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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
10/22/2020 09:13 AM
FEE \$44.00 Pgs: 32
DEP RT REC'D FOR CLEARFIELD CITY



Davis
COUNTY

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THE DOCUMENT HEREIN RECORDED IS A Declaration
(Document Type)

15-050-0112 thru 0125
Tax Serial Number(s)

**DECLARATION OF COVENANTS,
CONDITIONS & RESTRICTIONS & EASEMENTS**

①
For
Autumn Ridge Estates Phase 5,
a Planned Unit Development In Davis County, Utah

15 -
THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND EASEMENTS FOR AUTUMN RIDGE ESTATES PHASE 5, A PLANNED UNIT DEVELOPMENT (this "Declaration") is made and executed as of the last date set forth in the notarized signature below, by Hamblin Investments, Inc. and Mike Schultz Construction, Inc. Utah corporations (the "Declarants").

RECITALS:

(A) This Declaration will take effect on the date recorded at the office of the Davis County Recorder's Office (the "Effective Date").

(B) The Declarants are the record owners of certain real property located in Davis County, Utah and more particularly set forth in **Exhibit "A"** (the "Property").

(C) Declarants desires to subject the Property to the terms of this Declaration. Declarants intend to develop a residential subdivision on the Property pursuant to the Community Association Act, Utah Code Sections 57-8a-101, *et. seq.* Declarants will develop and convey all of the Lots within the Subdivision subject to a general plan of development, and subject to certain protective covenants, conditions, restrictions and easements, as set forth in this Declaration, as amended from time to time, which are deemed to be covenants running with the land mutually burdening and benefitting each of the Lots within the Subdivision. Common Areas are those areas that are depicted in the recorded Plat(s), as amended, and as described in this Declaration. Declarants reserve the right to develop additional phases within the Property pursuant to the Community Association Act and this Declaration. The Subdivision does not constitute a cooperative.

(D) Declarants have deemed it desirable, for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the powers to maintain and administer the Common Areas and otherwise administer and enforce the provisions of this Declaration. For such purposes, Declarants will cause to be registered with the Utah Department of Commerce Autumn Ridge Estates Phase 5 Homeowner Association, Inc. (the "Association").

(E) The Association is governed by the terms of this Declaration, the Articles of Incorporation for Autumn Ridge Estates Phase 5 Homeowner Association, Inc. ("Articles"), and the Bylaws for Autumn Ridge Estates Phase 5 Homeowner Association, Inc. ("Bylaws"), which Bylaws are attached hereto as **Exhibit "B"** and shall be recorded in Davis County Recorder's Office contemporaneously with the recording of this Declaration.

(F) Declarants declares that the Property shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved, subject to the following easements,

restrictions, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Property, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property or any portion thereof. The covenants, conditions, restrictions, reservations, easements and equitable servitudes set forth herein shall run with each Lot located on the Property, including any additions thereto, and shall be binding upon all persons having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of every portion of the Property and any interest therein; and shall inure to the benefit of and be binding upon Declarants, and its successors in interest; and may be enforced by the Association and the Declarants and their successors in interest.

(G) Notwithstanding the foregoing, no provision of this Declaration shall prevent the Declarants from doing any of the following, which shall be deemed to be among Declarants reserved rights in addition to such rights as may be described elsewhere in this Declaration: (1) installation and completion of the Subdivision Improvements; (2) use of any Lot owned by the Declarants as a model home, or for the placement of a temporary construction or sales office; (3) installation and maintenance of signs incidental to sales or construction which are in compliance with applicable Clearfield City or Davis County ordinances; and (4) assignment of Declarants rights under this Declaration in whole or part. This Declaration shall be binding upon the Declarants, as well as its successors in interest, and may be enforced by the Declarants or the Association.

(H) These Recitals are made a part of this Declaration.

COVENANTS, CONDITIONS AND RESTRICTIONS

ARTICLE I DEFINITIONS

1.0) Unless the context clearly requires the application of a more general meaning, the following terms, when used in the Declaration, shall have the following meanings:

(A) "Act" means the Community Association Act, Utah Code Ann. Sections 57-8a-101 *et. seq.*

(B) "Architectural Control Committee" or "ACC" shall mean the Architectural Control Committee created by this Declaration, the Bylaws, and/or Articles.

