



\*W3264433\*

E# 3264433 PG 1 OF 25  
Leann H. Kilts, WEBER COUNTY RECORDER  
21-Nov-22 0356 PM FEE \$132.00 DEP SI  
REC FOR: COTTONWOOD TITLE INSURANCE AGENCY  
ELECTRONICALLY RECORDED

When recorded, return to:

Ogden 3, LLC  
1835 W. 1500 S.  
Salt Lake City, UT 84104

---

## AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR WINSTON PARK

### Table of Contents

ARTICLE 1 DEFINITIONS .....	3
ARTICLE 2 PROJECT DESCRIPTION .....	6
ARTICLE 3 MEMBERSHIP AND VOTING RIGHTS .....	7
ARTICLE 4 PROPERTY RIGHTS IN COMMON AREAS.....	7
ARTICLE 5 BUDGET AND ASSESSMENTS.....	8
ARTICLE 6 DUTIES AND POWERS OF THE ASSOCIATION .....	11
ARTICLE 7 MAINTENANCE .....	14
ARTICLE 8 INSURANCE .....	15
ARTICLE 9 USE RESTRICTIONS.....	15
ARTICLE 10 ARCHITECTURAL CONTROLS .....	17
ARTICLE 11 ENFORCEMENT .....	18
ARTICLE 12 SPECIAL DECLARANT R I G H T S .....	19
ARTICLE 13 RIGHTS OF FIRST MORTGAGEE .....	21
ARTICLE 14 AMENDMENTS.....	22
ARTICLE 15 MISCELLANEOUS .....	22

- EXHIBIT A Legal Description of the Property
- EXHIBIT B Legal Description of Parcel A
- EXHIBIT C Map

This AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR WINSTON PARK ("Declaration") is executed by Ogden 3, LLC, a Utah limited liability company ("Ogden 3, LLC") and shall be effective when recorded in the office of the Weber County Recorder.

### RECITALS

A. Ogden 3, LLC is the sole owner of all of the real property subjected to that Certain Declaration of Covenants, Conditions, and Restrictions for Winston Park subdivision, recorded in the official records of Weber County, Utah, on August 3, 2022, as document No. 3248722 ("Original Declaration"). Ogden 3, LLC desires to amend, restate and supersede said Original Declaration in its entirety with this Declaration.

B. The Declarant identified in the Original Declaration has assigned all of its rights and interests under said Original Declaration to Ogden 3, LLC by that certain Assignment and Assumption of Declarant Rights and Obligations recorded in the official records of Weber County, Utah, on November 21, 2022, as document No. 3264429. All references to "Declarant" hereafter in this Declaration shall refer to and mean Ogden 3, LLC.

C. Capitalized terms in this Declaration are defined in Article 1.

D. The real property situated in Weber County, Utah, described in Exhibit A, attached to and incorporated in this Declaration by reference (the "Property"), is hereby submitted, together with all buildings and improvements previously, now, or hereafter constructed on the Property, and all easements and rights appurtenant thereto, to a residential development consisting of single family units and related Common Areas pursuant to Utah Code Ann. § 57-8a-101 et seq. that shall be known as Winston Park (the "Project").

E. Declarant is the owner of the real property subjected to this Declaration. By signing and recording this Declaration, Declarant subjects the Property to the terms, covenants and restrictions contained herein.

F. Declarant hereby desires to establish for the mutual benefit of all future Owners and Occupants of the Project, certain covenants, conditions, restrictions, easements, rights, privileges, assessments and liens as set forth herein (collectively the "Restrictions"), which shall run with and be a burden upon the real property within the Project.

G. Declarant desires to create an association of homeowners, which entity shall possess the power to maintain and administer the Common Areas, collect and disburse assessments and charges hereinafter provided for, and administer and enforce the provisions of this Declaration.

H. Declarant intends that the owners, occupants, mortgagees, and all other persons hereafter acquiring any interest in the Project shall at all times enjoy the benefits of, and shall hold their interest subject to this Declaration, which is recorded in furtherance of establishing a general plan of planned unit ownership for the Project, and for establishing Rules for the use, occupancy, management, and enjoyment thereof.

I. Declarant explicitly reserves for itself the option in the future to expand the Project. This Declaration shall apply to such additional real property as may be hereafter annexed into the Project as set forth below.

## DECLARATION

NOW, THEREFORE, Declarant does hereby amend, restate and supersede the Original Declaration in its entirety with this Declaration and does hereby declare that the real property within the Project is and shall henceforth be owned, held, conveyed, encumbered, leased, improved, used, occupied, and enjoyed subject to the following covenants, conditions and restrictions. These covenants, conditions, and restrictions are in furtherance of, and the same shall constitute a general plan for the ownership, improvement, sale, use, and occupancy of the Project; they are also in furtherance of and designed to accomplish the desires, intentions, and purposes set forth in the recitals above.

### ARTICLE 1 DEFINITIONS

1.1. Act shall mean 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. Additional Land shall mean, without limitation, any parcel of land that is annexed into the Project by a Supplemental Declaration in accordance with the provisions outlined in this Declaration, which may include but is not limited to that area identified as Parcel A on the Plat and/or identified in Exhibit B. Any and all Owners and Members within the Association shall not oppose any zone change or other actions necessary to add said area(s) to the Project/Association.

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

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

1.5. Association shall mean and refer to the Winston Park Homeowners Association, Inc., a Utah non-profit corporation. Failure of the Association to maintain its corporate status will not result in the dissolution of the Association.

1.6. Board or Board of Directors shall mean and refer to the Board of Directors of the Association as duly appointed and/or elected in accordance with the terms and conditions of this Declaration, the Articles of Incorporation and/or Bylaws of the Association. The Board is the governing body of the Association.

1.7. Board Member shall mean a duly qualified and elected or appointed individual member of the Board of Directors of the Association.

1.8. Bylaws shall mean the Bylaws of the Association as the same may be amended from time to time which can be obtained from the Association upon request.

1.9. Common Areas shall mean any land and the improvements situated thereon, within the Property that Declarant designates and/or are designed as the Project's Common Areas on the Plat, the map attached hereto as Exhibit C (as identified by the diagonal markings), or other recorded instrument and other real property which the Association now or hereafter owns in fee for the benefit of Owners for as long as the Association is the owner of the fee and the land and/or improvement.

1.10. Common Expenses shall mean all sums lawfully assessed against Owners for

expenses of administration, maintenance, management, operation, repair and replacement of the Common Areas which are maintained by the Association; expenses agreed upon as common expenses by the Association or its Board of Directors; expenses declared common expenses by the Declaration or other Governing Documents; and any other charges incurred by the Association or the Board necessary for the common benefit of the Owners.

