or on the sides of houses located on the Lots, (ii) an Owner may plant and maintain flowers, ground covers and other plants within the planting areas of the Maintained Areas, provided, however, that the Association shall not be obligated to maintain any fences or walls located between two Lots, as more fully described in Section 4.7 below.
- 4.7 **Fences and Walls.** The Maintained Areas defined in Section 4.6 above shall include, if applicable, all fences and walls located in the Project that (a) separate the Project from contiguous property not a part of the Project ("Perimeter Fences") or (b) that were installed as part of the initial construction of the Project. The Association shall have the exclusive

right to construct, locate, maintain, repair, and reconstruct any Perimeter Fences. Any Perimeter Fences shall not be removed except with the approval of Owners owning a majority of the Lots in the Project, at a meeting of the Owners duly held in accordance with the provisions of this Restated Declaration, the Articles and Bylaws. No additional fences or walls, including any rear or side fences, shall be constructed between any Lots without the approval of the Board of Trustees, which approval may be given only after the Board of Trustees has adopted a written policy, applicable to all Lot Owners, stating the standards that must be followed if an additional fence or wall is to be constructed. Any fences or walls permitted by the provisions of this section, shall be constructed of materials and shall be of such colors, styles and characteristics, as shall be approved by the Board of Trustees from time to time, with the intent being that the Board of Trustees will control the construction, maintenance and reconstruction of any fences or walls allowed by the provisions hereof to assure that they are constructed of similar materials and that they are harmonious with the overall architecture and aesthetics of the Project.

- 4.8 **Maintenance and Replacement of Exterior Doors and Windows.** Each Owner of a Unit shall be responsible for maintaining, repairing and replacing the following portions of the building: windows and glass, exterior doors, and garage doors. However, all windows, exterior doors and garage doors must fit the common architectural design that exists in the Project. For that reason, before an Owner may replace or alter any window, exterior door or garage door, that Owner must first (a) submit a written application to the Board, which application shall identify the materials, styles and colors that will be used by the Unit Owner, and (b) receive written permission from the Board, approving of the proposed changes. Any application must contain enough information for the Board to determine if the changes will fit the Project's architectural design. If the Board determines that the proposed changes do not fit the Project's architectural design, the Board may, in its sole discretion, deny the application. Furthermore, if the Board determines that it needs more information before approving or denying a request, the Board may request that an Owner provide additional information regarding the proposed changes before approving or denying the application. If an Owner replaces or alters any window, exterior door or garage door without first receiving permission from the Board, the Board, at its sole discretion, may require the Owner to either remove the unapproved changes or make additional changes to bring the improvements into compliance with this Restated Declaration.
- 4.9 **Inseparability.** Title to any part of a Lot within the Project may not be separated from any other part thereof. Every devise, encumbrance, conveyance, or other disposition of a Lot, or any part thereof, shall be constructed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the entire Lot, together with all appurtenant rights created by law or by this Restated Declaration, including appurtenant membership in the Association as hereinafter set forth, and an irrevocable license to use, occupy and enjoy the Common Areas in common with all Owners.
- 4.10 **No Partition.** The Common Areas shall be owned by the Association, in accordance with the provisions of this Restated Declaration, and no Owner nor the Association may bring any action for partition thereof except as allowed by law.

- 4.11 **Separate Mortgages by Owners.** Each Owner shall have the right separately to mortgage or otherwise encumber his Lot. No Owner nor the Association shall attempt to or shall have the right to separately mortgage or otherwise encumber the Common Areas and Common Facilities or any part thereof. Any mortgage or other encumbrance of any Lot shall be subordinate to all of the provisions of this Restated Declaration, and in the event of foreclosure the provisions of this Restated Declaration shall be binding upon any Owner whose title is derived through foreclosure by private power of sale, judicial foreclosure, or otherwise.
- 4.12 **Separate Taxation.** Each Lot and all improvements located thereon shall be assessed separately for all taxes, assessments, and other charges of the State of Utah or of any political subdivision thereof or of any special improvement district or of any other taxing or assessing authority. The Common Areas shall be deemed to be a parcel and shall be assessed separately for all taxes, assessments, and other charges of the State of Utah or of any political subdivision thereof or of any special improvement district or of any other taxing or assessing authority. All such taxes, assessments, and other charges on each respective Lot shall be separately levied against the Owner thereof. All such taxes, assessments, and other charges on the Common Areas shall be separately levied against the Association. No forfeiture or sale of any Lot for delinquent taxes, assessments, or other governmental charges shall divest or in any way affect the title to any other Lot.
- 4.13 **Mechanic's Liens.** No labor performed or material furnished for use in connection with any Lot with the consent or at the request of an Owner or his agent or contractor shall create any right to file a statement, claim, or notice of mechanic's lien against the Lot of any other Owner not expressly consenting to or requesting the same.
- 4.14 **Non-Exclusive Easements.** All streets constituting Common Areas that provide access to public roads outside of the Project shall be easements for the non-exclusive use of the Owners, their guests, occupants, lessees, and invitees.
- 4.15 **Mortgages and Liens on Common Areas.** The Association shall not attempt nor shall it have the right to mortgage or otherwise encumber the Common Areas or any part thereof. No labor performed, or material furnished for use in connection with the Common Areas shall create any right to file a statement, claim, or notice of mechanic's lien against the Common Areas.

ARTICLE V EASEMENTS

- 5.1 **Easement for Maintenance.** The Association shall have the irrevocable right to have access from time to time to all Common Areas and to all Maintained Areas during such reasonable hours as may be necessary for the maintenance, cleaning, repair, and replacement thereof or for making emergency repairs at any time herein necessary to

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

- 5.2 **Right to Ingress and Egress.** Each Owner shall have the right to ingress and egress over, upon, and across the Common Areas as necessary for access to such Owner's Lot, and such rights shall be appurtenant to and pass with the title to each Lot.
- 5.3 **Easements Deemed Created.** All conveyances of Lots within the Project hereafter made shall be construed to grant and reserve such reciprocal easements as are provided herein, even though no specific reference to such easements appears in any such conveyance.
- 5.4 **Easements Reserved by Association.** The Association shall have power to grant and convey to any third party easements and rights of way, including but not limited to rights of ingress and egress, in, on, over and under the Common Areas, for the purpose of constructing, erecting, operating and maintaining lines, cables, wires, conduits or other devices for electricity, cable television, power, telephone and other purposes, public sewers, storm drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities to provide common utility services to the Project and other property that may be added to the Project.
- 5.5 **Public Utility Easements.** As described (a) on the Plat, (b) in the Dedication Deed attached as Exhibit "E", (c) in the Agreement for Water Main Extension attached as Exhibit "F", Ogden City owns and is obligated to maintain the water and sewer lines located under the streets within the Project. In the event that there are problems with those water or sewer lines, Ogden City shall be responsible for all maintenance, repair or replacement of the lines, along with the associated costs.
- 5.6 **Party Walls.** Certain of the buildings constructed on Lots have common or party walls with adjacent buildings, Units and Lots. The boundary between two adjacent buildings, Units and Lots shall be the vertical boundary running through the center of the party wall, equidistant from the plane joining and along the outermost surfaces of studs and structural beams making up the party wall. Each Owner of a Lot that has a building adjoining another building on a separate Lot is hereby granted an easement of support and shelter over the portion of any party or retaining wall on the adjoining Lot. Each Owner covenants with the other to maintain the party wall in a structurally sound and weather tight state, and to continue to provide the support and shelter that presently exists and as may be necessary to maintain the integrity of each building. Each Owner has an easement for access for repair and maintenance over and through the adjoining Lot, and an easement for pipes, ducts utility ways and chases, access stairs, and fences passing through the other Lot. Physical structures including party walls serving two Units or buildings on separate Lots will be shared through a mutual nonexclusive easement of enjoyment for all purposes for which the improvements and their replacements were intended.

ARTICLE VI
RESTRICTIONS ON USE

- 6.1 **Residential Uses Only.** Each Lot contained in the Project is intended to be used for single family residential housing and is restricted to such use. No Lot shall be used for business or commercial activity.
- 6.2 **No Noxious or Offensive Activity.** No noxious or offensive activity shall be carried on, in, or upon any part of the Project, nor shall anything be done or placed in or upon any part of the Project which is or may become a nuisance or may cause embarrassment, disturbance, or annoyance to Owners. No activities shall be conducted, nor improvements constructed, in or upon any part of the Project which are or may become unsafe or hazardous to any person or property.
- 6.3 **Restriction on Recreational Vehicles.** No boats, trailers, recreational vehicles, trucks, commercial vehicles, or inoperable vehicles belonging to Owners or other residents of the Project shall be parked or stored in or upon any of the Common Areas, except in such portions of the Common Areas, if any, as the Association may specify, and subject to such Rules as the Association may from time to time promulgate.
- 6.4 **Restriction on Signs.** Except as may be temporarily necessary to caution or warn of danger, and except for temporary signs, reasonable in size, design and location, for the sale of a Lot, no signs or advertising devices or any nature, including without limitation commercial, political, informational, or directional signs or devices, shall be erected or maintained on any portion of the Project without the prior inspection and written approval of the Association. If the Association consents to the erection of any such signs or devices, the same shall be promptly removed at the request of the Association.
- 6.5 **No Structural Alterations.** No Owner shall, without the prior written consent of the Association, make or permit to be made any structural alteration, improvement, or addition, including without limitation any fences, walls or patios, to the exterior of the house located on his Lot, or to the Maintained Areas on his Lot, without the prior written consent of the Board, which consent may be granted or withheld in the Board's sole discretion. Notwithstanding the foregoing, the Board will reasonably grant permission for installation by an Owner of a satellite dish that is reasonably located and which does not exceed two feet in diameter. No Owner shall, without the prior written consent of the Association, do any act that would impair the safety of property or impair any easement appurtenant to the Project.
- 6.6 **No Obstructions.** There shall be no obstruction of the Common Areas by any Owner. Owners shall neither store nor leave any of their property in the Common Areas, except with the prior written consent of the Association. Excepts as described in Section 6.11 below, no vehicles of any kind may be parked at any time on any of the Common Areas, which include without limitation all of the streets within the Project.

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

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

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

6.10 **Pets**

a) No pet greater than 30 pounds in weight or greater than 18 inches in height (measured at the back hips) shall be allowed at Farr Orchard. All pets in violation of either of these restrictions shall be strictly prohibited and promptly removed from Farr Orchard and the owner of the pet shall pay all costs and attorney fees incurred in removing the pet. The Board shall have authority to order any pets removed that are in violation of these restrictions. The refusal of a resident to allow verification of a pet's weight by the Board shall be conclusive proof of violation of this provision. A pet includes any animal residing at Farr Orchard for more than 3 days in any one-year period.

b) No Pets shall be kept in any Unit until the pet owner (1) submits a signed Pet Agreement (attached hereto as Exhibit "G") to the Board, and (2) receives written approval from the Board. Two pets per unit may be allowed at Farr Orchard upon the written approval of the Board, which shall be granted when a unit owner or resident signs the Pet Agreement and agrees to abide by the provisions set forth herein. As described in the fine schedule attached as Exhibit "C", the Board may

fine any owner who keeps more than two pets in a Unit. The Board may amend the Pet Agreement attached as Exhibit “C” without amending this Restated Declaration or recording the new agreement at the office at the county recorder.

- c) No more than two pets shall be kept in any Unit, and no pets may be kept within a Unit unless the Unit’s owner signs the Pet Agreement attached as Exhibit “G”.
- d) No animals, livestock or poultry will be allowed, raised, bred or kept in any unit (with the exception of small birds and small, quiet children’s pets, e.g. hamsters) or in the general or limited common areas and facilities unless they receive written approval from the Board before being brought to Farr Orchard. The Board has the right to refuse any application to bring an animal into Farr Orchard if it determines the animal could be a nuisance or could potentially damage the common area.
- e) Under no circumstances may a pet be present on the Common Areas unless the pet is held by a person or on a leash held by a person.
- f) The Board shall have authority to order the removal of any dog, cat or pet, if, at any time, the animal causes or creates a nuisance or disturbance, or if the animal demonstrates any type of threatening or aggressive behavior toward humans or other animals.
- g) All individual who is renting or leasing a Unit is prohibited from bringing any dog into the Project, except a dog that is certified by a health care professional to be necessary as a service and/or companion animal pursuant to Fair Housing and ADA laws, regulations or guidelines for those individuals with a disability. All prospective renters/tenants seeking a "Reasonable Accommodation" from this restriction and/or rule must first submit sufficient information to the Board to demonstrate that they qualify for an exception to this dog prohibition. The Farr Orchard Board of Directors will provide written approval to the requesting renter/tenant prior to them bringing a dog to Farr Orchard or taking possession of their leased premises with a service animal. After a current renter/tenant with a dog vacates their leased premises, all new renters/tenants shall be subject to this regulation and/or rule.

6.11 **Parking Areas.** Owners shall have the right to park automobiles in the driveway areas immediately in front of their Lot, but not elsewhere within the Project. As an exception to this rule, the occupants of those Units that have a “single-width” driveway shall be permitted to park one vehicle in an off-street, Common Area, parking space. No Common Area parking space shall be individually assigned or reserved for any person/Unit. A driveway is a “single-width” driveway if it is only possible to park one vehicle on the driveway. No parking is allowed along designated private streets. The Association shall post “no parking” signage as necessary to enforce parking restrictions.