(C) "Assessment" shall mean any monetary charge, fine or fee imposed or levied against an Owner by the Association, as provided in the Governing Documents, regardless of whether said assessment is identified as an assessment, special assessment, individual assessment, reserve assessment, capital improvement assessment, fine, late fee or other charge.

(D) "Articles" shall mean the Articles of the Association, as amended from time to time.

(E) "Association" shall mean Autumn Ridge Estates Phase 5 Homeowner Association, Inc., and as the context requires, the officers or directors of that Association.

(F) "Board" or "Board of Directors" shall mean the duly elected and acting Board of Directors of the Association. (G) "Bylaws" shall mean the Bylaws of the Association, as amended from time to time, a copy of which is attached hereto as **Exhibit "B."**

(H) "City" shall mean Clearfield, Utah and its appropriate departments, officials and boards.

(I) "County" shall mean Davis County, Utah and its appropriate departments, officials and boards.

(J) "Common Areas" shall mean all property designated on the recorded Plat(s) or described in this Declaration as Common Area, being intended ultimately to be owned by the Association for the common use and enjoyment of all Owners, together with all improvements thereon and all of the easements appurtenant thereto, including, but not limited to: any detention basin(s), private utility lines (not owned and maintained by the Clearfield City/Davis County), community signage, and open space and facilities. The Association shall maintain the Common Areas.

(K) "Common Expenses" means any and all costs, expenses and liabilities incurred by or on behalf of the Association, including, without limitation, costs, expenses and liabilities for (A) managing, operating, insuring, improving, repairing, replacing and maintaining the Common Areas; (B) providing facilities, services and other benefits to Owners as set forth in this Declaration; (C) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; (D) levying, collecting and enforcing the assessments, charges, fines, penalties and liens imposed pursuant hereto; (E) operating the Association; and (F) creating reserves for any such costs, expenses and liability as required by this Declaration or the Act.

(L) "Declarants" shall mean and refer to Hamblin Investments, Inc. and Mike Schultz Construction, Inc. and its successors and assigns.

(M) "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions and Easements for Autumn Ridge Estates Phase 5, a Planned Unit Development, together with any subsequent amendments.

(N) "Dwelling" shall mean the single-family residence built or to be built on any Lot, together with all Improvements located on or with respect to the Lot concerned that are used in connection with such residence such as appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, furnaces, stoves, fixtures, etc. serving that Dwelling shall be considered part of the Dwelling. All driveways, sidewalks, pipes, wires, conduits, or other public utility lines or installations constituting a part of the Dwelling or serving only the Dwelling shall be part of the Dwelling.

(O) "Governing Documents" shall mean this Declaration, Bylaws, Articles, Rules, and any other documents or agreements binding upon an Owner.

(P) "Improvement" shall mean all structures and appurtenances of every type and kind, including but not limited to buildings, Dwellings, garages, walkways, retaining walls, driveways, fences, landscaping, decks, stairs, poles, lighting, signs, satellite dishes or other antennas, and any mechanical equipment located on the exterior of any building.

(Q) "Lot" shall mean any numbered building Lot shown on any official and recorded Plat(s), including the Dwelling and all Improvement located thereon.

(R) "Manager" shall mean any entity or person engaged by the Board of Directors to manage the Project.

(S) "Member" shall mean and refer to every person who holds membership in the Association, including an Owner and the Declarants as set forth herein.

(T) "Owner" shall mean and refer to the person who is the Owner of record (in the office of the Davis County Recorder of Davis County, Utah) of a fee simple or an undivided interest in any Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term "Owner" shall not mean or include a mortgagee or a beneficiary of trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

(U) "Person" shall mean a natural person or any legal entity with a right to hold title to real property in its own name in the State of Utah.

(V) "Plat(s)" shall mean an official and recorded plat of Autumn Ridge Estates Phase 5, including all subsequent phases when recorded, as approved by Clearfield City and recorded in the office of the Davis County Recorder, as it may be amended from time to time.

(W) "Property" shall have the meaning set forth in the Recitals.