1.11. Declarant shall mean Ogden 3, LLC, a Utah limited liability company, and any successor in interest.

1.12. Declaration shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions for Winston Park, as may be amended from time to time.

1.13. Design Guidelines shall mean and refer to those requirements governing the location, color, materials, and architectural design of dwellings, structures, and improvements within the Project.

1.14. Governing Documents shall mean the Declaration, Articles of Incorporation, Bylaws, Plat, and any Rules adopted by the Board. The Bylaws and Rules shall comply with the Declaration and in the event of any conflict between documents the laws of the State of Utah, local ordinances and the Declaration shall control.

1.15. Lot shall mean and refer to the subdivided numerated residential building lots depicted on the Plat and any subsequently recorded subdivision plats of any Additional Land annexed into the Project, including all improvements thereon.

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

1.17. Member shall mean and refer to an Owner.

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

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

1.20. Occupant shall mean and refer to any Person, other than an Owner, living, dwelling, or staying in a Lot/residence. This includes, but is not limited to, all lessees, tenants, and the family members, agents, guests, and representatives living, dwelling, or staying in a Lot/residence.

1.21. Owner(s) or Lot Owner(s) shall mean and refer to the record owner, whether one or more Persons, of a fee simple title to any Lot which is a part of the Project, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

1.22. Parcel A shall mean the real property identified as "Parcel A" on Exhibit B attached hereto.

1.23. Property shall mean and refer to the real property legally described in Exhibit A.

1.24. Period of Declarant Control shall mean and refer to a period of time commencing on the date this Declaration is recorded and terminating on the occurrence of the earliest of the following: (1) seven years after Declarant has ceased to offer Lots for sale in the ordinary course of business; (2) Declarant no longer owns any Lots within the Project; or (3) the Declarant executes and records a written waiver of its right to control the Association.

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

1.26. Plat shall mean the official subdivision plat of Winston Park Subdivision, filed and recorded in the official records of the Weber County Recorder's Office and any subsequently recorded subdivision plats of any Additional Land annexed into the Project.

1.27. Project as hereinbefore defined shall at any point in time mean, refer to the Winston Park and shall include the Property, including any additions thereto, together with the buildings, improvements, and permanent fixtures located thereon, and all easements and rights appurtenant thereto.

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

1.29. Rules shall mean and refer to the rules, resolutions, regulations, policies, architectural guidelines, etc. adopted by the Board or the Association.

1.30. Supplemental Declaration shall mean a written instrument recorded in the records of the Weber County Recorder, which refers to this Declaration and which amends, modifies, or supplements this Declaration in accordance with its terms.

## ARTICLE 2 PROJECT DESCRIPTION

2.1. Submission. The Declarant hereby confirms that the Property described with particularly on Exhibit A attached hereto and incorporated herein by this reference is hereby submitted to the Act. The Declarant hereby declares that the Project and all of the Lots shall be held, conveyed, transferred, sold, mortgaged, encumbered, occupied, used, and improved subject to the Restrictions, which Restrictions shall constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Declarant, the Association, and each Owner, including their respective heirs, successors, and assigns.

2.2. Name. The Project, as submitted to the provisions of this Declaration, shall be known as the Winston Park.

2.3. Description of Improvements. The improvements contained in the Project will be located upon the Property. The major improvements contained in the Project will include single family homes, and other common areas/improvements as set forth on the Plat. Other Lots/single family homes and/or Common Area, etc. may be added to the Project on the Additional Land as reserved by the Declarant. There are also Common Areas as further provided herein, along with other improvements detailed on the Plat. All improvements have been and shall continue to be constructed in a style and of materials architecturally compatible with the other improvements on the Project. The Lots, their locations, and approximate dimensions are indicated on the respective Plats.

2.4. Common Areas. The Common Areas of the Project shall be as identified on the Plats, and the map attached hereto as Exhibit C, and as defined in Article 1 above.

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

2.6. Expansion of Project. The Project may be expanded by the Declarant in

accordance with the provisions of Article 12.

2.7. Parcel A. Parcel A is not and shall not be subject to or encumbered by this Declaration until such time as it is expressly annexed into the Project by the owner thereof, in its sole discretion, by a Supplemental Declaration approved and executed by the owner thereof Declarant and/or Association as may be required at the time. Although Parcel A may currently be designated as Agricultural Preservation Open Space and may be subject to an open space agricultural use covenant with Weber County, such covenant shall not be deemed to create any rights or interests in Parcel A (or any portion thereof) for the benefit of the Association or any Owners of property within the Project unless the owner of Parcel A or a portion thereof expressly conveys a specific right or interest by a separate recorded conveyance instrument. When Weber County zoning regulations and designations or an applicable city annexation and zoning regulation allow the Agricultural Preservation Open Space designation of Parcel A to be modified, Parcel A may be rezoned and subdivided and developed as a separate and independent project in accordance with the applicable zoning rules and regulations.

### ARTICLE 3 MEMBERSHIP AND VOTING RIGHTS

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

3.2. Voting Rights. Except as otherwise disallowed in this Declaration or the Bylaws or limited by the Special Declarant Rights reserved by the Declarant, Owners shall be entitled to one (1) vote per Lot owned.

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

3.4. Proxies. An Owner may give his proxy, either specific or general, to another Owner, a third person, or to a contract purchaser or his Lot to vote on all matters coming before the Association for vote provided the same is in writing, signed by the Owner, and is presented to those Association officers conducting such vote or as may be further provided in the Bylaws.

### ARTICLE 4 PROPERTY RIGHTS IN COMMON AREAS

4.1. Easement of Enjoyment. Each Member shall have a right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Each Member shall have an easement of use and enjoyment over the sidewalks within the Project. Any Member may delegate the right and easement of use and enjoyment described herein to any family member, tenant, lessee, or contract purchaser who resides on such Member's Lot.

4.2. Title to Common Areas. The Declarant has or will convey title of various Common Areas to the Association; however, neither such conveyance nor any other provision of the Declaration shall be construed to create a contractual relationship between the Association and

Declarant.

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

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

(b) The right of the Association to dedicate or transfer all or any part of the Common Areas, and any sewer, water and storm drain lines to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. During the Period Declarant Control, any such dedication or transfer may take place in the sole discretion of the Declarant without any assent from the Owners. Following the Period of Declarant Control, any such dedication or transfer must be assented to by 2/3 of the Owners.