ARTICLE VII
SATELLITE ANTENNAS

- 7.1 **Satellite Antennas.** The Board shall reasonably grant permission for the installation by a Unit Owner of a satellite antenna (dish) that is located on a building (as defined in this Article). Satellite antennas may only be attached to the rear portion of a Unit (the part of the Unit not facing a street) and on the outside overhanging section of a roof and shall not be attached to the front of any Unit nor to the section of a roof that faces a street. Prior to installing the antenna, the Owner shall furnish to the Board a copy of the Owner's installation plans.
- 7.2 **Limitation on Size and Number of Antennas.** The satellite antenna shall not be larger than 24 inches in diameter. No more than one satellite antenna shall be installed to serve a single Unit.
- 7.3 **Owner Responsible for Removal.** The Owner serviced by a satellite antenna shall be responsible for removal of the satellite antenna and its associated mounting and wiring if and when services or the device are cancelled, or upon sale of the Unit. In addition, the Owner shall be responsible for the cost to repair any damage caused by the removal of the satellite antenna and associated mounting and wiring, including the sealing of conduits or other roof penetrations.
- 7.4 **Authorization and Deposit.** The Association shall prepare documentation consistent with this Article wherein (1) the Association shall grant written approval prior to the installation of a satellite antenna by an Owner; and (2) wherein the Association shall receive from the Owner, prior to the granting of written approval, a deposit for the purpose of insuring the building to which the satellite antenna is attached is repaired to a satisfactory condition following the removal of the satellite antenna. The deposit shall be in an amount as determined by the Board, but not less than the amount reasonably calculated to repair any damage caused by installation of the satellite antenna. Owners with existing satellite antennas shall be required to submit a deposit in accordance with this Article.
- 7.5 **Indemnification of Association.** Any Owner installing a satellite antenna under this Article shall indemnify, defend and hold the Association harmless from and against any loss, damage, claim or other liability resulting from the installation, maintenance, repair, use and/or removal of the satellite antenna, including but not limited to any damage to the Building or other property damage caused by installation or use of a satellite antenna.

- 7.6 **Removal of Satellite.** Any Owner who maintains or installs a satellite antenna contrary to the provisions of this Article, shall promptly remove the satellite antenna upon receiving written notice from the Board.
- 7.7 **Attorney fees.** Should the Board be required to take any legal action to enforce any provision of this Article, the Owner against whom such action is taken shall be responsible to reimburse the Board for all costs and reasonable attorney fees incurred by the Board.

ARTICLE VIII THE ASSOCIATION

- 8.1 **Membership.** Each Owner shall be entitled and required to be Member of the Association. Membership shall begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If title to a Lot is held by more than one person, the membership appurtenant to that Lot shall be shared by all such persons in the same proportionate interests and by the same type of tenancy in which title to the Lot is held. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. An Owner shall be entitled to one membership for each Lot owned by said Owner. Each membership shall be appurtenant to the Lot to which it relates and shall be transferred automatically by conveyance of that Lot. Ownership of a Lot within the Project cannot be separated from membership in the Association appurtenant thereto, and any devise, encumbrance, conveyance, or other disposition of a Lot shall be construed to be a devise, encumbrance, conveyance, or other disposition, respectively, of the Owner's membership in the Association, and the rights appurtenant thereto. No person or entity other than an Owner may be a member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Lot.
- 8.2 **Board of Trustees.** The Board of Trustees shall initially consist of three (3) members which can be increased up to as many as five (5) members upon the majority vote of the existing Board of Trustees or the majority vote of the Owners at a duly called meeting of the Owners.
- 8.3 **Compensation.** Board members may only be compensated for their services on the Board as described herein and shall be reimbursed for all expenses reasonably incurred in connection with Board business and approved by the Board. Board members who perform secretarial services or bookkeeping services for the Association may be paid for their services, but only pursuant to a written contract entered into with the Board in advance that specifically describes the services to be performed and the amount of compensation to be received.
- 8.4 **Amplification.** The provisions of this Article VIII may be amplified by the Articles of Incorporation and Bylaws of the Association; provided, however, that no such

amplification shall substantially alter or amend any of the rights or obligations of the Owners set forth in this Restated Declaration.

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

ARTICLE IX CERTAIN RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

- 9.1 **The Common Areas.** The Association shall be responsible, as described in Section 4.4, and subject to the rights and duties of the Owners as set forth in this Restated Declaration, for the exclusive management and control of the Common Areas and all improvements thereon. In particular, the Association shall be responsible for maintenance of the private roads and associated improvements located in the Project. Except as otherwise provided for in this Restated Declaration, the Association shall also be responsible for maintenance, repair, and replacement of all improvements or other materials located upon or used in connection with the Common Areas. The specification of duties of the Association with respect to particular Common Areas shall not be construed to limit its duties with respect to other Common Areas, as set forth in the first sentence of this Section. All goods and services procured by the Association in performing its responsibilities under this Section shall be paid for with funds from the Common Expense Fund.
- 9.2 **Manager.** The Association may by written contract delegate in whole or in part to a professional Manager such of the Association's duties, responsibilities, functions, and powers hereunder as are properly delegable. The services of any Manager retained by the Association shall be paid for with funds from the Common Expense Fund.
- 9.3 **Miscellaneous Goods and Services.** The Association may obtain and pay for the services of such personnel as the Association shall determine to be necessary or desirable for the

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

- 9.4 **Real and Personal Property.** The Association may acquire, hold and own real, personal, and mixed property of all types for the use or benefit of all of the Owners and may dispose of such property by sale or otherwise. The maintenance, repair and replacement of all such property shall be paid for out of the Common Expense Fund and all proceeds from the disposition thereof shall become part of such fund.
- 9.5 **Rules and Regulations.** The Association by action of its Board of Trustees may make reasonable Rules governing the use of the Lots and of the Common Areas, which Rules shall be consistent with the rights and duties established in this Restated Declaration. The Association may take judicial action against any Owner to enforce compliance with such Rules or other obligations of Owners arising hereunder, or to obtain damages for noncompliance therewith, as permitted by law. The Association is empowered to adopt rules allowing for the termination of utilities upon non-payment of fees, as provided in Utah Code Annotated § 57-8a-204, to adopt rules for the collection of lease payments from tenants as provided in Utah Code Annotated § 57-8a-205, and to adopt rules allowing the Association to assess a fine against those residents, owners or tenants who violate the Association CC&Rs, bylaws or rules, which rules shall be similar and consistent with those permitted for Utah Condominium Associations in Utah Code Annotated § 57-8-37. In the event of such judicial action, the Association shall be entitled to recover its costs, including reasonable attorney fees, from the offending Owner. The Association's initial Rules and fine schedule are attached hereto as Exhibit "C".
- 9.6 **Granting of Easements.** The Association may, without the vote or consent of the Owners or of any other person, grant or create, on such terms as it deems advisable, utility, ingress, egress, construction and similar easements over, under, across, and through the Common Areas.
- 9.7 **Implied Rights.** The Association may exercise any right or privilege given to it expressly by this Restated Declaration or by law, and every other right or privilege reasonably necessary to effectuate any such right or privilege.
- 9.8 **Reserves.** The Association shall maintain an adequate reserve fund for maintenance, repairs and replacement of those Common Areas that must be replaced on a periodic basis, and such reserves shall be funded from the monthly assessments described in Article X below.

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

ARTICLE X ASSESSMENTS

- 10.1 **Agreement to Pay Assessments.** Each Owner of a Lot by the acceptance of instruments of conveyance and transfer therefor, whether or not it be so expressed in said instruments, shall be deemed to covenant and agree with each other and with the Association, to pay to the Association all assessments, both regular and special, made by the Association for the purposes provided in this Restated Declaration. Such assessments shall be fixed, established and collected from time to time as provided in this Article X.
- 10.2 **Regular Assessments.** Regular assessments shall be computed and assessed against all Lots in the Project as follows:
- a) **Common Expenses.**
 - i) **Annual Budget.** On or before the 1st day of December of each year, the Association shall prepare, or cause to be prepared, an operating budget setting forth an itemized statement of the anticipated receipts and disbursements for the coming calendar year and taking into account the general condition of the Project. Each such budget, together with a written statement from the Association outlining a plan of operation for the year in question and justifying in every important particular the estimates made, shall be submitted to the Members on or before the 15th day of December of each year. Such budget, with any changes therein, shall be adopted by the Members at each annual meeting of the Members. Said operating budget shall serve as the basis for the schedule of proposed monthly assessments for the annual period for which it is prepared. Said budget shall also constitute a major guideline under which the Association shall operate during such annual period.
 - ii) **Basis of Annual Budget.** The annual budget shall be based upon the Association's estimates of the cash required to provide for payment of expenses ("Common Expenses") arising out of or connected with maintenance and operation of the Common Areas and the Maintained Areas. Such actual expenses and estimated expenses may include, among other things, the following: expenses of management; governmental taxes and special assessments; premiums for all insurance that the Association is required or permitted to maintain; repairs and maintenance; wages for Association employees, including fees for a Manager, if any; utility charges; legal and

accounting fees; any deficit remaining from a previous period; creation of a reasonable contingency reserve; sinking or reserve funds required or allowed herein; and any other expenses and liabilities which may be incurred by the Association for the benefit of all of the Owners or by reason of this Restated Declaration.

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

b) **Inadequate Funds.** In the event that the Common Expense Fund proves inadequate at any time for whatever reason, including nonpayment of any Owner's assessment, the Association may levy additional assessments in accordance with the procedure set forth in Section 10.3 below, except that the vote therein specified shall not be necessary.

10.3 **Special Assessments.** In addition to the regular assessments authorized by Sections 10.1 and 10.2 above, the Association may levy, at any time and from time to time, upon affirmative vote of at least fifty-one percent (51%) of the Total Votes of the Association, special assessments, payable over such periods of time as the Association may determine, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of the Common Areas or any part thereof, or for any other expenses incurred or to be incurred as provided in this Restated Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections or Articles hereof. Any amounts assessed pursuant hereto shall be apportioned equally among and assessed equally to all Lots. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners. No payment shall be due less than thirty (30) days after such notice shall have been mailed. All unpaid portions of any special assessment shall bear interest at the rate of one and one-half percent (1 ½ %) per month from the date such portions become due until paid.

10.4 **Lien for Assessments.** All sums assessed to the Owner of any Lot within the Project pursuant to the provisions of this Article X, together with interest thereon as provided herein, shall be secured by a lien on such Lot in favor of the Association. To evidence a lien for sums assessed pursuant to this Article X, the Association may prepare a written

notice of lien in conformance with Utah law setting forth the amount of the Assessment, the date due, the amount remaining unpaid, the name of the Owner of the Lot, and a description of the Lot. Each Owner shall be deemed to have consented to the filing of a notice of lien against such Owner's Lot. Such notice shall be signed and acknowledged by a duly authorized officer of the Association and may be recorded in the office of the Weber County Recorder. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. Such lien may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed in the State of Utah. In any such foreclosure, the Owner shall also be required to pay to the Association any assessments against the Lot which shall become due during the period of foreclosure. The Association shall have the right and power to bid in at any foreclosure sale, and to own, lease, mortgage or convey the subject Lot.

- 10.5 **Personal Obligation of Owner.** The amount of any regular or special assessment against any Lot shall be the personal obligation of the Owner of such Lot to the Association. Suit to recover a money judgment for such personal obligation shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any such personal obligation by waiver of the use and enjoyment of any of the Common Areas or by abandonment of his Lot, or by waiving any services or amenities. In the event of any suit to recover a money judgment for unpaid assessments hereunder the involved Owner shall pay the costs and expenses incurred by the Association in connection therewith, including reasonable attorney's fees.
- 10.6 **Statement of Account.** Upon written request of any Owner, Mortgagee, prospective Mortgagee, or prospective purchaser of a Lot and payment of any reasonable fee assessed, the Association shall issue a written statement setting forth the following: (a) the amount of the unpaid assessments, if any, with respect to such Lot, and (b) the amount of the current regular assessment with respect to such Lot and the date such assessment becomes or became due. Such statement shall be conclusive upon the Association in favor of persons who rely thereon in good faith.
- 10.7 **Personal Liability of a Purchaser.** A purchaser of a Lot shall be jointly and severally liable with the seller thereof for all unpaid assessments against such Lot up to the time of the grant of conveyance; provided, however, that the provisions of this Section shall not prejudice the purchaser's right to recovery from the seller of the amount of such assessments paid by the purchaser for such assessments.
- 10.8 **Assessments Part of Common Expense Fund.** All funds received from assessments under this Article X shall be a part of the Common Expense Fund.
- 10.9 **Amendment of Article.** Except as may be necessary to conform to the law, as it may be amended from time to time, this Article X shall not be amended unless the Owners of all Lots in the Project unanimously consent and agree to such amendment by a duly recorded instrument.

ARTICLE XI
RENTAL RESTRICTIONS

11.1 **No Rentals.** No Lots within Farr Orchard may be leased unless a Lot Owner qualifies for one of the exceptions listed in Section 11.2 below. Any leasing based on the exception set forth in Section 11.2 must be consistent with the provisions of this Restated Declaration.

11.2 **Exceptions.** The restrictions herein shall not apply:

- a) To a Lot Owner who is a member of the military and is temporarily deployed out of the State of Utah, and by reason of the temporary deployment is required to move from the Lot during the period of temporary military deployment. The Lot Owner who is temporarily deployed may lease their Lot during the period of temporary military deployment. However, if the Lot Owner moves from the Lot due to a permanent change of station (PCS) the rental restrictions shall continue to apply to that Lot and Lot Owner;
- b) To a parent, grandparent, or child who is a Lot Owner and leases their Lot to a family member who is a parent, grandparent, child, grandchild, or sibling of the Owner;
- c) To a Lot Owner who moves for a period of less than two years at least 40 miles away from the Lot by reason of being relocated by the Lot Owner's employer, if relocation of the Owner is necessary for purposes of employment;
- d) To a Lot Owner who moves at least 40 miles away from their Lot due to temporary (less than three years) humanitarian, religious or charitable activity or service and leases their Lot with the intent to return to occupy the Lot when the humanitarian, religious or charitable service has concluded;
- e) To a Lot owned by an entity that is occupied by an individual who has voting rights under the entity's organizing documents; and has a 25% or greater share of ownership, control, and right to profits and losses of the entity; or
- f) To a Lot owned by a trust or other entity created for estate planning purposes if the trust or other estate planning entity was created for:
 - i) the estate of a current resident of the lot; or
 - ii) the parent, child, or sibling of the current resident of the lot;

11.3 **Grandfather Clause.** Those Lots that are occupied by non-Lot Owners at the time the 2012 Amendment was recorded at the Weber County Recorder's Office may continue to be occupied by non-Lot Owners until the Lot Owner sells, conveys or transfers the Lot to

another party, occupies the Lot, or an officer, Owner, member, trustee, beneficiary, director, or person holding a similar position of Ownership or control of an entity or trust that holds an Ownership interest in the Lot, transfers the Lot to another party or occupies the Lot.