(X) "Rules" mean any instrument adopted by the Board for the regulation and management of the Association as provided in the Governing Documents.

(Y) "Subdivision" or "Project" shall mean all phases of Autumn Ridge Estates Phase 5 and all Lots, and other property within the Subdivision, as shown on the Plat(s) and any future Plat(s) covering the Property.

(Z) "Subdivision Improvements" shall mean all improvements to be installed outside the boundaries of Lots or within easements as identified on the Plats that are necessary to provide public road access and/or private road access and utility service to the Lots, and including other construction work required to comply with any conditions

of Clearfield City or Davis County or other governmental agencies to the approval of the Subdivision or any Plat(s) thereof.

ARTICLE II EASEMENTS

2.1) Easement Concerning Common Area. Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Area. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom, or encumbered, pledged, assigned or otherwise alienated by an Owner. Any Owner may temporarily delegate the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such Owner's Lot. Notwithstanding the foregoing, no Owner shall have any right or interest in any easements forming a portion of the Common Area except for the necessary parking, access, and utility easements for use in common with others.

2.2) Limitation on Easement. An Owner's right and easement of use and enjoyment concerning the Common Area shall be subject to the following:

(a) The right of the Association to govern by Rules the use of the Common Area for the Owners so as to provide for the enjoyment of said Common Areas by every Owner in a manner consistent with the preservation of quiet enjoyment of the Lots by every Owner.

(b) The right of the Association to suspend an Owner's right to the use of the Common Areas, or any amenities included therein, for any period during which an Owner is in violation of the terms and conditions of the Governing Documents or delinquent in the payment of a levied assessment or fee.

(c) The right of Clearfield City, Davis County, and any other governmental or quasi-governmental body having jurisdiction over the Property, to enjoy access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Common Areas for the purpose of providing police and fire protection, utility access/installation, and providing any other governmental or municipal service.

2.3) Reservation of Access and Utility Easements. Declarants hereby reserve an easement for access and utilities (including but not limited to: electrical, gas, communication, phone, internet, cable, sewer, drainage and water facilities) over, under, along, across and through the Property, together with the right to grant to Clearfield City and Davis County, or any other appropriate governmental agency, public utility or other utility corporation or association, easements for such purposes over, under, across, along and through the Property upon the usual terms and conditions required by the grantee thereof for such easement rights, provided, however, that such easement rights must be exercised in such manner as not to interfere unreasonably with the use of the Property by the Owners and the Association and those claiming by, through or under the Owners or the Association; and in connection with the installation,

maintenance or repair of any facilities as provided for in any of such easements, the Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the approximate condition of the Property immediately prior to the exercise thereof. Each Owner in accepting the deed to a Lot expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way.

2.4) Easements for Encroachments. If any part of the Common Areas as improved by Declarants now or hereafter encroaches upon any Lot or if any structure constructed by Declarants on any Lot now or hereafter encroaches upon any other Lot or upon any portion of the Common Area, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure on any Lot shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon any other Lot or upon any portion of the Common Area due to such reconstruction shall be permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

2.5) Easements for Construction and Development Activities. Declarants reserve easements and rights of ingress and egress over, under, along, across and through the Property and the right to make such noise, dust and other disturbance as may be reasonably incident to or necessary for the (a) construction of Dwellings on Lots, (b) to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising signs on the Common Area with respect to the sales of Lots, or other property in the Project, (c) improvement of the Common Area, and construction, installation and maintenance thereon of roadways, walkways, buildings, structures, landscaping, and other facilities designed for the use and enjoyment of some or all of the Owners, and (d) construction, installation and maintenance on lands within, adjacent to, or serving the Property of roadways, walkways, and other facilities, planned for dedication to appropriate governmental authorities.

2.6) Easement in Favor of Association. The Lots and Common Area are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

(a) For inspection during reasonable hours of the Lots and Common Area and in order to verify the performance by Owners or other persons of all items of maintenance and repair for which they are responsible;

(b) For inspection, maintenance, repair and replacement of portions of the Common Area;

(c) For correction of emergency conditions on one or more Lots or on portions of the Common Area;

(d) For the purpose of enabling the Association, the Architectural Control Committee or any other committees appointed by the Association to exercise and discharge during reasonable hours their respective rights, powers and duties;

(e) For inspection during reasonable hours of the Lots and Common Area in order to verify that the Owners and occupants, and their guests, tenants and invitees, are complying with the provisions of the Governing Documents.