4.4. Association Easement. The Association, its Board, employees, agents, and contractors shall have non-exclusive easements to use the Common Areas, **Limited Common Areas**, and Lots to perform their duties as assigned by the Governing Documents.

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

4.6. Easements for Encroachments. If any portion of a Common Area structure or improvement encroaches upon any Lot, or if any structure or improvement of a Lot encroaches upon any other Lot or the Common Area as a result of the manner in which the improvements were initially approved and constructed or due to settling, shifting, alteration, replacement, repair, or restoration by the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist for the life of the improvement or structure.

4.7. Compliance with Restrictions and Rules. Each Owner and Occupant and guest shall comply with the Restrictions imposed by this Declaration. Further, each Owner, Occupant and guest shall fully and faithfully comply with the Association's Rules. During the Period of Declarant Control, the Declarant shall be exempt from the requirements of Utah Code 57-8a-217.

## ARTICLE 5 BUDGET AND ASSESSMENTS

5.1. Annual Budget. The Board shall prepare, or cause the preparation of, and adopt an annual budget for the Association.

5.2. Covenant to Pay Assessments. Each Owner, by the acceptance of a deed to a Lot, whether or not it be so expressed in the deed, hereby covenants and agrees to pay to the Association all Assessments, including without limitation, all Annual, Special, and Individual Assessments described below, and other fees, charges, levies, and fines as may be provided in the Governing Documents.

5.3. Purpose of Assessments. Assessments levied by the Association shall be used for the purpose of promoting the health, safety, and welfare of residents of the Project, including but not limited to the appearance and aesthetics of the Project. The use made by the Association of funds obtained from Assessments may include, but is not limited to: payment of the cost of taxes

and insurance on the Common Areas; maintenance, repair, and improvement of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions, or purposes under the Governing Documents.

5.4. Declarant's Assessment Exemption. The Declarant and any strategic builders designated by Declarant shall not be obligated to pay Assessments on any Lot owned by it until such time as the Declarant elects and only for so long as the Declarant elects.

5.5. Annual Assessments. Annual Assessments shall be made on a calendar year basis. The Board shall give written notice of each Annual Assessment not less than 15 days nor more than 60 days prior to the beginning of the next calendar year. Each Annual Assessment shall be due and payable in monthly installments on the first day of each and every month and no separate notices of such installments shall be required. At least 15 days prior to the effective date of any change in the amount of the Annual Assessment, the Association shall give each Owner written notice of the amount. No Annual Assessment may be increased more than 20% from the previous year without the affirmative vote of the majority of the Owners within the Association.

5.6. Special Assessments. In addition to the Annual Assessments, the Board may levy a Special Assessment payable over such a period as the Board may determine for the purpose of defraying, in whole or in part any expense or expenses not reasonably capable of being fully paid with funds generated by Annual Assessments; the cost of any construction, reconstruction, or unexpected repair or replacement of the Common Areas; or for any other expense incurred or to be incurred as provided in this Declaration. Special Assessments over \$1,000 in a calendar year must be approved and assented to by a majority of the Members present in person or by proxy at a meeting duly called for such purpose. Notice in writing of the amount of any Special Assessments and the time for their payment shall be given as soon as is reasonably possible to the Owners. Payment shall be due on the dates and in the manner determined by the Board and provided in the notice.

5.7. Individual Assessments. In addition to Annual and Special Assessments authorized above, the Board may levy Individual Assessments against a Lot and its Owner for: (a) administrative costs and expenses incurred by the Board in enforcing the Governing Documents against the Owner or his/her Occupants or guests; (b) costs associated with the maintenance, repair, or replacement of Common Areas caused by the neglect or actions of an Owner or his/her Occupants; (c) any other charge, fine, fee, expense, or cost designated as an Individual Assessment in the Governing Documents or by the Board, including, without limitation, action taken to bring a Lot or residence and its Owner into compliance with the Governing Documents; (d) nonpayment of a Reinvestment Fee; (e) costs of providing services to the Lot upon request of the Owner; and (f) attorney fees, court or collection costs, fines, and other charges relating thereto as provided in this Declaration.

5.8. Allocation of Assessments. Except for Individual Assessments, Annual and Special Assessments shall be fixed at a uniform rate for all Lots, unless otherwise provided in the Governing Documents.

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

5.10. Personal Obligation and Lien. All Assessments, together with any interest, late fees, collection costs, and attorney fees if collection efforts become necessary shall be, constitute,



and remain: (a) a charge and continuing lien upon the Lot with respect to which such Assessment is made; and (b) the personal obligation of the person who is the Owner of such Lot at the time the Assessment falls due. No Owner may exempt himself or his Lot from liability for payment of Assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid Assessments, late payment fees, interest, and costs of collection, including reasonable attorney fees, which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore.

5.11. Rules Regarding Billing and Collection Procedures. The Board shall have the right to adopt Rules setting forth procedures for billing and collection of Assessments, provided that such procedures are not inconsistent with the provisions hereof. The failure of the Association to send an invoice to an Owner shall not relieve any Owner of liability for any Assessment or charge under this Declaration, but the Assessment lien therefore shall not be foreclosed or otherwise enforced until the Owner has been given not less than 30 days written notice prior to such foreclosure or enforcement, at the address of the Owner on the records of the Association, of the Assessment or installment and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. A copy of such notice may also be provided to the Occupant(s) of the Owner if the Owner is not a resident at the Project.

5.12. Due Date and Delinquency. Assessments shall be paid in a timely manner. Payments are due in advance on the first day of the month or the first day of such other period established for the payment of Assessments. Payments are delinquent if received more than 14 days from the date that they became due. Whenever an Assessment is delinquent, the Board may at its option invoke any one or more options or all of the sanctions granted in this Article or the Act.

5.13. Collection Charge. If the Association does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply: Delinquent accounts shall be charged a \$25 late fee each month until the Owner's account (including all collection charges, costs, and attorney fees) are paid in full. Interest may accrue on all unpaid balances at the rate of 18% per annum. Collection charges, interest, attorney fees, and/or late fees shall constitute part of the Assessment lien provided above until paid. The Association may by Rule increase the amount of the late fee described above.

5.14. Collection Action at Law. The Association may exercise any or all of the following remedies to collect delinquent Assessments:

(a) The Association may suspend such Owner's voting rights.