- 11.4 **Transfer of Lot.** For purposes of section 11.3, a transfer occurs when one or more of the following occur:
- a) there is a conveyance, sale, or other transfer of a Lot by deed;
 - b) the granting of a life estate in the Lot; or
 - c) if the Lot is owned by a limited liability company, corporation, partnership, or other business entity, the sale or transfer of more than 75% of the business entity's share, stock, membership interests, or partnership interests in a 12-month period.
- 11.5 **No Partial Rentals.** Renting or Leasing less than 100% of the Lot is Prohibited. No short-term, Airbnb, or overnight type rentals are permitted within the Project. An Owner may not rent or lease a portion of a Unit, or an individual room, on a short-term basis, even if the Owner continues to occupy a portion of his or her Unit.
- 11.6 **Rent Defined.** As used herein, “Rent” (or any variation of the word) of “Lease” (or any variation of the word) means a Lot that is owned by an Owner that is Occupied by one or more Non-Owners while no Owner occupies the lot as the Owner’s primary residence. The payment of remuneration to an Owner by a Non-Owner shall not be required to establish that the Non-Owner is leasing a Lot. Failure of a Non-Owner to pay remuneration of any kind to the Owner shall not be considered when determining if a Lot is a Rental Lot. The terms “Rent” and “Lease” shall also include short term or overnight, Airbnb style rentals, even if an Owner continues to occupy the Unit while renting out a portion of the Unit.
- 11.7 **Non-Owner Defined.** As used herein, “Non-Owner” or “Non-Lot Owner” means an individual or entity that does not hold any interest in the title to the Lot as shown on the records of the Weber County Recorder.
- 11.8 **Occupied Defined.** As used herein, “Occupied” means to reside in the Lot for 14 or more days in any thirty (30) day period. A Lot is deemed to be Occupied by Non-Owner if the Lot is Occupied by an individual(s) other than the Lot Owner and the Owner is not occupying the Lot as the Owner’s primary residence.
- 11.9 **Single Family Defined.** “Single Family” means any number of individuals, related by blood, marriage, or adoption, and domestic servants for such family, or a group of not more than three persons who are no so related, living together as a single nonprofit housekeeping Lot.

- 11.10 **Violation.** Any Lot Owner who violates this Restated Declaration shall be subject to a complaint for damages and/or an injunction and Order seeking to terminate the Lease in violation of this Restated Declaration. If the Farr Orchard Owners Association is required to retain legal counsel to enforce this Restated Declaration, with or without the filing of legal process, the violating Lot Owner shall be liable for all costs and expenses incurred by the Association, including but not limited to attorney fees and court costs incurred by the Board, in enforcing this Restated Declaration.
- 11.11 **Guest Permitted.** Nothing herein shall prohibit an Owner from permitting a guest or visitor from residing in his or her Lot, while the Owner is present.
- 11.12 **House Sitter/ Caretakers.** In the event a homeowner does not plan to reside in their property for an extended period they may petition the Farr Orchard Owners Association Board for approval to have a person/persons reside in their property and act as house sitters or caretakers until owner returns to the property. The number of persons considered house sitters/caretakers shall not exceed three persons. The person or persons who act in the capacity of house sitters/caretakers must abide by all existing covenants adopted by the Farr Orchard Owners Association. Property owner who will be vacant from their property must submit a formal written request to the Board at least 21 days prior to the homeowner's departure and must have written approval by the Board in place prior to the house sitter/caretakers occupancy of the property.

ARTICLE XII INSURANCE

- 12.1 **Types of Insurance.** The Association shall obtain and keep in full force and effect at all times the insurance coverage provided herein by companies licensed to do business in the State of Utah.
- 12.2 **Farr Orchard Subject to Insurance Provisions of the Community Association Act.** As authorized by U.C.A. 57-8a-402(4)(a) of the Act, the Lot Owners at Farr Orchard hereby subject the Association and the Lots, buildings and Units within Farr Orchard to the provisions of the Act wherein the Association shall maintain property insurance on the physical structure of all garages, attached dwellings, Units and Common Areas in the Project, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils, as provided in U.C.A. 57-8a-403(1)(a). The Association hereby incorporates the provisions of the Act as set forth in U.C.A 57-8a-401 through 407. The Association shall determine the amount of the Association's insurance deductible as in the Board's opinion is consistent with good business practice.
- 12.3 **Owner's Personal Insurance.** The Association shall not be responsible for nor purchase insurance coverage on the contents of the Units except as such coverage is provided by the Act. Each Owner is required to obtain insurance (renter's or Unit Owner's coverage) for their own protection and benefit and as a requirement of any loan they may have on their Unit, which Owner's insurance is for the purpose of insuring the Owner's personal property,

the Owner's share of any Association deductible for which the Owner may be responsible, and for any other insurable event or item not covered under the provisions of the Association's insurance policy as provided in the Act. The Association shall not be required to monitor or verify that Owners have purchased an individual insurance policy to insure against the liabilities described herein.

- 12.4 **Primary Coverage and Deductible.** If a loss occurs that is covered by the Association's property insurance policy and a Lot Owner's property insurance policy, the Association's policy provides primary insurance coverage and the Lot Owner is responsible for the Association's policy deductible, as set forth in U.C.A. 57-8a-405.
- 12.5 **Notice by Association to Lot Owners.** The Association shall provide fair and reasonable notice to each Lot Owner of the Lot Owner's obligation under the preceding subsection for the Association's policy deductible and of any change in the amount of the deductible.
- 12.6 **Public Liability and Property Damage Insurance.** The Association shall obtain comprehensive public liability insurance coverage for the Project in such amounts and in such forms as it deems advisable to provide adequate protection against liability for personal injury, death and property damage. Coverage shall include without limitation, liability for operation of automobiles on behalf of the Association and all reasonably insurable activities in connection with the ownership, operation, maintenance, and other use of the Project.
- 12.7 **Worker's Compensation Insurance.** The Association shall obtain worker's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association, if any, in the amounts and in the forms now or hereafter required by law.
- 12.8 **Fidelity Insurance or Bond.** The Association may obtain fidelity insurance or a bond in such amounts and in such forms as the Association deems appropriate to cover against dishonesty of employees or the Manager, destruction or disappearance of money or securities, and forgery.
- 12.9 **Additional Coverage.** The provisions of this Restated Declaration shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required or permitted by the Act or by this Restated Declaration in such amounts and in such forms as the Association may from time to time deem appropriate.
- 12.10 **Adjustment and Contribution.** Exclusive authority to adjust losses under the insurance policies hereafter in force on the Project shall be vested in the Association.
- 12.11 **Review of Insurance.** The Association shall review annually the coverage and policy limits of all insurance on the Project and shall adjust the same at its discretion. Such annual

review may include an appraisal of the improvements in the Project by a representative of the insurance carrier or carriers providing the policy or policies on the Project, or such other qualified appraisers as the Association may select.

ARTICLE XIII COMMUNITY RULES AUTHORIZING FINES

- 13.1 **Fines; Authorization.** The Association, through the Board, is hereby authorized to assess a fine against Lot Owners who violate provisions in this Restated Declaration, the Bylaws, or the Association Rules. The assessment of a fine shall be in accordance with the provisions of this Article XIII, and the Rules adopted by the Board.
- 13.2 **Written Notice of Violation.** Before assessing a fine, the Board must give a written notice of the violation to the Lot Owner of the violation and inform the Lot Owner that a fine will be imposed if the violation is not cured within the time provided in the written notice. The written notice shall:
- a) Contain a description or brief summary of the provision, bylaw, rule or regulation that has been violated; and
 - b) A description of the manner in which the bylaw, rule or regulation has been violated.

If a violation is temporarily cured or stopped, but is repeated by the same Lot Owner within one year of the date a written notice of violation is first served on the Lot Owner, the violation shall be deemed to be a continuing violation and the Board shall not be required to serve another notice of violation upon the Lot Owner but may rely upon the notice provided in the first written notice.

- 13.3 **Time to Cure.** In all instances, the violation must be cured within 48 hours of the written notice being delivered to the Lot Owner or the Lot Owner's agent, unless such time period is extended by the Board for good cause. The member of the Board or their agent that serves the written notice of violation on the Lot Owner shall write on the notice of violation the date and time the notice of violation was served on the Lot Owner and the date and time by which the violation must be cured. If a Lot Owner repeats the violation more than 48 hours after receiving the written notice of violation but less than one year after receiving the notice, the Lot Owner shall be deemed to have not timely cured the violation.
- 13.4 **Fine.** If the violation is fully and completely cured within the time provided in the written notice of violation, and is not repeated within one year of the time the written notice is first served on the Lot Owner, no fine may be assessed by the Board. If the violation is not fully cured within the time provided, the Board shall, after confirming that the violation complained of has not been fully cured, impose a fine as provided herein or in the Governing Documents. If the same violation is repeated more than 48 hours but less than one year after the written notice of violation is first given, the Board shall impose a fine as

provided herein or in the Governing Documents. The Lot Owner shall receive a written notice of fine from the Board informing the Lot Owner of the amount of the fine imposed.

13.5 **Manner of Providing Notice of Violation and Fine.** The notice of a violation of a bylaw or the Rules of the Association and the notice of a fine imposed by the Board may be provided to the Lot Owner in any one or more of the following ways:

- a) Delivering a copy of the notice to the Lot Owner personally; or
- b) Sending a copy of the notice through certified or registered mail, addressed to the Lot Owner at his or her place of residence, in which case an additional 48 hours shall be allowed to cure the violation; or
- c) Leaving a copy of the notice with a person of suitable age and discretion at the Lot Owners lot; or
- d) Affixing a copy of the notice in a conspicuous place on the Building or Unit; or
- e) If the person committing the violation is a tenant of the Lot Owner, by (1) personally delivering a copy of the notice to the tenant living at the Lot or affixing a copy in a conspicuous place on the Lot if a person of suitable age or discretion could not be found, and by (2) delivering or mailing a copy of the notice to the Lot Owner at the address provided by the Lot Owner to the Association.

13.6 **Non-Lot Owner Occupied Lots: Renters & Guests.** In cases where the Lot is not occupied by the Lot Owner and the violation of the Governing Documents is committed by a guest or resident of the Lot, the Lot Owner shall be responsible for the failure of the resident to cure violations of the Governing Documents. For purposes of the lease between the Lot Owner and the resident of the Lot, the provisions of the Governing Documents and these Rules shall be incorporated by reference into the terms of the lease and the Lot Owner may collect from the resident of the Lot any fines the Lot Owner becomes obligated to pay by virtue of the resident's actions. The Lot Owner shall be responsible for bringing a separate action to collect any such fines from the Lot Owner's tenant. Residents (defined herein as renters, tenants, guests of Lot Owners or renters, and any person who temporarily or permanently lives in a Lot, but excluding Lot Owners), are subject to the Association's Governing Documents. Lot Owners are ultimately responsible for the activities of residents who reside in, visit, or in any manner use their Lot and the Common Area. Any fine assessed against a resident will be the responsibility of the Lot Owner of the Lot in which the resident resides or is a guest. Because residents are subject to the provisions of the Governing Documents, residents are also subject to fines in the same manner as a Lot Owner. Any fine assessed against a resident may be collected by the Lot Owner from the resident. If a resident violates a bylaw or rule or regulation, both the resident and the Lot Owner shall be served a notice of violation as provided above. It shall be the responsibility of the Lot Owner to see that the resident cures the violation within the time allotted. Failure

of the Lot Owner to have the resident timely cure the violation shall subject the Lot Owner to the fine as provided herein as if the Lot Owner committed the violation.

- 13.7 **Board Action.** Any action by the Board involving a notice of violation or a notice of fine may be taken by any officer of the Board if so authorized or subsequently ratified by a quorum of the Board, consisting of 50% or more of the Board present at a meeting either in person or by telephone conference, or if not present at a meeting, members consenting to the action after conferring with other members of the Board.
- 13.8 **Violations for Which a Fine May be Assessed.** A fine may be assessed for the violation of a provision of the Governing Documents, or for a rule listed on Exhibit "C", which is attached and incorporated by this reference. The Board may amend Exhibit "C" and adopt new Association Rules by following the procedure outlined in Section 57-8a-217(2) of the Act. As long as the Board follows the procedure outlined in Section 57-8a-217(2), Exhibit "C" may be amended by the Board without an amendment being recorded to this Restated Declaration. Only those violations listed on Exhibit "C" and those violations of Rules adopted by the Board are the offenses which are subject to a fine. Exhibit "C" may be used to incorporate provisions in the Governing Documents for which a violation may be assessed.
- 13.9 **Continuous Violations.** Each day (or 24-hour period) during which a violation of the Governing Documents of the Association, or the Rules listed on Exhibit "C", continues after the time period expires during which the Lot Owner is required to cure the violation, constitutes a separate violation and is subject to a fine in the amount listed in Exhibit "C". The violation of a provision in the Governing Documents or a provision listed on Exhibit "C", which is temporarily cured within the time period required in the notice of violation, but which is violated again within one year of the date the original notice of violation was served, is deemed to be a continuous violation for which another notice of violation is not required to be served.
- 13.10 **Amount of Fines.** The amount of a fine for a violation of a provision in the Restated Declaration, the Rules, or the provisions listed on Exhibit "C", shall be in the amount listed on Exhibit "C".
- 13.11 **Late Fees.** Fines not paid within 10 days of being assessed shall accrue interest at the rate of 18% per annum and a late fee of not more than \$50.00. An additional late fee shall be assessed for each and every 30-day period the fine remains unpaid after it is assessed. No interest or late fees may accrue until 10 days after a hearing (if requested by the Owner) has been conducted and a final decision has been rendered by the Board.
- 13.12 **Protesting the Fine.** A Lot Owner who is assessed a fine may request an informal hearing to protest or dispute the fine within 30 days from the date the fine is assessed (which is the date written on the notice of fine). The Lot Owner protesting the fine shall request the informal hearing by delivering a written request to any member of the Board stating the grounds for the protest or dispute and setting forth in detail the following:

- a) the grounds for the protest, including any unusual circumstances justifying a reduction in the standard fine;
- b) the facts relied upon by the protesting Lot Owner with respect to the violation or non-violation of the Bylaws or Rules;
- c) the amount of the fine the Lot Owner claims should be paid and the reasons supporting that claim; and
- d) any errors made by the Board in calculating, assessing, or collecting the fine.