(b) The Association shall have a lien against each Lot for any Assessment, late fees, interest and corresponding attorney fees levied against the Lot and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the Assessment, fine, or charge is due. This lien shall arise and be perfected as of the date of the recording of this Declaration. At any time, any Assessment or installment thereof is delinquent, the Association, by and through its Board or any Manager, may file a notice of lien in the deed records of Weber County, Utah against the Lot with respect to which the delinquency pertains. Once filed, such lien shall accumulate all future Assessments or installments, interest, late fees, penalties, fines, attorney fees, and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid.

(c) If the delinquent Owner is leasing his Lot or any portion thereof, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant of

the Owner the rent due or becoming due and the payment of such rent to the Board shall discharge such tenant for rent due and shall discharge the Owner for such Assessments to the extent of the amount so paid.

(d) Payments shall be credited first to collection costs (including attorney fees), then to interest and late fees, then to the oldest assessments, then the most recent assessments.

(e) The Association shall have any other remedy available to it whether provided in the Governing Documents, the Act, other law, or in equity.

5.15 Reinvestment Fee. With the exception of any transfer from Ogden 3, LLC to a third party (including without limitation to STC Holdings, LLC) or any transfer from STC Holdings, LLC to a third party, in addition to all other assessments and upon the conveyance of Lot, a reinvestment fee shall be charged to the buyer or seller upon and as a result of a transfer of a Lot, for the purposes of enabling the Association to pay for one or more of the items identified in Utah Code Section 57-1-46(1)(i)(ii)(A)-(H), as amended or supplemented from time to time.

5.16 Homestead Waiver. Pursuant to Utah Code section 57-8a-301, and to the extent any liens are created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, each Owner waives the benefit of any homestead or exemption laws of the State of Utah now in effect, or in effect from time to time hereafter.

## ARTICLE 6 DUTIES AND POWERS OF THE ASSOCIATION

6.1. Organization of Association. The Association shall serve as the governing body for all Owners. The Association shall make provisions for the maintenance, repair, replacement, administration, and operation of the Common Area and Common Expenses, and other matters as provided in the Act, this Declaration, and the Bylaws. The Association shall have all rights and powers granted to it under the Act and in this Declaration, the Articles, and the Bylaws. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with this Declaration, the Articles, and the Bylaws. Except as specifically authorized in this Declaration, the Articles, or the Bylaws, no Owner or group of Owners shall have authority to take any action on behalf of the Owners, the Association, or the Board.

6.2. Legal Organization. The Association shall be incorporated as a nonprofit corporation. In the event the nonprofit corporate status expires or is invalidated in any manner, the Board of Directors, in its sole discretion, may renew and/or reincorporate the Association. Any such expiration or invalidation shall not relieve any Owner from paying Assessments and abiding by all Restrictions contained in this Declaration or other Governing Documents.

6.3. General Powers and Duties. The Association shall have, exercise, and perform the following powers, duties, and obligations:

(a) The powers, duties, and obligations granted to the Association by this Declaration, its Bylaws, and the Articles of Incorporation;

(b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah;

(c) The powers, duties, and obligations of a homeowners association pursuant to the Act, or any successor thereto;

(d) The powers, duties, and obligations not reserved specifically to the Lot

Owners; and

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

(f) The powers and obligations of the Association may from time to time be amended, repealed, enlarged, or restricted by changes in this Declaration made in accordance with the provisions herein, accompanied by any necessary changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Utah.

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

a) **Maintenance and Services.** The Association shall provide maintenance and services for the Project as provided in Article 7 and other provisions of this Declaration. The Association acting through the Board or its duly authorized agent shall have the right at all times upon reasonable notice of at least 48 hours to enter upon any Lot, without trespass, and regardless of whether or not the Lot Owner or Occupant thereof is present at the time, to fulfill its responsibilities, to exercise its rights, including but not limited to maintain and make repairs to street lights and Common Area improvements. Notice shall not be necessary in case of an emergency originating in or threatening such Lot or residence thereon or any other part of the Project.

b) **Insurance.** The Association shall obtain and maintain in force policies of insurance as provided in this Declaration, the Act, or the Bylaws of the Association. Except as required by the Governing Documents or Utah law, the Association shall have no obligation to obtain or maintain any insurance covering the Lots or other real property or any personal property of any Owner(s), and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance.

c) **Rulemaking.** The Association, through its Board of Directors, shall make, establish, promulgate, amend, and repeal Rules governing the conduct of persons and the operation and use of the Project as it may deem necessary or appropriate in order to assure a clean, aesthetically pleasing, peaceful, and orderly use and enjoyment of the Project. Pursuant to Utah Code §57-8a-218(19), the requirements of Utah Code §57-8a-218(1), (2), (6), and (8) through (14), except subsection (1)(b)(ii), are hereby modified to not apply to the Association.

d) **Assessments.** The Association shall adopt budgets and impose and collect Assessments as provided in Article 5 of this Declaration.

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

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

g) **Employment of Agents, Advisers, and Contractors.** The Association may employ the services of any person or corporation as managers, hire employees to manage, conduct, and perform the business, obligations, and duties of the Association, employ professional counsel and obtain advice from such persons or firms or corporations such as, but

not limited to, community association managers, landscape architects, accountants, recreational experts, architects, planners, lawyers, reserve study specialists, or what is convenient for the management, maintenance, and operation of the Project. Any agreement with a Manager shall not exceed a term of two (2) years, renewable by agreement of the parties for a successive two (2) year term, and shall be terminable by the Association upon no more than 60 days' advanced notice.

h) **Litigation.** The Board may instigate litigation to enforce the provisions of this Declaration or any other common law or statutory right which the Association is granted, except as otherwise provided herein.

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

6.6. **Board of Directors.** The governing body of the Association shall be the Board of Directors. Except where a matter or vote is specifically reserved to the Owners, the Board shall act in all instances on behalf of the Association. Board Members shall be elected pursuant to the provisions set forth in the Bylaws which may set forth requirements for serving on the Board.

Notwithstanding the foregoing, during the Period of Declarant Control, the Declarant shall have the sole authority to appoint Board Members and such Board Members shall not be bound by any qualifications or requirements in the Bylaws, except as required by law.

6.7. **Dispute Resolution.** Declarant, Association, its officers and directors, and all Owners (each a "Bound Party" as used in this Section) agree to encourage the amicable resolution of any disputes, grievances, and claims regarding the design, initial construction, condition, or sale of any part of the Project or any improvements thereon ("Claim(s)") involving any Bound Party without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to the following mandatory procedures for resolving all Claims.

(a) Any Bound Party initiating a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and Respondent referred to herein being individually referred to as a "Party" or collectively referred to as the "Parties") shall notify each Respondent in writing ("Notice"), stating plainly and concisely:

- i. The nature of the Claim, including the Persons involved and Respondent's role in the Claim;
- ii. The legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- iii. The proposed remedy;
- iv. The fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim; and
- v. That the person alleged to be responsible shall have 180 days to cure or resolve the claim.

(b) Within 60 days of providing the Notice, the Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good

faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

(c) In the event that the Claim is not resolved within 60 days following the meeting or in a time period as agreed to by the parties; or if the meeting fails to take place within the time period required above despite good faith efforts, except for any Claim that may be filed by the Association against the Declarant or an affiliate of the Declarant, the Claimant may proceed with legal proceedings against the Respondent following 180 days of the original notice.

(d) Before initiating any legal proceeding for any Claim against the Declarant or an affiliate of Declarant, the Association shall:

- i. Provide full disclosure in writing to all Owners of all material information relating to the Claim, which includes without limitation, a statement describing the nature of the Claim, the manner in which the Claim will be funded and a statement describing any demands, notices, offers to settle or responses to offers to settle made either by the Association or the Declarant or its affiliate, if applicable;
- ii. Call and hold a special meeting of the Owners to discuss the Claim and disclosures, and provide at least 72 hours' notice to each Bound Party of such meeting, and permit a representative of each Bound Party to attend the special meeting;
- iii. Receive approval from at least two-thirds (2/3) vote of the entire voting interest of the Association, who must be present in person or by proxy at the special meeting, to initiate any legal proceeding of the Claim against the Declarant and/or its affiliate, if applicable; and
- iv. Allow the one 180 day right to cure period to expire.

(e) Any post-turnover litigation involving the Bound Parties shall strictly comply with each of the provisions of this Section. The parties hereby covenant, stipulate, and agree that in the event the Bound Parties fail to satisfy the prerequisites set forth herein, the non-compliant party will indemnify, defend, hold harmless, and exculpate the other Bound Party to the fullest extent permissible by law, and the non-breaching Bound Party shall be entitled to recover any and all attorney fees and costs expended as a result of enforcing this Section, which fees and costs may include, without limitation, pre-litigation attorney fees, costs incurred in connection with investigation of potential claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. The Bound Parties further covenant, stipulate, and agree that failure to comply with this Section herein will result in damages to Declarant including, without limitation, reputational harm, lost revenues, and loss of business and sales opportunities.

(f) The dispute resolution procedures in this Section are in addition to and are not superseded by those protections provided to the Declarant by the Act, including, but not limited to, Utah Code § 57-8a-229.

(g) ALL PARTIES HEREBY AGREE TO RESOLVE ANY CLAIM ACCORDING TO THE PROVISIONS OF THIS SECTION AND SUCH PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE THE CLAIM IN ANY MANNER OTHER THAN AS PROVIDED IN THIS SECTION.

6.8. Registration with the State. In compliance with Utah Code § 57-8a-105, the Association shall be registered with the Utah Department of Commerce and shall update its registration to keep any required information current as required by law.

## ARTICLE 7 MAINTENANCE

7.1. Association Maintenance Obligations. The Association shall maintain, repair, and replace all Common Areas within the Project. Additionally, the Association shall maintain, repair, and replace all street lights within the Project and is hereby granted an easement across all Lots within the Project for said purpose. The Common Areas shall be maintained in a safe condition and in a good and workmanlike manner such as to carry out the purpose for which such areas are intended. The Association shall have no obligation to maintain, repair or replace any part of a Lot, residence, or any other landscaping installed by an Owner without the Association's express agreement for such maintenance.

7.2. Services. In the sole discretion of the Board, the Association may provide or contract for such services to be of benefit to the Project, including, without limitation, landscaping and garbage/trash removal services for all Lots.

7.3. Lot Owner Maintenance. Each Owner shall have the obligation to provide maintenance, repair and replacement of their Lot and all improvements thereon including but not limited to: painting, maintenance, repair, replacement and care of roofs, gutters, down spouts, exterior building surfaces, driveways, structural elements of the Lot/residence, foundations, any sidewalk located on the Lot, windows, doors, garage, and utility lines that service the Lot/residence. The Association shall not be responsible to maintain any landscaping on or within the Lot, except at the discretion or approval of the Board.

Owners shall be responsible to maintain, repair, and replace any fences located on their Lot. The cost and responsibility to maintain, repair, and replace any portion of such fence or other improvement, which serves, benefits, or bounds only one Lot shall be borne exclusively by the Lot Owner bounded thereby. When such fences or improvements serve, benefit, or otherwise mark a boundary of two or more Lots, the responsibility and cost to maintain, repair, and replace the shared portion of such fences or improvements shall be borne equally by all Lot Owners bounded thereby.

7.4. Common Area Maintenance Caused by Owner Negligence. If the need for maintenance or repair of Common Areas as specified herein is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the Occupant, family, guests, tenants, or invitees of an Owner, the Board may cause such repairs to be made by the Association and the cost of such maintenance or repair work shall be added to and become an Individual Assessment (as set forth above) to which such Lot is subject.

## ARTICLE 8 INSURANCE

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

## ARTICLE 9 USE RESTRICTIONS

9.1. Use of Common Areas. The Common Areas should be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots. The Association may adopt reasonable Rules regarding the use of the Common Areas.

9.2. Offensive or Unlawful Activities. No noxious or offensive activities shall be carried on upon any Lot, or Common Area, nor shall anything be done or placed on any Lot or Common Area which interferes with or jeopardizes the quiet enjoyment of other Lots or the Common Areas, or which is a source of annoyance to residents.

9.3. Recreational Vehicles. Except for loading and unloading purposes up to 24 hours, boats, trailers, motorhomes, recreational vehicles, large trucks, commercial vehicles, or the like may not be parked within the Project unless parked on or within the Owner's Lot, behind a fence, and substantially screened from view. The Board in its complete and absolute discretion is authorized to determine whether any such screening is satisfactory or not.

9.4. Nuisances. No resident or Owner shall create, maintain or permit a nuisance in, on or about the Project. For purposes of this Section a "nuisance" includes any behavior which annoys, disturbs or interferes with other residents and interferes with their right to the quiet and peaceful enjoyment of their property. A nuisance includes, but is not limited to, the following:

(a) The development of any unclean, unhealthy, unsightly, or unkempt condition on, in or about a Lot or the Common Areas including but not limited to the accumulation of rubbish, unsightly debris, garbage, equipment, or other things or materials that constitute an eyesore as reasonably determined by the Board, along with maintaining any plants, animals, devices or items whose activities or existence in any way is illegal, noxious or dangerous;

(b) Allowing a pet to be unleashed while outside a fenced Lot and/or

(c) allowing a pet to urinate or defecate in the Common Areas or another Lot, or failing to immediately clean any feces deposited by a pet in the Common Area;

(d) Allowing livestock (including cows, goats and sheep) to be kept or bred in the Project; and

(e) Any noise within the project that violates city and county noise ordinances.