13.13 **Informal Hearing.** Within 14 days of receiving the written request for hearing, the Board shall schedule an informal hearing at which time the requesting Lot Owner will be given an opportunity to present evidence and witnesses supporting the Lot Owner's position. No formal rules of evidence will be required, and the Board can receive the evidence submitted by the requesting Lot Owner and determine the probative value of such evidence. If it chooses and if it would be of benefit to the requesting Lot Owner, the Board may also produce evidence supporting its decision to fine the Lot Owner. However, the intent of the hearing is to listen to the violating Lot Owner's explanations and not to have a trial. The Board may terminate the hearing at any time if any individual present becomes unruly, inconsiderate or rude.

13.14 **Decision of the Board.** The Board, after the requesting Lot Owner has had the opportunity at the hearing to present the evidence desired, may either:

- a) leave the amount of the fine as originally stated;
- b) reduce the fine to an amount agreed upon by a majority of the Board present at the hearing;
- c) reduce the fine to an amount agreed to by the offending Lot Owner with the agreement that the offending Lot Owner will pay the fine within 10 days and not appeal the fine in district court;
- d) suspend all or a portion of the fine conditioned on the Lot Owner not repeating the violation for 180 days; or
- e) forgive the fine.

The Board shall render its written decision no later than ten (10) days after the date of the hearing.

- 13.15 **Lien.** A fine assessed against an Owner that remains unpaid after the time for appeal has expired becomes a lien against the Lot Owner's interest in the property in accordance with the same standards as a lien for the nonpayment of common expenses under U.C.A. § 57-8a-301.
- 13.16 **Promulgation of Additional Rules and Fines.** As described in Section 13.8 above, the Board is authorized to adopt new Rules and to amend the Rules and fines listed in the attached Exhibit "C" as may be necessary or desirable to ensure the property is maintained and used in a manner consistent with the interests of the Lot Owners, to protect and enhance the quality of life in the Association, to protect the property values of the lots, to ensure a quality and enjoyable lifestyle, and to respect the rights and privileges of all residents to be free from the annoyance, disturbance and nuisance of others. The method by which the Board may adopt new Rules shall be in accordance with Section 57-8a-217 of the Act.

ARTICLE XIV DAMAGE OR DESTRUCTION

- 14.1 **Association as Attorney in Fact.** All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in fact in their name, place and stead for the purpose of dealing with the Common Areas, Lots, Units and buildings of the Project upon their damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from any Owner shall constitute an appointment by said grantee of the Association as his attorney in fact as herein provided. As attorney in fact, the Association shall have full and complete authorization, right, and power to make, execute, and deliver any contract, deed or other instrument with respect to the interest of an Owner in the Common Areas, Lots, Units and buildings which may be necessary or appropriate to execute the powers herein granted.
- 14.2 **Total Destruction.** If damage or destruction occurs in or to the Project that is so extensive that 67% of the Owners of Lots in the Project vote to not rebuild, repair or reconstruct the Common Areas, Lots, Units or buildings damaged or destroyed, then in such event and upon written agreement of 67% of the Owners, this Restated Declaration shall be terminated, and each Owner shall own his Lot, and all Owners together shall own all Common Areas as tenants in common, and there shall be no obligation to repair or reconstruct the damaged portions of the Common Areas. Upon the dissolution of the Project as herein provided, a notice of such shall be filed with the Weber County Recorder, and upon filing of such notice, the following shall occur:
- a) The Common Areas shall be deemed to be owned in common by the Owners as tenants in common on an equal, undivided basis;
 - b) Any liens affecting any of the Lots shall remain a lien on their respective Lots, but also shall be deemed to be transferred, in accordance with the existing priorities, to the undivided interest of the respective Owner in the Common Areas;

- c) If 67% of the Total Votes of the Association so elects within ninety (90) days after the damage has occurred, and if allowed by the applicable governmental authorities, the Common Areas shall be dedicated as public roads in accordance with applicable statutes and ordinances, and all Owners shall join in such dedication; and
 - d) If the option described in Section 14.2 (c) above is not elected, the Common Areas shall be subject to an action for partition at the suit of any Owner, in which event the net proceeds of any sale resulting from such suit for partition, together with the net proceeds of the insurance on the Project, if any, shall be considered as one fund and shall be divided equally among all of the Owners, after first paying out of the respective share of each Owner, to the extent sufficient for such purpose, all liens on the undivided interest in the Project owned by such Owner.
- 14.3 **Partial Destruction.** As long as 67% of the Owners of Lots so elect, upon the damage or destruction of any portion of the Common Areas, Lots, Units or buildings, the Association shall proceed to repair and reconstruct the Common Areas, Lots, Units and buildings. The Association shall use insurance proceeds from the insurance it is obligated to carry to accomplish such repair and reconstruction. In the event insurance proceeds are insufficient to accomplish the repair and reconstruction as required herein, then the Association shall levy a special assessment against all Owners pursuant to the provisions of Article X above to collect funds necessary to accomplish such repairs and reconstruction. (For purposes herein, Partial Destruction means greater than 10% and less than 50% of the Common Area, Lots, Units and buildings are destroyed or rendered uninhabitable).
- 14.4 **Repair or Reconstruction.** As soon as practicable after receiving estimates on the cost of repair or reconstruction, the Association shall, if repair or restoration is to occur, diligently pursue to completion the repair or reconstruction of that part of the Common Areas, Lots, Units and buildings damaged or destroyed. The Association may take all necessary or appropriate action to effect repair or reconstruction, as attorney in fact for the Owners, and no consent or other action by any Owner shall be necessary in connection therewith.
- 14.5 **Disbursement of Funds for Repair or Reconstruction.** If repair or reconstruction is to occur, then the insurance proceeds held by the Association and any amounts received from assessments shall constitute a fund for the payment of the costs of such repair and reconstruction. It shall be deemed that the first monies disbursed in payment for the costs of such repair or reconstruction shall be made from insurance proceeds; if there is a balance after payment of all of the costs of such repair or reconstruction, such balance shall be distributed equally to the Owners.

ARTICLE XV CONDEMNATION

- 15.1 **Condemnation.** If at any time or times all or any part of the Common Areas shall be taken or condemned by any public authority under power of eminent domain, the provisions of

this Article shall apply. A voluntary sale or conveyance of all or any part of the Common Areas in lieu of condemnation, but under threat of condemnation, shall be deemed to be taken by power of eminent domain.

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

ARTICLE XVI COMPLIANCE WITH DECLARATION AND BYLAWS

- 16.1 **Compliance.** Each Owner shall comply with the provisions of this Restated Declaration, the Articles of Incorporation and Bylaws of the Association, and the Rules promulgated by the Association, and the decisions and resolutions of the Association adopted pursuant thereto, as the same may be lawfully amended from time to time. Failure to comply with any of the same shall be grounds for an action to recover sums due and for damages or injunctive relief or both, maintainable by the Association or by an aggrieved Owner.
- 16.2 **Enforcement and Remedies.** The obligations, provisions, covenants, restrictions and conditions contained in this Restated Declaration, or in any supplemental or Restated Declaration, enforceable against the Association, shall be enforceable by any Owner of a Lot, by a proceeding for a prohibitive or mandatory injunction. The obligations, provisions, covenants, restrictions and conditions contained in this Restated Declaration, or in any supplemental or Restated Declaration, enforceable against an Owner or any other person, shall be enforceable by the Association by a proceeding for a prohibitive or mandatory injunction or by a suit or action to recover damages or to recover any amount due or unpaid.

ARTICLE XVII MISCELLANEOUS

- 17.1 **Collection of Assessments from Tenants.** If an Owner shall at any time rent or sublet his Unit to tenant, and the Owner shall default for a period of one month in the payment of any assessments, the Association may, at its option and in compliance with Utah Code Annotated, § 57-8a-310, so long as such default shall continue, demand and receive from any tenant or subtenant of the Owner occupying the Unit, the rent due or becoming due. The rent paid by the tenant to the Association shall be applied to the Owner's delinquent assessment and any rent in excess of the delinquent assessment shall be paid to the Owner. The payment of an assessment by the tenant to the Association under the terms of this paragraph shall not be grounds by the Owner for an action against the tenant for breach of contract, unlawful detainer or eviction. Every Owner is bound by the terms of this paragraph in dealing with the Owner's tenants. Nothing herein shall be construed to relieve an Owner of his personal obligation to pay assessments to the Association.

- 17.2 **Non-Judicial Foreclosure.** All costs, expenses, assessments and fees owed to the Association for Common Expenses may be secured by a lien, which lien may be foreclosed in the same manner as foreclosures of deeds of trust under Utah law. The lien shall also secure and the Owner shall also be required to pay to the Association any assessments against the Unit which shall become due during the period of foreclosure. The Association shall have the right and power to bid an amount equal to its then existing lien at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof. In any foreclosure or sale, the owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, reasonable attorney fees, and a reasonable rental for the Unit during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. If the Association elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed to the Unit hereby irrevocably appoints the attorney of the Association, provided he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In addition, Owner hereby transfers in trust to said Trustee all of his right, title, and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein.
- 17.3 **Late Fees.** Each monthly payment of Common Area Assessments is due by the 15th of the month and shall incur a late fee of \$25.00 if not paid when due.

ARTICLE XVIII MORTGAGEE PROTECTION

- 18.1 **Mortgage Protection.** No breach of any of the covenants, conditions, restrictions, and limitations contained herein shall defeat or render invalid the lien of any Mortgage made in good faith and for value; provided, however, that all such covenants, conditions, restrictions and limitations contained herein shall be binding upon an Owner whose title is derived through foreclosures or trustee's sale.
- 18.2 **Priority of Liens.** No enforcement of any lien provision herein contained shall defeat or render invalid the lien of any Mortgage. All sums assessed in accordance with the provisions herein shall constitute a lien on each respective Lot prior and superior to all other liens except (1) all taxes, bonds, assessments, and other levies which, by law, would be superior thereto; and (2) the lien or charge of any recorded Mortgage on such Lot made in good faith and for value and recorded prior to the date on which any such assessment or assessments become due.
- 18.3 **Prior Liens Relate Only to Individual Lots.** All taxes, assessments and charges which may become liens prior to the first Mortgage under local law shall relate only to the individual Lot and not to the Project as a whole.

- 18.4 **Mortgage Holder Rights in Event of Foreclosure.** Any Mortgagee of a Mortgage of record which obtains title to a Lot by the foreclosure of the Mortgage on the Lot or by deed or assignment in lieu of foreclosure, or any purchaser at a foreclosure sale, shall take the Lot free of any claims for unpaid assessments and charges against the Lot which accrued prior to the date of the acquisition of title to such Lot by such acquirer.
- 18.5 **Amendment.** No provision of this Article XVIII shall be amended without the prior written consent of at least two-thirds of all first Mortgagees as appear on the official records of Weber County, Utah, as of the date of such amendment. However, should this Article XVIII be amended without the prior written consent of at least two-thirds of all first Mortgagees, the first Mortgagees who have received a security interest in a Unit as indicated on the official records of Weber County, Utah, will not be subject to the amendment but will be bound by the provisions of Article XVIII that existed of record at the time the first Mortgagee received a security interest. Any Mortgagee who receives a security interest in a Unit will be bound by the provisions of this Article XVIII that existed of record at the time the Mortgagee received a security interest in a Unit.

ARTICLE XIX GENERAL PROVISIONS

- 19.1 **Intent and Purpose.** The provisions of this Restated Declaration and any supplemental or Restated Declaration shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a planned unit development project. Failure to enforce any provision, restriction, covenant, or condition in this Restated Declaration, or in any supplemental or Restated Declaration, shall not operate as a waiver of any such provision, restriction, covenant, or condition or of any other provisions, restrictions, covenants, or conditions.
- 19.2 **Construction.** The provisions of this Restated Declaration shall be in addition and supplemental to all applicable provisions of law. Wherever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders. The Article and Section headings set forth herein are for convenience and reference only and are not intended to describe, interpret, define or otherwise affect the context, meaning, or intent of this Restated Declaration or any Article, section or provision hereof. The provisions hereof shall be deemed independent and severable and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.
- 19.3 **Registration of Mailing Address.** Upon the sale of any lot, the Owner of such Lot shall register from time to time with the Association his current mailing address. All notices or demands intended to be served upon any Owner may be sent by first class U.S. mail, postage prepaid, addressed to the Owner at his registered mailing address, or, if no address has been registered, to the Lot of such Owner. All notice or demands intended to be served

upon the Association may be sent by first class U.S. registered or certified mail, postage prepaid, addressed to the Association at the address of its offices as may be furnished to the Owners in writing from time to time. Any notice or demand referred to in this Restated Declaration shall be deemed given three days after deposited in the U.S. mail, postage prepaid, and in the form provided for in this Section.

- 19.4 **Audit.** Any Owner may at any reasonable time, upon appointment and at his own expense, cause an audit or inspection to be made of the books and records maintained by the Association.
- 19.5 **Amendment.** Except as otherwise provided herein, this Restated Declaration may be amended if Owners holding at least fifty-one percent (51%) of the Total Votes of the Association consent and agree to such amendment at a meeting of the Owners duly held in accordance with the provisions of the Articles, Bylaws, and this Restated Declaration, which properly approved amendments shall be evidenced by instruments which are duly recorded in the office of the County Recorder for Weber County, State of Utah.
- 19.6 **Effective Date.** This Restated Declaration shall take effect upon recording.
- 19.7 **Agent for Service.** The person to receive service of process for the Association shall be the then current registered agent of the Association as shown on the records maintained in the office of the Division of Corporations and Commercial Code of the State of Utah.
- 19.8 **Limitation on Association's Liability.** The Association shall not be liable for any failure of water service or other utility service to be obtained and paid for by the Association hereunder, or for injury or damage to any person or property caused by the elements or by another Owner or person in the Project, or resulting from electricity, water, rain, snow or ice. No diminution or abatement of any assessments under this Restated Declaration shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs, maintenance or improvements to the Project or any part thereof, or from any action taken to comply with any law, ordinance or order of a governmental authority.
- 19.9 **Owner's Obligations.** All obligations of an Owner under and by virtue of the provisions contained in this Restated Declaration shall continue, notwithstanding that he may be leasing, renting, or selling on contract his Lot. The Owner of a Lot shall have no obligation for expenses or other obligations accruing after he conveys title to such Lot.
- 19.10 **Hold Harmless of Ogden City.** The Association acknowledges that Ogden City has waived the requirement that the open canal in the Common Areas be piped or fenced, on the condition that Ogden City be held harmless for not requiring that the canal be piped or fenced. Accordingly, the Association shall assume all obligations related to, and shall indemnify, defend, release and hold harmless Ogden City, its officers, employees, and agents, from and against all loss, damage, personal injury or death, all suits, claims, demands or actions, liabilities, judgments, costs and attorney's fees, relating to, arising

from, or attributable to, directly or indirectly, in whole or in part to, (I) the granting of the waiver that such canal be piped or fenced, (ii) the failure to pipe or fence such canal, or (iii) the open and accessible condition of such canal.

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

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

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

CERTIFICATION

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

IN WITNESS WHEREOF, this ____ day of _____, 2018

FARR ORCHARD OWNERS ASSOCIATION

By _____
President

STATE OF UTAH)
 :SS.
COUNTY OF WEBER)

On this ____ day of _____, 2018, personally appeared before me _____ who, being by me duly sworn, did say that (s)he is President of the Farr Orchard Owners Association and that the within and foregoing instrument was signed in behalf of said Owners Association and (s)he duly acknowledged to me (s)he executed the same.

Notary Public

EXHIBIT “A”

LEGAL DESCRIPTION

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

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

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

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

EXHIBIT “B”

BYLAWS OF THE FARR ORCHARD OWNERS ASSOCIATION

These BYLAWS OF THE FARR ORCHARD OWNERS ASSOCIATION are effective upon recording in the Weber County Recorder's Office pursuant to the Utah Community Association Act and the Utah Revised Nonprofit Corporation Act (referred collectively herein as the “Acts”).

RECITALS

- A. The Association is organized for all lawful purposes for which a nonprofit corporation may be organized under the Utah Revised Nonprofit Corporation Act, as amended, subject to the terms and conditions contained in the Declaration and Articles of Incorporation.
- B. These Bylaws are adopted to complement the Restated Declaration, to further define the rights of the Association and the Owners, to provide for the ability to effectively govern and operate the Association and the Project known as Farr Orchard Planned Residential Unit Development and, to further the Association's efforts to safely, efficiently, and economically provide a quality living environment.

ARTICLE I DEFINITIONS

- 1.1 Except as otherwise provided herein or as may be required by the context, all capitalized terms used herein shall have the same meaning and effect as used and defined in the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Farr Orchard.

ARTICLE II APPLICATION

- 2.1 All present and future Owners, Mortgagees, occupants, and their invitees and guests, and any other persons who may use the facilities of the Project in any manner are subject to these Bylaws, the Restated Declaration, and any Rules adopted by the Board. The mere acquisition of a Unit or the mere act of occupancy or use of any said Units or the Common Areas will signify that these Bylaws, the Restated Declaration, and Rules are accepted, ratified, and will be complied with by said persons.

ARTICLE III OWNERS

- 3.1 **Annual Meetings.** The annual meeting of the Owners shall be held each year on a day and time established by the Board. The purposes of the annual meeting may include the election of Board Members, the distribution of financial reports and budget, a review of any revisions to the Rules, distributing the most recent reserve study, and to transact such other business as may come before the meeting. If the election of Board Members cannot be held during the annual meeting, or at any adjournment thereof, the Board shall cause the election to be held either at a special meeting of the Owners to be convened as soon thereafter as may be convenient or at the next annual meeting. The Board may from time to time by resolution change the month, date, and time for the annual meeting.
- 3.2 **Special Meetings.** Special meetings of the Owners may be called by a majority of the Board, the President, or upon the written request of Owners holding not less than forty percent (40%) of the voting interests of the Association. Any written request for a special meeting presented by the Owners shall be delivered to the President and shall include the original signature of each Owner affirmatively supporting such request along with a complete statement of the purpose of the meeting on each page containing signatures. The President shall then call, provide notice of, and conduct a special meeting within 45 days of receipt of the Owner request.
- 3.3 **Place of Meetings.** The Board may designate any place in Weber County that is reasonably convenient for the Owners as the place of meeting for any annual or special meeting.
- 3.4 **Notice of Meetings.** The Board shall cause written or printed notice of the date, time, and place (and in the case of a special meeting, the purpose or purposes) for all Owner meetings. Such written or printed notice shall be delivered to each Owner of record entitled to vote at such meeting not more than sixty (60) nor less than ten (10) days prior to the meeting. Such notice may be sent via email, text, hand-delivery, or regular mail. If sent by email or text, such notice shall be deemed delivered and effective on the date transmitted to the Owner's email address or telephone number registered with the Association. If mailed, such notice shall be deemed to be delivered and effective on the date deposited in the U.S. mail if addressed to the Owner's address registered with the Association. Each Owner shall register with the Association such Owner's current email address, phone number, and mailing address for purposes of notice hereunder. Such registered email, phone number, and mailing address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, an Owner's Unit shall be deemed to be the Owner's registered address and notice to the Unit address may be made by first-class mail or by posting the meeting notice on the front door. An Owner may opt out of receiving notices from the Association via email or text by giving written notice to the Board stating that the Owner will not accept notices by way of email or text.

- 3.5 **Qualified Voters.** An Owner shall be deemed to be in “good standing” and “entitled to vote” at any meeting of the Association if he or she has fully paid his or her share of any assessment (together with any interest and/or late fees) at least 48 hours prior to the commencement of the meeting and is not in violation of any provision of the Governing Documents.
- 3.6 **Record Date for Notice Purposes.** The Board may designate a record date, which shall not be more than sixty (60) nor less than ten (10) days prior to the meeting, for the purpose of determining Owners entitled to notice of any meeting of the Owners. If no record date is designated, the last date on which a notice of the meeting is mailed or delivered shall be deemed to be the record date for determining Owners entitled to notice. The persons or entities appearing in the records of the Association on such record date as the Owner(s) of record of Lots in the Project shall be deemed to be the Owners of record entitled to notice of the Owner meeting.
- 3.7 **Quorum.** At any Owner meeting, the number of Owners present, either in person or by proxy shall constitute a quorum for the transaction of business.
- 3.8 **Proxies.** At each Owner meeting, each Owner entitled to vote shall be entitled to vote in person or by proxy provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been signed by the Owner or by the Owner's attorney. A proxy may be written on paper or received via email, facsimile, text, or any other electronic or physical means. A signature as required herein shall mean any indication that the document is from and consented to by the person who is purported to have sent it. If a Lot is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Lot or the Owner's attorney when duly authorized in writing. A proxy given by an Owner to any person who represents the Owner at meetings of the Association shall be in writing, dated, and signed by such Owner. Such instrument may allow the proxy to vote on any issue arising at any particular meeting or meetings, or may set forth the specific matters or issues upon which the proxy is authorized to act. Proxies shall be filed with the Secretary (or with such other officer or person who may be acting as Secretary of the meeting) before the meeting is called to order. The Secretary shall record all proxies in the meeting minutes.
- 3.9 **Votes.** With respect to each matter submitted to an Owner vote, each Owner entitled to vote at the meeting shall have the right to cast one vote, either in person or by proxy. The affirmative vote of a majority of the votes entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by Owners, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, or the Restated Declaration. When a Lot is jointly owned, any Owner may exercise the vote for such Lot on behalf of all co-owners of the Lot. In the event of two (2) conflicting votes by co-owners of a Lot, no vote shall be counted for that Lot. In no event shall fractional or cumulative votes be

exercised with respect to any Lot. Only those Owners whose accounts with the Association are not more than thirty (30) days delinquent shall be entitled to vote.

- 3.10 **Waiver of Irregularities.** All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, in the form of proxies and the method of ascertaining Owners present, and in the decision and votes of the Board or of the Owners shall be deemed waived by those Members in attendance if no objection is made at the meeting. For those Members who are not in attendance at the meeting, the right to challenge inaccuracies and irregularities in calls, notices, voting, and decisions shall be waived if no objection is made within thirty (30) days of the date of the meeting.
- 3.11 **Action Taken Without a Meeting.** Owners have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of Owners in accordance with the requirements of Utah Code §16-6a-707 or § 16- 6a-709 and any other applicable section of the Acts. Any action so approved shall have the same effect as though taken at an Owner meeting. Ballots or written consents may be obtained via any electronic or physical means including but not limited to email, facsimile, text, or paper document.
- 3.12 **Minutes of Meetings.** The Secretary shall take minutes of all meetings of the Owners. The minutes shall include, at a minimum, (1) the identification of the Persons present in person and by proxy, (2) the meeting date, (3) the identification of any issue that is voted on or decided in the meeting, (4) the number of votes cast for and against any issue decided upon, and (5) the exact wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this section does not invalidate any action taken at a meeting. Draft meeting minutes for each annual meeting of the Owners shall be made available to all Owners within thirty (30) days of the annual meeting.

ARTICLE IV BOARD OF TRUSTEES

- 4.1 **Powers.** The Project and the affairs and business of the Association shall be managed by the Board of Trustees. The Board may exercise business judgment and all of the powers of the Association, whether derived from the Restated Declaration, these Bylaws, the Articles, or the Acts except such powers that the Restated Declaration, these Bylaws, the Articles, and the Acts vest solely in the Owners.
- 4.2 **Number and Qualifications.** The property, business, and affairs of the Association shall be governed and managed by a Board of Trustees composed of either three (3) or five (5) persons, as determined by the Board. Board Members must be at least 18 years old and must be an Owner or the spouse of an Owner of a Lot in the Project. No two (2) Board Members may reside in the same Living Unit or be business partners if the business is related to their ownership of a Lot. If an Owner is a corporation, partnership, limited liability company, or trust, an officer, partner, member, manger, agent, trustee, or

beneficiary of such Owner may be a Board Member. If a Board Member ceases to meet any required qualifications during the Board Member's term, such person's membership on the Board shall automatically terminate.

- 4.3 **Election.** The election of Board Members shall be made by the Owners. At such election, the Owners or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Restated Declaration. The Association may accept written ballots for Board Member election voting purposes from those Members unable to attend a meeting in which an election is held. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.
- 4.4 **Term of Office.** The Owners shall elect Board Members for two (2) year terms. The terms shall be staggered and overlap so that elections for Board Member positions are held each year at the Annual Meeting. Board Members may serve consecutive terms if elected.
- 4.5 **Regular Meetings.** The Board shall hold meetings at least quarterly or more often at the discretion of the Board.
- 4.6 **Special Meetings.** Special meetings of the Board may be called by the President or a majority of Board Members on at least two (2) business days' prior notice to each Board Member.
- 4.7 **Meeting Notice.** The person or persons authorized to call Board meetings may fix any place, within Weber County, as the place for holding the meeting and shall provide a conference call-in number for Board Members not able to attend in person. Notice shall be given personally, by email, or by telephone, including text message at least two (2) business days' in advance of the meeting. By unanimous consent of the Board, Board meetings may be held without call or notice to the Board Members, but notice shall always be provided to those Owners who have requested notice of Board meetings.
- 4.8 **Quorum and Manner of Action.** A majority of the then authorized number of Board Members shall constitute a quorum for the transaction of business at any meeting of the Board. The act of a majority of the Board Members present at any meeting at which a quorum is present and for which proper notice was provided shall be the act of the Board. The Board Members shall act only as the Board of Trustees, and individual Board Members shall have no powers as such.
- 4.9 **Owner Attendance.** Any Owner may request notice of Board meetings by requesting such notice form a Board Member and providing a valid email address at which the Owner will receive notice. Owners who have requested notice of Board meetings shall be given notice along with the Board Members and shall be provided any call-in number or other means of attendance by electronic communication that is provided to Board Members. If Owners attend a Board meeting, the Board may select a specific period of time during the meeting

and limit Owner comments to such time period. The Board in its sole discretion may set a reasonable length of time that each Owner may speak.