9.5. Signs. The Association may regulate and restrict signs in the Project.

9.6. Trash Containers and Collection. All garbage and trash shall be placed and kept in covered containers of a type and style which shall be approved by the Board. Such containers shall be maintained as not to be visible from the street view except to make them available for collection and then only for the shortest time necessary to affect such collection. The Association may adopt additional Rules for the storage and concealment of trash containers.

9.7. Parking. Owners and Occupants must first use their garages before other vehicles may be parked outside of the garage. Overnight parking is prohibited on the streets within the Project. The Board may adopt additional Rules relating to the parking of vehicles within the Project.

9.8. No Patio / Deck Storage. No observable outdoor storage of any kind shall be permitted on front yards, porches, etc., which may be seen from the road or another Lot except for patio furniture and portable barbecue grills in good condition which may be maintained on backyard patios.

9.9. Leases. The leasing of Lots/residences is permitted. Any agreement for the leasing, rental, or occupancy of a Residence (hereinafter in this Section referred to as a "lease")

shall be in writing. Upon request of the Board, a copy of any leasing agreement shall be provided to the Board along with the name and contact information for all adult tenants, vehicle information of the tenants, and any other information deemed necessary by the Board. No Owner shall be permitted to lease his/her Residence for transient, hotel, or seasonal purposes. All leases shall be for an initial term of no less than six (6) months. All leases shall provide that the tenant is subject to and shall abide by the Governing Documents.

9.10. Variances. The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article if the Board determines in its discretion (by unanimous vote): (1) either that the restriction would create an unreasonable hardship or burden on an Owner or Occupant, or that a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete and unreasonable to enforce; and (2) that the activity permitted under the variance will not have any financial affect or any other substantial adverse effect on the other Owners or Occupants of the Project and is consistent with the high quality of life intended for residents of the Project. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then-existing Board. No variance may be granted that is inconsistent with the Act.

## ARTICLE 10 ARCHITECTURAL CONTROLS

10.1. Architectural Control Committee. The Board may serve as or may appoint a three (3) member Architectural Control Committee, the function of which shall be to ensure that all improvements and landscaping within the Project harmonize with existing surroundings and structures (herein the "ACC"). The ACC need not be composed of Owners. If such a committee is not appointed, the Board shall perform the duties required of the ACC.

10.2. Architectural Controls. To maintain a degree of protection to the investment which homeowners in this area may make, homes of superior design are requisite, and designs shall be limited to those approved by the ACC. In the event of any reconstruction of an improvement or a residence due to a casualty, the design, quality, and appearance of the reconstructed home shall be substantially the same as the structure initially built, unless otherwise approved by the ACC. No landscaping, grading, excavation, building, fence, wall, residence, improvement or other structure, or alteration of any kind, shall be commenced, erected, maintained, improved, altered, or made until the construction plans and specifications, have been approved in writing by the ACC. All subsequent additions to or changes or alterations in any building, fence, wall, improvement, or other structure, including exterior color scheme, and all changes in the grade within the Project, shall be subject to the prior written approval of the ACC. Once approved by the ACC, no changes or deviations in or from the plans and specifications shall be made without the prior written approval of the ACC. Subsequent to receiving approval of the ACC and prior to the commencement of construction, each Owner will be responsible for obtaining a building permit from the city.

No construction, reconstruction or modification of a Lot or landscaping may commence without approval by the ACC. Specifications shall give complete descriptions and color samples of materials to be used on the exterior of the residence. The ACC will base its approval of construction plans, specifications, landscaping plans, and other alterations upon compliance with the Design Guidelines, any other guidelines adopted by the Association.

10.3. Design Guidelines. The Board may adopt Design Guidelines for the purpose of maintaining a consistent character and quality of appearance of the improvements within the project.



(a) The Declarant shall have sole and full authority to amend the Design Guidelines during the Period of Declarant Control. Upon termination or delegation of the Declarant's right to amend, the Board shall have the right to amend the Design Guidelines.

(b) Amendments to the Design Guidelines shall apply prospectively only. They shall not require modifications to or removal of any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Design Guidelines as amended.

(c) All landscape walls and fences within the Project shall be constructed of the following approved material: block, decorative block, and vinyl – and all such materials will compliment in color the Owner's home. Chain link fences are prohibited. All gates will be made of metal or vinyl.

(d) Approved construction materials for dwellings and accessory structures within the Project (provided they comply with all other aspects of the Design Guidelines) are brick, rock, stucco and hardie board siding. Aluminum and steel siding is prohibited within the Project.

(e) All additions, accessory structures and outbuildings (such as sheds, etc.) must be constructed in a similar style and with like materials and colors of the Owner's house. The roofline of any additions and outbuildings shall not exceed the height of the primary dwelling.

(f) Front-yard landscaping shall be installed by the Owner, at the Owner's expense, no later than 12 months from taking occupancy. Failure to complete front-yard landscaping as set forth herein may result in the imposition of a fine and/or other corrective measures as imposed by the Association.

10.4. Setbacks and Floor Area Requirements. Setbacks for this Project may vary from the A-1 zone and shall be the greater of those set forth on the Plat (front and rear: 20 ft; side: 6 ft; street-facing side (corner lot): 15 FT) or as required by ordinance and code. The primary dwelling (excluding any garage and any basement) shall have a minimum of three car garage and a minimum floor area of 1,500 square feet above ground.

10.5. Ground Water. The lowest allowable livable finish floor elevation will need to be approved by a geotechnical engineer and county engineer due to ground water table.

10.6. Declarant's Exemption. Notwithstanding the forgoing, the provisions of this Article do not apply to the Declarant during the Period of Declarant Control.

10.7. Variances. The ACC may authorize variances from compliance with any of the architectural provisions of this Declaration or Design Guidelines, in its sole discretion, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental consideration may warrant. If a variance is granted, no violation of the Governing Documents shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance shall not operate to waive any Restrictions of the Governing Documents, other than those specifically identified in the variance, nor shall it affect an Owner's obligation to comply with all governmental laws and regulations.

10.8. Liability for Damages. The ACC, Board and/or the Association shall not be held liable for damages because of any action, inaction, approval, or disapproval by it made pursuant to this Article.

## ARTICLE 11 ENFORCEMENT

11.1. Enforcement of Governing Documents. The Association, Declarant, or any Owner shall have the right to enforce, by proceedings at law or in equity, each provision of this Declaration, including the right to prevent any violation of such, and the right to recover damages and other sums for such violation(s). The Association, Declarant, or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Bylaws and the Rules and any respective amendments thereto. The prevailing party in any action for the enforcement of any provisions of the Governing Documents (including but not limited to litigation and the appeal thereof) shall be entitled to collect court costs and reasonable attorney fees.

## ARTICLE 12 SPECIAL DECLARANT RIGHTS

12.1. Improvements. Declarant hereby reserves the right, without obligation, to construct:

- (a) any improvements shown on a Plat;
- (b) Any Lot or residence upon any portion of the Additional Land, and subject to the requirements of Section 12.2, the addition of the same to the Project by a Supplemental Declaration; and
- (c) Any other buildings, structures, or improvements that Declarant desires to construct on the Project, or any other real estate owned by Declarant or identified as Additional Land, regardless of whether the same ever become part of the Project.
- (d) Expandable Project. The Declarant herewith expressly reserves the right and option to expand the Project in its unilateral discretion by the addition of Additional Land, or portions thereof, and Lots and residences to be constructed thereon, all in accordance with the provision of this Section.
- (e) The Project may be expanded by the addition of real property designated by Declarant.
- (f) Expansion of the Project by the Declarant is without limitation, except as set forth in this Section, and shall be effective without prior approval of the Association or any Owner.
- (g) Declarant's right to expand the Project as provided in this Section shall not expire until the Declarant elects in writing to not add the Additional Land to the Project.
- (h) The Additional Land may be added in total or in part, and in any order as Declarant may determine. Such Additional Land (or any portion thereof) may be added at any time within the period allowed for expansion of the Project.
- (i) All improvements upon Additional Land shall be made in such a manner as to conform to all governmental regulations appertaining thereto, but such improvements may be located upon the Additional Land, or any portion thereof, in such manner as the Declarant deems appropriate in its sole discretion, subject to the requirements contained herein. All additional Lots and residences to be constructed upon Additional Land will be constructed for or are to be designated exclusively for residential use.
- (j) The Declarant simultaneously with the annexation of Additional Land to the Project by Supplemental Declaration and may prepare and record in the Weber County records, a supplemental subdivision Plat pertaining to such Additional Land.
- (k) Simultaneously with the recording of said supplemental Plat, the

Declarant shall duly execute, acknowledge, and record a Supplemental Declaration setting forth that an expansion of the Project has occurred. Such Supplemental Declaration shall include, in addition to any requirements of the Act, the legal description of the Additional Land added to the Project.

12.2. Other Special Declarant Rights. Special Declarant Rights are those rights reserved for the benefit of the Declarant in this Declaration and the Governing Documents and shall include, and regardless of anything in the Declaration to the contrary, the following rights which shall remain in effect during the Period of Declarant Control and for the maximum period allowed by law:

- (a) the right to maintain sales offices, model homes, and signs advertising the Project or any residence/Lot at any location in the Project;
- (b) the right to use easements through the Common Areas as set forth in this Declaration;
- (c) the exclusive right to appoint or remove members of the Board during the Period of Declarant Control;
- (d) unless expressly and specifically bound by a provision of the Governing Documents, Declarant shall be exempt from the provisions of the Governing Documents;
- (e) the right to withdraw land from the Project for up to 15 years from the date this Declaration is recorded in the office of the Weber County Recorder;
- (f) the right to make and adopt Association Rules without being subject to the requirements of Utah Code §57-8a-217; and
- (g) the right to exert any right allowed to the Board or the Association pursuant to the Act and this Declaration.

12.3. Exercising Special Declarant Rights. Declarant may exercise the Special Declarant Rights at any time prior to the later to occur of the date on which the Period of Declarant Control expires or the date when the Declarant relinquishes such rights in writing. Declarant may exercise its Special Declarant Rights in any order, and no assurance is given as to the order in which Declarant will exercise them. If Declarant exercises any Special Declarant Right with respect to any portion of the Project, Declarant may, but is not obligated to, exercise that Special Declarant Right with respect to any other portion of the Project. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this Article and any other right reserved to the Declarant in this Declaration, without the consent of the Association or any of the Owners.

12.4. Interference with Special Declarant Rights. Neither the Association nor any Owner may take any action or adopt any Rules that interferes with or diminishes any Special Declarant right contained in this Declaration without Declarant's prior written consent. Any action taken in violation of this Section shall be null and void and have no force or effect.

12.5. Limitation on Improvements by Association. Until such time as the earlier of the following events occur: (a) termination of the Period of Declarant Control, or (b) such time as Declarant chooses, neither the Association nor the Board shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally constructed or created by Declarant.

12.6. Transfer of Declarant Rights. The Declarant may transfer, convey, and/or assign any and all of its rights, powers and privileges created or reserved under this Declaration to any Person or entity.

12.7. Changes by Declarant. Nothing contained in this Declaration shall be deemed to affect or limit in any way whatsoever the right of the Declarant, its successors or assigns, to sell or to change the location, design, method of construction, grade, elevation, or any other part or feature of a Lot and residence prior to the contracting for the conveyance of the residence to a purchaser.

12.8. Easements Reserved to Declarant.

(a) The reservation to Declarant its successors and assigns, of non- exclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Plat as public utility easements, trails or access, or otherwise designated as an easement area over any road or Common Area on the Project, and over those strips of land running along the front, rear, and/or side of each Lot for the installation of sidewalks, curbs, gutter and related improvements.

(b) The reservation to Declarant its successors and assigns an easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Project and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, street lights, sidewalks, curbs, gutter, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Lot, or in the area or on the area in which the same is located.

(c) The reservation to Declarant its successors and assigns for an easement granting the privilege of entering upon the Common Areas for such purposes and making openings and excavations thereon, which openings and excavations shall be restored in a reasonable period of time, and for such alterations of the contour of the land as may be necessary or desirable to affect such purposes.

(d) The reservation to the Declarant and its successors and assigns, of a non-exclusive easement and right-of-way in, through, over and across the Common Area for the purpose of the storage of building supplies and materials, and for all other purposes reasonably related to the completion of construction and development of the Project and the provision of utility services, and related services and facilities.