- 4.10 **Open Meetings.** Except as provided below in (a) through (f), Board meetings shall be open to Owners. The Board may hold a closed executive session during a meeting of the Board if the purpose of the closed executive session is to:
- a) Consult with legal counsel of the Association to obtain legal advice and discuss legal matters;
 - b) Discuss existing or potential litigation, mediation, arbitration, or an administrative proceeding;
 - c) Discuss a labor or personnel matter;
 - d) Discuss a matter relating to the initial contract negotiations, including the review of a bid or proposal;
 - e) Discuss a matter involving a Person, if the Board determines that public knowledge of the matter would violate the Person's privacy; or
 - f) Discuss a delinquent assessment.
- 4.11 **Board Meetings Generally.** The Board may designate any place in Weber County as the place of meeting for any regular or special Board meeting. The Board may allow attendance and participation at any Board meeting by telephone or any other electronic means that allows for Board Members to communicate orally in real time. If a Board meeting is held by telephone, the Association shall provide the call-in information such that Owners may call-in to access the meeting.
- 4.12 **Board Action.** Notwithstanding noncompliance with any provision within this Article, Board action is binding and valid unless set aside by a court of law. A person challenging the validity of a Board action for failure to comply with this Article may not bring the challenge more than sixty (60) days after the Board has taken the action in dispute.
- 4.13 **Compensation.** No Board Member shall receive compensation for any services that such member may render to the Association as a Board Member; provided, however, that a Board Member may be reimbursed for expenses incurred in performance of such duties as a Board Member to the extent such expenses are approved by a majority of the other Board Members. Nothing herein contained shall be construed to preclude any Board Member from serving the Project in any other capacity and receiving compensation therefore, so long as approved in advance by a majority of disinterested Board Members.

- 4.14 **Resignation and Removal.** A Board Member may resign at any time by delivering a written resignation to either the President or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery. A Board Member may be removed at any time, with or without cause, at a Special Meeting of the Owners duly called for such purpose upon the affirmative vote of more than fifty percent (50%) of the entire voting interests of the Association. At such a meeting, the Owners shall vote for a new Board Member to fill the remaining term of the removed Board Member. Board Members may also be removed by the other active Board Members upon the occurrence of any of the following: failure to attend three (3) consecutive Board meetings, failure to remain current on Assessments, or a violation of the Governing Documents. If removal occurs based on the preceding sentence, then the remaining Board Members may appoint a replacement to serve the remaining term of the removed Board Member.
- 4.15 **Vacancies.** If vacancies occur in the Board for any reason (including death, resignation, or disqualification) except removal by the Owners, the Board Members then in office shall continue to act, and such vacancies shall be filled by a majority vote of the Board Members then in office, though less than a quorum. Any vacancy in the Board occurring by reason of removal of a Board Member by the Owners may be filled by election of the Owners at the meeting at which such Board Member is removed. Any Board Member elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his predecessor. Except by reason of death, resignation, disqualification, or removal, Board Members shall continue to serve until their successors are elected.
- 4.16 **Action Without a Meeting.** Board Members have the right to take any action in the absence of a meeting which they could take at a meeting subject to the requirements of Utah Code §16-6a-813 and any other applicable sections of the Acts. Any action so approved shall have the same effect as though taken at a meeting of the Board.
- 4.17 **Waiver of Notice.** Before or at any meeting of the Board, any Board Member or Owner may waive notice of such meeting and such waiver shall be deemed the equivalent of proper notice. Attendance by a Board Member or Owner at any meeting thereof shall be a waiver of notice by that Board Member or Owner of the time, place, and purpose thereof.
- 4.18 **Adjournment.** The Board may adjourn any meeting from day to day for such other time as may be prudent or necessary, provided that no meeting may be adjourned for longer than thirty (30) days.
- 4.19 **Meeting.** A Board meeting does not include a gathering of Board Members at which the Board does not conduct and vote on Association business.

ARTICLE V OFFICERS

- 5.1 **Officers.** The officers of the Association shall be a President, Vice President, Secretary, Treasurer, and such other officers as may be appointed by the Board.
- 5.2 **Election, Tenure, and Qualifications.** The officers of the Association shall be elected by the Board at the first Board meeting following each Annual Meeting of the Owners. Each officer shall hold such office until the next ensuing meeting of the Board following the Annual Meeting of the Owners and until a successor has been elected and qualified, or until such officer's death, or until resignation, disqualification, or removal in the manner provided in these Bylaws, whichever first occurs. Any person may hold any two (2) or more of such offices, except that the President may not also be the Secretary. No person holding two (2) or more offices shall act in or execute any instrument in the capacity of more than one (1) office.
- 5.3 **Subordinate Officers.** The Board may appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.
- 5.4 **Resignation and Removal.** Any officer may resign at any time by delivering a written resignation to any member of the Board or to any managing agent of the Association. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced upon the affirmative vote of a majority of the Board Members at any time, with or without cause.
- 5.5 **Vacancies.** If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by majority vote of the Board at any regular or special Board meeting.
- 5.6 **President.** The President shall be the chief executive of the Association. The President shall preside at meetings of the Board and at meetings of the Owners. At the meetings, the President shall have all authority typically granted to the person presiding over the meeting including but not limited to: (1) the right to control the order of the meeting, (2) the right to arrange for the removal of any disruptive Owner or person, (3) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order" or "The Modern Rules of Order." The President shall sign on behalf of the Association all conveyances, mortgages, documents, and contracts, and shall do and perform all other acts and things as required by the Board.
- 5.7 **Vice President.** The Vice President shall perform all duties of the President when the President is absent or unable or refuses to act at any meeting of the Board or Owners. The Vice President shall perform such other duties as required by the Board.

- 5.8 **Secretary.** The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Restated Declaration, Rules, or any resolution the Board may require. The Secretary shall also act in the place of the Vice President in the event of the President's and Vice President's absence or inability or refusal to act.
- 5.9 **Treasurer.** The Treasurer shall have the custody and control of the funds and financial accounts of the Association, subject to the action of the Board, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Board. The Treasurer shall perform such other duties as required by the Board.
- 5.10 **Compensation.** No officer shall receive compensation for any services rendered to the Association as an officer, provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer to the extent such expenses are approved by the Board.

ARTICLE VI COMMITTEES

- 6.1 **Designation of Committees.** The Board may designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. No member of such committee shall receive compensation for services rendered to the Association as a member of the committee; provided, however, that the committee member may be reimbursed for expenses incurred in performance of such duties as a committee member to the extent that such expenses are approved by the Board. A committee shall not have powers, duties, or responsibilities beyond those specifically assigned by the Board in a written resolution. The Board may terminate a committee at any time.
- 6.2 **Proceeding of Committees.** Each committee may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board.
- 6.3 **Quorum and Manner of Acting.** At each committee meeting, the presence of members constituting at least a majority of the authorized membership of such committee (but in no event fewer than two (2) members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The committee members shall act only as a committee, and the individual members thereof shall have no powers as such. A committee may only exercise the authority granted to it by the Board.
- 6.4 **Resignation and Removal.** A committee member may resign at any time by delivering a written resignation to the President, the Board, or the presiding officer of such committee.

Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board may at any time, with or without cause, remove any committee member.

- 6.5 **Vacancies.** If any vacancy shall occur in any committee designated by the Board due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy by the Board, constitute the then total authorized membership of the committee and, provided that two (2) or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board.

ARTICLE VII INDEMNIFICATION

- 7.1 **Indemnification.** In addition to any indemnification provisions and requirements set forth in the Restated Declaration, no Board Member, officer, or committee member shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct said Board Member, officer, or committee member performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a Board Member, officer, or committee member of the Association, as well as such person's heirs and administrators, from and against any and all claims, judgments and liabilities to which such persons shall become subject, by reason of that person having heretofore or hereafter been a Board Member, officer, or committee member of the Association or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him as such Board Member, officer, or committee member and shall reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's willful or intentional misconduct. The rights accruing to any person under the foregoing provisions of this Section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to indemnify or reimburse such person in any proper case, even though not specifically provided for herein or otherwise permitted. The Association, its Board Members, officers, committee members, employees, and agents shall be fully protected in taking any action or making any payment or in refusing so to do in reliance upon the advice of counsel.
- 7.2 **Other Indemnification.** The indemnification herein provided shall not be deemed exclusive of any other right to indemnification to which any person seeking indemnification may be entitled under the Acts or under any agreement, vote of disinterested Board Members or otherwise, both as to action taken in any official capacity and as to action taken in any other capacity while holding such office. It is the intent that all Board Members, officers, and committee members be and hereby are indemnified to the fullest extent permitted by the laws of the State of Utah and these Bylaws. The indemnification herein provided shall continue as to any person who has ceased to be a

Board Member, officer, committee member, or employee and shall inure to the benefit of the heirs, executors and administrators of any such person.

- 7.3 **Insurance.** The Board, in its discretion, may direct that the Association purchase and maintain Directors and Officers insurance on behalf of any person who is or was a Board Member, officer, committee member, Manager or employee of the Association or is or was serving at the request of the Association as a Board Member, officer, committee member, Manager, employee, or agent of another association, corporation, partnership, joint venture, trust or other enterprise against any liability asserted against, and incurred by, such person in any such capacity or arising out of such person's status as such, whether or not the Association would have the power to indemnify such person against liability under the provisions of this Article.
- 7.4 **Settlement by Association.** The right of any person to be indemnified shall be subject always to the right of the Association through the Board, in lieu of such indemnity, to settle any such claim, action, suit or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

ARTICLE VIII AMENDMENTS

- 8.1 **Amendments by Association.** The Bylaws may be amended by the Owners upon the affirmative vote of more than fifty-one percent (51%) of the voting interest of the Association. Any amendment(s) shall be effective upon recordation in the office of the Weber County Recorder. In such instrument the President shall execute the amendment and certify that the vote required by this Section has occurred. If a Lot is owned by more than one Owner, the vote 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 vote 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 Owner signature shall be required.

ARTICLE IX MISCELLANEOUS PROVISIONS

- 9.1 **Waiver.** No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.
- 9.2 **Invalidity; Number; Captions.** The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws. As used in these Bylaws, the singular shall include the plural, and the plural the singular. The masculine and neuter shall each include the masculine, feminine and neuter, as the

context requires. All captions are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

- 9.3 **Conflicts.** These Bylaws are intended to comply with the Restated Declaration. In case of any irreconcilable conflict, the Restated Declaration shall control over these Bylaws.

EXHIBIT “C”

AMOUNT OF FINE*

1ST Offense	2ND Offense within 90 days	3RD or more Offense within 90 days	RULE (the following activities are prohibited)
\$50	\$100	\$150	<ul style="list-style-type: none"> · parking in restricted areas such as streets within Farr Orchard · parking in areas marked with “no parking” signs · parking in areas not permitted on the Farr Orchard parking map · violation of any parking rule contained in the Restated Declaration, Bylaws, or Farr Orchard Rules · parking recreational vehicles or boats within Farr Orchard · parking more than three cars per residence at Farr Orchard. (One car may be parked in the garage, one in the driveway of the residence, and one in the visitors parking area with the written permission of the board only.) · owners parking in the visitors parking without the written permission of the board, which permission shall only be given if the garage and driveway are occupied by a resident’s vehicles · parking unregistered or inoperable vehicles in the common area for more than 15 days
\$35	\$70	\$100	<ul style="list-style-type: none"> · driving faster than the posted speed · driving faster than conditions safely permit
\$25	\$50	\$100	<ul style="list-style-type: none"> · performing maintenance or mechanical work on vehicles (including motorcycles & ATV’s) in the common area
\$35	\$70	\$100	<ul style="list-style-type: none"> · leaving trash, garbage, or clutter on the unit’s patio, porch or doorstep, or otherwise maintaining the patio, porch or doorstep in an unsightly, unclean, or unsanitary condition
\$50	\$100	\$150	<ul style="list-style-type: none"> · misuse or damage to the common area by attaching satellite dishes, awnings, signs, lights, or any other item to the Common Area, without the written permission of the Board · causing damage to the Common Area (lawn, roof, gutters, plumbing, parking area, sidewalk, sprinkler system, flowers or shrubs)
\$10	\$20	\$30	<ul style="list-style-type: none"> · leaving personal belonging in the common area (bicycles, scooters, toys, equipment) · failing to retrieve trash cans from the street within 24 hours after trash pickup
\$25	\$50	\$125	<ul style="list-style-type: none"> · creating noise within a unit that can be heard in another unit or in the common area such that the noise is (1) offensive to the senses, (2) disruptive to the comfortable enjoyment and lifestyle of other residents, or (3) an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life · creating noise in the common area that can be heard in a unit such that the noise is (1) offensive to the senses, (2) disruptive to the comfortable enjoyment and lifestyle of other residents, or (3) an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life

AMOUNT OF FINE

\$50	\$100	\$150	<ul style="list-style-type: none"> · maintaining pets in a unit in violation of the Bylaws, Restated Declaration or Rules (for violations of Section 6.10(b) & (c) of the Restated Declaration, see the last two rows on this page) · failing to clean up after pets that have made a mess in the common area · allowing pets in the common area that are unattended or not on a leash · maintaining or bringing a pet into unit that can be heard in another unit such that the sound created by the pet is (1) offensive to the senses, (2) disruptive to the comfortable enjoyment and lifestyle of other residents, or (3) an obstruction to the free use of property so as to interfere with the comfortable enjoyment of life · chaining, staking, or tying up an animal in the common area
\$25	\$50	\$90	<ul style="list-style-type: none"> · failing to maintain window coverings in a state of good repair (failure to replace broken blinds, tom drapes or other such window coverings). There shall be no blankets, newspapers or bed sheets used for window coverings. Window coverings shall maintain a uniform look throughout Fart Orchard
\$25	\$50	\$100	<ul style="list-style-type: none"> · operating a business in a unit without a business license or in violation of the municipal ordinances, the bylaws, declaration, or rules and regulations
\$100	\$150	\$250	<ul style="list-style-type: none"> · leasing a unit in violation of the provisions of this Restated Declaration
\$100 per month until the third pet is removed.			<ul style="list-style-type: none"> · maintaining three (3) pets in a Unit (in violation of Section 6.10(b) & (c) of the Restated Declaration)
\$200 per month, per pet, for any pet above three pets, until the additional pets are removed.			<ul style="list-style-type: none"> · maintaining four (4) or more pets in a Unit (in violation of Section 6.10(b) & (c) of the Restated Declaration)

EXHIBIT ‘D’

MAINTENANCE CHART

BUILDING & PROPERTY MAINTENANCE

The following chart defines the division of responsibility for maintenance and repair of property in the project/subdivision between the Association and Owner.

	EXTERIOR	HOA	OWNER
1	Maintenance, replace, repair of roofs (including: membranes, sub-roofing, girders, beams & support structures).	X	
2	Maintenance, replacement and repair of Exterior walls (including: siding, stucco, shingles, brickwork, columns & studs).	X	
3	Maintenance, replacement and repair of front steps and sidewalk	X	
4	Maintenance, replacement and repair of concrete footings, foundations and entrees.	X	
5	Maintenance, replacement and repair of water spigot by back doors.	X	
6	Any damage caused to a Unit by a resident's negligence, such as failing to disconnect a hose from a spigot, is the liability of the Unit Owner on which the spigot is located.		X
7	Maintenance, replacement and repair of Unit entrances (including: frames, thresholds, doors, door knobs, locks, hinges & doorbells)		X
8	Replacement and repair of Perimeter Fences (as defined in section 4.7 of the Restated Declaration), and fences that were installed as part of the initial construction of the Project.	X	
9	Replacement and Repair of fences located between two Lots that were not part of the initial construction of the Project.		X
10	Maintenance, replacement and repair of rain gutters and down spouts.	X	
11	Maintenance and repair of balconies	X	
12	Replacement of balconies	X	
13	Replacement, maintenance and repair of exterior doors, hinges, frames, thresholds, locks, doorbells and chimes.	X	
14	Replacement, maintenance and repair of windows, sliding glass doors, screens and frames.		X
15	Replacement, maintenance and repair of all light bulbs located in exterior light fixtures.		X
16	Utility lines (Water, power, gas & telephone) servicing multiple units.	X	
17	Utility lines (Water, power, gas & telephone) servicing individual units.		X
18	Electrical system from the Unit's breaker panel and to all outlets including switches and light fixtures located in the Unit.		X
19	Plumbing fixtures such as faucets, showers, sinks, basins, toilets & tubs		X

20	Replacement, maintenance and repair of front entry railings originally installed by the Association	X	
21	Maintenance, replacement and repair of any television, satellite, cable, internet and any other communications equipment		X
22	Maintenance, replace and repair of Air-Conditioning systems (Complete system inside and outside including electrical system from the meter base to the air conditioner unit, including conduit and all wiring)		X
23	Maintenance, replacement and repair of all Unit owner improvements		X
24	Maintenance and replacement of water, gas and electricity meters		X

	INTERIOR	HOA	OWNER
25	Floor structure (including: concrete, beams & sub-flooring)		X
26	Floor covering (including: wood flooring & carpeting, tile)		X
27	Wall studs & beams forming the exterior wall structure surrounding each unit as well as all load-bearing walls located within each unit to the interior surface of each unit (including sheetrock up to but not including the unfinished surface).		X
28	All interior ceilings, non-load-bearing walls (located within each unit) including wall studs, sheetrock & decorative finishes.		X
29	All interior painting, decorations, cabinets and furnishings from the inside of the unfinished walls and ceilings. This includes all appliances such as dishwashers, garbage disposals, ranges, refrigerators, furnaces, exhaust fans, attic vents, air conditioners, and intercom, telephone, and computer networks. Water pipes and drainage pipes that serve only one Unit are the responsibility of the Owner to the point they join a common pipe.		X
30	Maintenance and repair of water heaters		X
31	Replacement of water heaters		X
32	Maintenance, cleaning and repair of venting serving only one unit, air conditioning units and fireplaces.		X
33	Maintenance, repair and replacement of the gas and electrical system from the gas meter to the gas appliances or from the electric meter to the breaker panel and to all outlets including switches and light fixtures.		X
34	Maintenance, repair and replacement of plumbing fixtures such as sinks, basins, toilets and all interior pipes and valves.		X
35	Repair of cracks or other damage to interior walls, floors or ceilings caused by normal Unit settling.		X
36	Repairs of damage resulting from static water or seepage of water from any underground source, including water and sprinkler system failures.		X

37	Repairs of damage resulting from surface water.		X
38	Interior damage resulting from failures in non-shared utility lines, unless covered by insurance.		X

	GROUPS	HOA	OWNER
39	Lawn, flower shrubs and trees in the Common Areas (except if planted by an Owner.)	X	
40	Any plants, flowers or ground cover planted by an individual Owner.		X
41	Lawn watering system.	X	
42	Snow removal from streets, sidewalks and driveways located in front of a house.	X	
43	Snow removal from any driveways, patios or porches located to the rear or side of a house.		X
44	Roadways, parking lots, curbs and gutters, sidewalks and front steps.	X	

	OTHER	HOA	OWNER
45	Garbage collection.	X	
46	Maintenance and repair of water system from the city water meter to the entrance to the exterior wall of each Unit.	X	

EXHIBIT ‘E’

DEDICATION DEED



W1938579

When Recorded Return To:

Ogden City Corporation
2549 Washington Boulevard, Suite 840
Ogden, Utah 84401
Attention: Andrea W. Lockwood, Esq.

Space above for County Recorder's Use

DEDICATION DEED

FARR ORCHARD OWNERS ASSOCIATION, INC., a Utah nonprofit corporation, Grantor, hereby conveys and warrants against all claiming by, through or under Grantor, and dedicates, to OGDEN CITY, a Utah municipal corporation, Grantee, of 2549 Washington Boulevard, Ogden, Utah 84401, as easements for the perpetual use of the public utilities, to be used for the installation, maintenance, and operation of public utility service lines, the "Common Areas" and "Public Utility Easements" depicted on the following recorded subdivision plats, the boundary descriptions of which are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference:

13-219-0001 to 0036 F X ABS.

Farr Orchard Phase 1, a recorded subdivision located in a part of the east 1/2 of Section 21, Township 6 North, Range 1 West, Salt Lake Base and Meridian. A Planned Residential Unit Development Ogden City, Utah, recorded in the records of Weber County, State of Utah on May 30, 2000, as Entry No. 1708471, in Book 52 at Page 27; and

13-223-0001 to 0029 F X ABS.

Farr Orchard Phase 2, a recorded subdivision located in a part of the east 1/2 of Section 21, Township 6 North, Range 1 West, Salt Lake Base and Meridian. A Planned Residential Unit Development Ogden City, Utah, recorded in the records of Weber County, State of Utah on June 22, 2001, as Entry No. 1778241, in Book 54 at Page 14.

Grantor has executed this Dedication Deed as of April 30, 2003.

GRANTOR:

FARR ORCHARD OWNERS ASSOCIATION, INC., a Utah nonprofit corporation,

By: *[Signature]*
Name: Richard M. Webber
Its: Manager

526050.3

E# 1938579 BK2367 PG1752
DOUG CROFTS, WEBER COUNTY RECORDER
13-MAY-03 126 PM FEE \$.00 DEP CV
REC FOR: OGDEN.CITY

13

Grantee hereby accepts this Dedication Deed as of ^{May 13} April __, 2003.

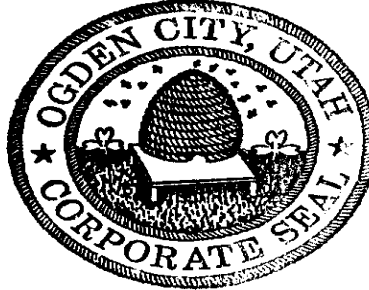
GRANTEE:

OGDEN CITY, a Utah Municipal Corporation

By: Matthew R. Godfrey
Matthew R. Godfrey, Mayor

ATTEST:

Gloria J. Bennett
Gloria J. Bennett, City Recorder



STATE OF UTAH)
 : ss.
COUNTY OF Weber)

The foregoing instrument was acknowledged before me this 30th day of April, 2003, by Richard M. Webber, as Manager of Farr Orchard Owners Association, Inc., a Utah nonprofit corporation.

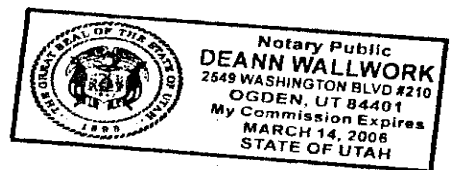
Tawnya Boss
NOTARY PUBLIC
Residing at: _____

My Commission Expires:
12/02/2006



STATE OF UTAH)
 : ss.
COUNTY OF Weber)

On this 13th day of May, 2003, personally appeared before me, Matthew R. Godfrey and Gloria J. Berrett, whose identity is personally known to me and who by me duly sworn did say that they are, respectively, the Mayor and the City Recorder of Ogden City, a Utah municipal corporation, and that the foregoing document was signed by them on behalf of said Ogden City and acknowledged to me that said Ogden City executed the same.



Deann Wallwork
NOTARY PUBLIC

**EXHIBIT A
TO
DEDICATION DEED**

Real Property

The real property referenced in the foregoing instrument is located in Weber County, Utah and is more particularly described as follows:

Farr Orchard Phase 1:

A part of the Southeast Quarter of Section 21, Township 6 North, Range 1 West, Salt Lake Base and Meridian, being more particularly described as follows:

Beginning at the intersection of the East right-of-way line of Monroe Boulevard and the South right-of-way line of Canyon Road (established from the Ogden City Plats), which is 1203.38 feet North 89°56'56" West along the Quarter Section line and 44.80 feet South 0°58'00" West from the East Quarter Corner of said Section 21; Basis of Bearing being the Ogden City Monuments on Sixteenth Streets at Fowler and Brinker Avenues, thence North 0°58'00" East 44.80 feet along East right-of-way- line of Monroe Boulevard; thence South 89°56'56" East 492.73 feet to a point on the southerly right-of-way of Canyon Road; thence along said right-of-way South 57°55'00" West 6.65 feet to an angle point of said right-of-way; thence continuing along said right-of-way South 85°13'00" West 196.71 feet; thence departing from Canyon Road right-of-way line South 15°51'22" East 155.64 feet to a point of tangency with a 415.00 foot radius curve to the right (chord bearing South 10°42'19" East 74.52 feet) thence Southerly 74.62 feet along the arc of said curve through a central angle of 10°18'07"; thence South 05°33'15" East 150.29 feet; to a point of tangency with a 5.00 foot radius curve to the left (chord bearing South 49°40'53" East 6.96 feet) thence Southerly 7.70 feet along the arc of said curve through a central angle of 88°15'15"; thence South 15°44'18" East 30.66 feet; thence South 0°02'28" East 90.86 feet; thence South 89°57'32" West 200.77 feet; thence West 183.63 feet to a point on the East line of Monroe Boulevard; thence North 00°58'00" East 473.20 feet along said East line to the point of beginning.

Contains 4.181 Acres, 35 UNITS.

Farr Orchard Phase 2:

A part of the Southeast Quarter of Section 21, Township 6 North, Range 1 West, Salt Lake Base and Meridian, being more particularly described as follows:

Beginning at the Northeast Corner of Farr Orchard Phase 1, as recorded in the office of the Weber County Recorder, said point being on the South right-of-way line of Canyon Road (established from the Ogden City Plats), which is 912.32 feet North 89°56'56" West along the Quarter Section line and South 20.12 feet from the East Quarter Corner of said Section 21; said

point of beginning being also North 85°13'00" East 292.84 feet from the intersection of the South line of Canyon Road and the East line of Monroe Boulevard; thence running along the South line of Canyon Road North 85°13'00" East 196.71 feet; thence North 57°55'00" East 36.04 feet along said line; thence South 29°47'13" East 77.61 feet to a point on a 285.00 foot radius non-tangent curve, thence northeasterly 10.47 feet along the arc of said curve to the left through a central angle of 02°06'14" (chord bearing North 59°09'39" East 10.46 feet); thence North 58°06'32" East 2.86 feet; thence South 31°53'28" East 30.00 feet to a point on a 5.00 foot radius non-tangent curve to the left thence southerly 7.59 feet along the arc of said curve through a central angle of 86°55'46" (chord bearing South 14°38'39" West 6.88 feet); thence South 28°49'14" East 11.98 feet to a point of tangency with a 50.00 foot radius curve to the right; thence Southeasterly 25.65 feet along the arc of said curve through a central angle of 29°23'19" (chord bearing South 14°07'34" East 25.37 feet); thence South 00°34'06" West 49.50 feet, thence South 89°25'54" East 17.60 feet; thence South 00°34'06" West 228.50 feet; thence North 89°25'54" West 17.60 feet; thence South 00°34'06" West 3.14 feet to a point of tangency with a 5.00 foot radius curve to the left; thence along said curve 7.82 feet through a central angle of 89°38'36" (chord bearing South 44°15'12" East 7.05 feet); thence South 03°20'35" West 30.03 feet; thence South 00°08'00" East 88.68 feet; thence South 89°52'00" West 158.33 feet; thence South 89°57'32" West 60.26 feet; thence North 00°02'28" West 90.86 feet; thence North 15°44'18" West 30.66 feet to a point of non-tangency with a 5.00 foot radius curve to the right; thence Northwesterly 7.70 feet along the arc of said curve through a central angle of 88°15'15" (chord bearing North 49°40'53" West 6.96 feet); to the Easterly right-of-way line of Cobblestone Lane (a private road); thence North 05°33'15" West 150.29 feet along said line to a point of tangency with a 415.00 foot radius curve to the left; thence along the arc of said curve and along said line 74.62 feet through a central angle of 10°18'07" (chord bearing North 10°42'19" West 74.52 feet); thence North 15°51'22" West 155.64 feet to the point of beginning.

Containing 2.943 Acres, 28 Units.