(e) Declarant further reserves unto itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Lot and grade a portion of such Lot adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any structure built on such Lot, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

ARTICLE 13 RIGHTS OF FIRST MORTGAGEE

Notwithstanding anything contrary contained herein, the following provisions apply:

13.1. No Priority. No provision herein is intended, nor shall it be construed, to give any Lot Owner, or any other party, priority over any rights of the first Mortgagee of a Lot pursuant to its Mortgage in the case of a distribution to such Lot Owner of insurance proceeds or condemnation awards for losses to or a taking of Common Areas.

## ARTICLE 14 AMENDMENTS

15.1. Amendments by Declarant. During the Period of Declarant Control, the Declaration and the Plat may be amended solely by the Declarant without any additional approval required and without notice to the Members. In addition, during the Period of Declarant Control no other amendment shall be valid or enforceable without the Declarant's prior written consent.

15.2. Amendments by Association. After termination of the Period of Declarant Control, amendments to this Declaration or Plat may be proposed by either a majority of the Board Members or by Owners holding at least 40% of the voting interests of the Association. The proposed amendment must be reduced to writing and must be included in the notice of any meeting at which action is to be taken thereon. Except as otherwise provided herein, this Declaration may only be amended upon the affirmative vote of at least 67% of the voting interests of the Association. No meeting shall be required for an amendment if the required vote for approval is obtained by written consent or ballot. Any amendment(s) shall be effective upon recordation in the office of the Weber County Recorder. In such instrument the Board shall certify that the vote required by this Section for amendment 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 signature used for voting shall be required.

## ARTICLE 15 MISCELLANEOUS

16.1. Interpretation and Severability. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is constructed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any party thereof, and any gender shall include the other gender. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

16.2. Covenants to Run with Land. This Declaration and all provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Association and all parties who hereafter acquire any interest in a Lot or in the Common Areas shall be subject to the terms of this Declaration and the provisions of any Rules, agreements, instruments, and determinations contemplated by this Declaration.

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

16.4. Security. The Declarant or Association shall in no way be considered an insurer or guarantor of security within or relating to the Project, including any Common Area in which the Association may have an obligation to maintain, and the Association shall not be held liable for any loss or damage by reason of any failure to provide adequate security or any ineffectiveness of security measures undertaken. Owner or Occupant agree by purchasing a Lot in this Association that the Association, Declarant, and the Board are not insurers of the safety or well-being of Owners or Occupants or of their personal property, and that each Owner or Occupant

assumes all risks for loss or damage to persons, the Lots, the Common Areas, and to the contents of improvements located thereon to the extent not insured by the Association. EACH OWNER AND OCCUPANT UNDERSTANDS AND ACKNOWLEDGES THAT THE ASSOCIATION, DECLARANT, AND BOARD HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE SECURITY OF THE PROJECT.

16.5. Effective Date. The Declaration and any amendment hereof shall take effect upon its filing in the office of the Weber County Recorder.

IN WITNESS WHEREOF, the undersigned, acting as Declarant, hereby adopts and causes this Declaration to be executed this 18<sup>th</sup> day of November, 2022

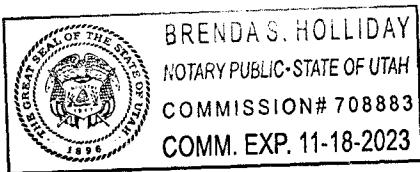
DECLARANT:

Ogden 3, LLC, a Utah limited liability company

By: Wade Rumsey  
Wade Rumsey, Member/Manager

STATE OF UTAH )  
 ) :ss  
COUNTY OF SALT LAKE )

On this 18<sup>th</sup> day of November, 2022, before me personally appeared Wade Rumsey whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is the Member/Manager of Ogden 3, LLC ("Company"), and that the foregoing document was signed by him on behalf of that Company by proper authority and he acknowledged before me that the Company executed the document and the document was the act of the Company for its stated purpose.



B  
NOTARY PUBLIC FOR SIC JF  
My Commission Expires: 11-18-2023

EXHIBIT A  
LEGAL DESCRIPTION

The Property

WINSTON PARK

A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN. SAID TRACT OF LAND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EXISTING FENCE LINE EXTENDED DEFINED AS THE WESTERLY BANK OF A SLOUGH, SAID POINT BEING NORTH 89°15'08" WEST ALONG THE QUARTER SECTION LINE 152.35 FEET FROM THE NORTHEAST CORNER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE BEGINNING AT A POINT ON THE EXISTING FENCE LINE EXTENDED DEFINED AS THE WESTERLY BANK OF A SLOUGH, SAID POINT BEING NORTH 89°15'08" WEST ALONG THE QUARTER SECTION LINE 152.35 FEET FROM THE NORTHEAST CORNER OF SECTION 28, TOWNSHIP 6 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE ALONG SAID EXISTING FENCE AND WESTERLY BANK OF SAID SLOUGH THE FOLLOWING SEVEN (7) COURSES: 1) SOUTH 38°02'07" WEST 414.75 FEET; 2) SOUTH 37°51'05" WEST 188.07 FEET; 3) SOUTH 38°06'04" WEST 513.12 FEET; 4) SOUTH 43°27'51" WEST 42.80 FEET; 5) SOUTH 39°10'43" WEST 191.74 FEET; 6) SOUTH 41°15'28" WEST 152.02 FEET; 7) SOUTH 33°50'24" WEST 167.55 FEET TO POINT ON A BOUNDARY LINE AGREEMENT RECORDED AS ENTRY NO. 3184075 AT THE OFFICE OF THE WEBER COUNTY RECORDER; THENCE NORTH 88°46'49" WEST 814.57 FEET ALONG SAID BOUNDARY LINE AGREEMENT; THENCE NORTH 00°41'23" EAST 1318.75 FEET TO THE QUARTER SECTION LINE; THENCE SOUTH 89°15'08" EAST ALONG SAID QUARTER SECTION LINE 1830.36 FEET TO THE POINT OF BEGINNING.

CONTAINS 40.152 ACRES, MORE OR LESS

LESS AND EXCEPTING all of that parcel identified as "Parcel A" as depicted in the northeast corner of the final Plat recorded in the records of Weber County on July 12, 2022 as Entry No. 3245491, said parcel contains 474,094 SQ FT or 10.884 acres.

19.796.0001 mm 0056

**EXHIBIT B**

**Parcel A**

All of that parcel identified as "Parcel A" as depicted in the northeast corner of the final Plat of Winston Park Subdivision recorded in the records of Weber County on July 12, 2022 as Entry No. 3245491, said parcel contains 474,094 SQ FT or 10.884 acres.



### EXHIBIT C

### Map

1800 SOUTH ST. (PUBLIC ROAD)