EXHIBIT ‘F’

AGREEMENT FOR WATER MAIN EXTENSION

WATER MAIN EXTENSION CONTRACT

NO.: WM-366-99

FARR ORCHARD - PHASE 1

(@: Fort Lane & Creekside Dr.)

DEVELOPER:

SILVER CREEK DEVELOPMENT

Michael R. Schofield, Gen. Manager

825 25th Street

Ogden, Ut. 84401

Phone: (801) #334-7754

AGREEMENT FOR WATER MAIN EXTENSION

This agreement made this 9th day of September, 19 99,

by and between **OGDEN CITY**, a municipal corporation of Utah, called the **CITY**, and **SILVER CREEK DEVELOPMENT**, owner and developer, hereinafter called the **DEVELOPER**.

WITNESSETH:

WHEREAS, the DEVELOPER has laid out, platted, and subdivided certain lands within the corporate limits of Ogden City pursuant to the provisions of the Ogden Municipal Code - current revisions, (refer to

Subdivision Regulations, Title 14). The lands so subdivided have been designated and are now known as **Farr Orchard - Phase 1**. This subdivision has **thirty-five (35) lots** - lots #1 through #35.

WHEREAS, under the terms of the aforesaid codes, Ogden City required said DEVELOPER to secure to Ogden City the installation of water main extensions with laterals to the property line, together with all necessary or customary accessories and facilities, including fire hydrants, to serve the subdivided property, all under the specifications and inspection of the Ogden City Engineer and at the sole cost and expense of said DEVELOPER, except as hereinafter specifically provided.

WHEREAS, all of the water facilities aforesaid, upon acceptance by the CITY, are to become the property of the CITY and a part of its water system.

NOW THEREFORE, in consideration of the premises and other good and valuable considerations, the parties mutually covenant and agree as follows:

1. Specifications for proper installation and proper material are set forth in the current editions of the following documents. All provisions contained therein, (where applicable to this project), are hereby made a part of this agreement by reference:

Manual of Standard Specifications -- (published by the Utah Chapter of American Public Works Association)

Manual of Standard Plans -- (published by the Utah Chapter of American Public Works Association)

Ogden City Engineering Standards and Amendments for Public Works Projects -- (Ogden City)

The DEVELOPER shall be required to retain a complete and current set of these publications for reference purposes while installing this water main extension. If the DEVELOPER does not already have the current editions, he/she may purchase copies from the Ogden City Engineering Division, 2484 Washington Blvd. - Suite 211, Ogden, Utah 84401 - [(801) #629-8980]. In addition, a copy of the approved construction drawings and specifications will be required to be held at the construction site by the DEVELOPER'S Contractor.

2. The DEVELOPER agrees forthwith to pay to Ogden City Division of Water Utility the following non-refundable Contract Preparation Fee:

Seventy-Five and no/100 Dollars - (\$75.00).

To cover administration, review of utility drawings and preparation of the water main extension contract by the Utility. This fee does *not* cover Utility involvement in shut-downs, line preparations, (ie: pressure testing preparation, chlorination, flushing lines, etc.), or any installations, adjustments, or repairs to any facilities, (ie: adjusting or repairing valves, valve boxes, fire hydrants, etc.). This fee is *non-refundable*.

3. If adjustments or repairs to any valves, valve boxes, or other facilities of the water system extension herein provided for become necessary prior to the time that all the work of the DEVELOPER is complete, whether as a result of street work or otherwise, such adjustments and repairs shall be made by the DEVELOPER at his expense. If the necessary adjustments or repairs are not completed in a timely manner as determined by the City Engineer, the Water Utility may do such work and a **reasonable cost thereof shall be charged to and paid by the DEVELOPER.**
4. The DEVELOPER hereby agrees to save the CITY harmless from all loss or damage occasioned to it or to any person or property by reason of any carelessness or negligence on the part of the DEVELOPER'S contractor, subcontractors, agents, and employees in the performance of the contract; and will, after reasonable notice thereof, defend and pay the expense of defending any suit which may be commenced against the CITY by any third person alleging injury by reason of such carelessness or negligence; and will pay any judgment which may be obtained against the CITY in such suit.
5. The water main and fittings under this agreement will be of eight-inch (8") Ductile Iron, Class 51, unless otherwise specified. Valves must be of a manufacture for which repair parts are common to the Utility's maintenance stock.
6. The DEVELOPER shall extend the 8-inch water main throughout the subdivision as indicated on the approved drawings. Any additional stipulations set forth herein by the CITY shall also be met by the DEVELOPER, who shall be responsible for seeking clarification and approval on any questions or concerns he may have regarding said stipulations.

7. For the purpose of this contract, the DEVELOPER or his contractor shall install engineer approved, imported fill encasement for the external corrosion protection of all buried Ductile Iron pipe, fittings, and appurtenances, according to current Ogden City and AWWA-(C600/3.3) standards and specifications.
8. Two six-inch (6") connections shall be tapped under pressure by the Utility, (one on the 6" main in Brinker Ave. where they will tie in the new 8" main in Creekside Drive, and the other on the 6" main in Brinker Ave. where they will tie in the new 8" main in Fort Lane), the exact locations to be determined by the DEVELOPER and the Utility. The DEVELOPER shall request the taps for connection of the new mains at least forty-eight (48) hours before the work is required. Hookup fees for these connections shall be those in effect at the time the request for the work is made and must be paid at the time the taps are requested.

(Each hookup fee includes: one valve, one tapping sleeve, and one valve box, all of the appropriate size for this hookup.)

After each tap has been made and all line preparation has been accomplished, the contractor will furnish and use a D.I. sleeve to connect the D.I. pipes together.

9. Fire hydrants installed under this contract shall be new and shall be manufactured by Clow Corporation - (Models: F2500 or Medallion), or by Mueller Company - (Centurion Model). Valves for the fire hydrants shall be placed at the main. **If the Utility is required to furnish any material or equipment or perform any work in connection with the installation of the hydrants, the DEVELOPER will be billed and will pay at cost plus 15 percent.** Any adjustments or repairs required on the hydrants after installation will be accomplished by the Utility and **billed to and paid by the DEVELOPER at cost plus 15 percent.**
10. The DEVELOPER shall request the Utility to fill and chlorinate the new main, after which the DEVELOPER or his contractor shall pressure test the new main at their expense and under the

inspection of the CITY. This chlorination must be accomplished before the new main can be connected to the existing water main and before any service lines can be tapped into the main. **The Utility will bill the DEVELOPER, and the DEVELOPER will pay, for labor, materials, and equipment provided by the Utility to fill and chlorinate the new main, at actual cost plus 15 percent.**

11. The water facilities herein provided for will not be open for use or supplied with water for any purpose until all treatment of the same, for purification or otherwise, and all tests have been completed and the same have been found to meet the engineering standards and water purity requirements of the City's Water Utility and Health Department. After completion of the installation the CITY will cause such treatment and tests to be pursued with all reasonable diligence, but not less than seven (7) days will be required for the purpose of making tests before the new facilities will be open for use. **The Utility will bill the DEVELOPER, and the DEVELOPER will pay, for labor, material, and equipment required for the Utility to prepare the new main for use, at actual cost plus 15 percent.**
12. **ALL SERVICE LINE TAPS WILL BE MADE BY THE UTILITY.** Fees for this work will be those in effect at the time the request for the work is made and must be paid at the time the service line tap is requested.
13. Each individual building shall have its own service lateral for culinary water delivery. Laterals must be installed by the DEVELOPER under standard specifications and established Ordinances, Rules, and Regulations of Ogden City and its Water Utility in effect at the date of installation. Service laterals from 1-inch to 2-inch in size will be of **Type K copper** for that portion of the line which lies between the main and the meter and extending from the meter at least three feet (3') towards the property side of meter.

14. Meter boxes for all water meters must be located within the lines of the building served by that meter, and within one foot (1') of back of curb. The Utility recommends that metered service lines be centered on the lot in order to keep meter boxes out of streets, sidewalks, driveways, cemented areas, or other unauthorized areas. If such unauthorized location does result, the correction must be made by the DEVELOPER. The contractor will set the meter box for 1-inch service laterals at the grade established by the DEVELOPER. Any correction in grade setting must be made by the DEVELOPER.
15. Meters for measuring water conveyed through new service laterals shall be placed in accordance with directions of the Utility. Any adjustments necessary for the proper installation of the water meter shall be the responsibility of the DEVELOPER. The water meter shall remain the property of the CITY and be maintained by the Utility. No meter will be set until all applicable meter and hook-up fees have been paid and a water-use signature card has been signed.
16. Upon completion of the subdivision, the DEVELOPER shall submit two (2) sets of drawings (*As-Built*) showing the final locations of all underground work; (the DEVELOPER shall submit: one *As-Built* set/drawing to the City's Engineering Division, and the second *As-Built* set/drawing to the City's Water Utility Division). These drawings shall show pipe size, kind of pipe, location of meter boxes, and other facilities, and must have reference points and measurements so that the water facilities can be located later, on the ground.
17. For the purpose of this agreement, the work on the subdivision shall not be considered complete until the City Engineer has accepted curbs, gutters, sidewalks, and street paving. The Utility, upon notification, shall proceed to make the inspection in accordance to the *General Conditions, Section 00700, Article 14.5* of the previously referenced *Manual of Standard Specifications*. Until the "Notice of Substantial Completion" is issued, and subsequent acceptable completion of the Punch

List Work, the DEVELOPER shall be responsible for the maintenance of all of the water facilities installed under this agreement.

18. In the event the DEVELOPER breaches this agreement, he shall be liable for reasonable attorney fees and court costs to enforce compliance with said agreement.

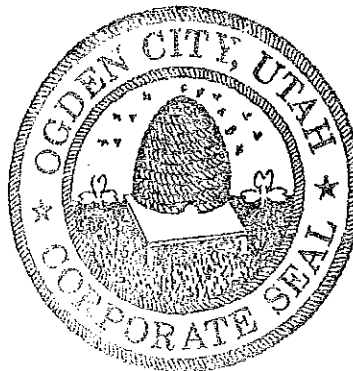
IN WITNESS WHEREOF, this agreement has been executed by the DEVELOPER and the CITY as of the day and year first above written.

OGDEN CITY
A Municipal Corporation

By Marvin L. Zaugg
Marvin L. Zaugg
Water Utility Manager

ATTEST:

Gloria J. Berrett
acting Gloria J. Berrett
City Recorder

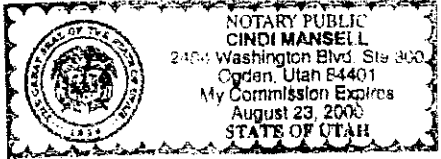


SILVER CREEK DEVELOPMENT

By Michael R. Schofield
Michael R. Schofield
General Manager

STATE OF UTAH)
 : ss
COUNTY OF WEBER)

On the 9th day of September, 19 99,
personally appeared before me ~~Marvin L. Zaugg~~ and ~~Gloria J. Berrett~~, who being by me first severally
duly sworn, on oath, did depose and say that said ~~Marvin L. Zaugg~~ is the Water Utility Manager and that
said ~~Gloria J. Berrett~~ is the City Recorder of Ogden City, the municipal corporation which executed the
foregoing instrument; and that said instrument was signed in behalf of said municipal corporation;
and acknowledged to me by said ~~Marvin L. Zaugg~~ and ~~Gloria J. Berrett~~ that said municipal corporation
executed the same.

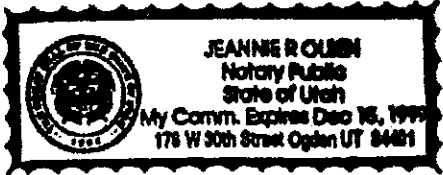


Cindi Mansell
Notary Public
Residing at Ogden, Utah

My Commission Expires:
8-23-2000

STATE OF UTAH)
 : ss
COUNTY OF WEBER)

On the 1st day of September, 19 99,
personally appeared before me ~~Michael R. Schofield~~, who by his signature hereon certifies that he is the
General Manager of Silver Creek Development, Developer of FARR ORCHARD - PHASE 1, and
acknowledges that the foregoing instrument was executed by him on behalf of said Developer.



Michael R. Schofield
Notary Public
Residing at:

My Commission Expires:
12-15-99

EXHIBIT “G”

PET AGREEMENT

FARR ORCHARD

Pet Ownership Agreement

Name: _____ Date: _____

Address: _____

The above named owner(s) or resident(s) agree(s) to abide by the following rules while owning and maintaining a pet at Farr Orchard:

1. The pet will not disturb the other residents at Farr Orchard by creating an unacceptable level of noise.
2. The pet will not defecate on, do damage to, or in any way disturb, the common areas at Farr Orchard. Any owner who allows a pet to defecate on the common area and who does not immediately clean up the mess made by the pet shall pay a fine to the Association pursuant to the Association Fine Schedule.
3. The pet will remain inside the resident's unit at all times it is at Farr Orchard unless it is on a leash AND in the presence of the unit owner or agent of a unit owner.
4. The pet will never be allowed to freely roam in the common areas of Farr Orchard.
5. When applicable, the resident will provide a litter box for the pet inside the unit where the pet resides. The contents of a used litter box shall be placed in the garbage only after first being placed in a tightly secured plastic bag.
6. Whenever the pet is in the Farr Orchard common areas it shall be either (a) carried by the resident or (b) on a leash which is not longer than 10 feet in length and is being held by a resident.
7. The resident understands that the Homeowners Board reserves the right to require removal of any pet if it receives complaints about the pet and the Board determines, in its sole discretion, that the complaints are valid.
8. The resident agrees that it will pay liquidated damages of \$15.00 per day for each day the pet remains in a unit after its removal has been required by the Homeowners Board.

Signed by: _____ Unit Owner/Resident

Number of pets (circle one): 1 / 2

Description (type, size, color): _____

Weight _____ Height (measured at back hips) _____

Approval by Board: _____ Date: _____