2.7) Income Generated from Service Providers. Declarants, as owner of the real property at the time it is annexed into the Subdivision through recordation of a plat, which includes the dedication of certain utility easements to Clearfield City or Davis County, may negotiate terms with service providers that desire to install infrastructure to provide services to owners in the Subdivision. During the Declarants Control Period, any income gained from these negotiations with service providers by Declarants may be retained by the Declarants.

ARTICLE III COMMON AREAS & MAINTENANCE

3.1) Common Areas. The Common Areas consist of areas designated as Common Areas on the recorded Plat(s) or described in this Declaration, including any structures related to the operation or maintenance of the Common Areas, together with any rights of way and utilities, as shown on the recorded Plat(s). Notwithstanding anything contained in this Declaration to the contrary, all Common Areas appurtenant to each recorded Plat of the Project shall be conveyed to the Association upon recordation of a Plat depicting such Common Areas, reserving all easements as set forth in this Declaration.

(a) Except as otherwise provided in this Declaration, the Association, or its duly designated agent, shall maintain all Common Areas, including, without limitation, the improvements and landscaping located thereon in good order and repair and shall otherwise manage and operate all Common Areas as it deems necessary and appropriate. The Association shall have the authority to assess its members for the costs of said maintenance in accordance with the terms of this Declaration.

3.2) Landscaping. The Association shall perform general landscaping maintenance within the Common Areas. The Association may adopt Rules to add further detail with regard specific landscape maintenance services provided by the Association.

(a) General landscaping within the Common Areas includes Parcel A which encompasses the retention basin, the retention basin overflow, the retention basin drainage and the retention basin easement. The Association will maintain the retention basin overflow and drainage area as well. This includes the overflow and drainage area/easement that runs through Autumn Ridge Phase 1 Lot 4.

ARTICLE IV OWNERS' MAINTENANCE OBLIGATIONS

4.1) Duty to Maintain. It is the obligation of each Owner to maintain his Lot, Dwelling and Improvements located thereon in a clean and sanitary condition, free of pests and rodents, and uncluttered at all times in order to preserve and enhance the enjoyment of the Project.

4.2 Repairs by Association. In the event that an Owner permits his Lot or Improvements to fall into a state of disrepair that is dangerous, unsafe, unsanitary or unsightly condition or fails to comply with any other covenant or restriction in violation of this Declaration, the Association may give written notice to the Owner describing the condition complained of and demand that the Owner correct the condition within 30 days. If the Owner fails to take corrective action, the Association shall have the right, but not the obligation, to enter upon the offending Owner's Lot and take corrective action to abate the condition. All costs of abatement shall be charged to the Owner, who agrees to promptly pay the reasonable costs of any work performed under this provision, plus 15%. In addition, each Owner hereby grants to the Association a lien on the Lot and any improvements to secure repayment of any sums advanced pursuant to this section, which lien may be foreclosed at any time by the Association in the manner prescribed in Utah for the foreclosure of mortgages. Alternatively, without requiring foreclosure, the Association may seek collection of sums advanced directly from the Owner of the Lot in question. Unpaid amounts will bear interest from the date advanced at the lawful judgment rate under applicable state law.

4.3) Alterations of Exterior Appearance. The Owners will maintain their Lots and Improvements in substantially the same condition and appearance as that approved by the Board. No subsequent exterior alterations, improvements or remodeling, whether structural or changes in landscaping, paint color or materials will be made without the advance consent of the Board. Declarants shall be exempt from this provision.

4.4) Repair Following Damage. In the event of casualty loss or damage to the improvements, the Owner will be entitled to reconstruct the Improvements as they existed prior to the damage or loss without review by the Board, provided however that alterations or deviations from the original approved plans will require review. Nothing in this Declaration is intended to prevent an Owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent injury or dangerous conditions following loss or damage, before re-construction begins. Such temporary measures may be taken without the consent or approval of the Board, provided that any such measure must be of a temporary nature, and repair or reconstruction must begin as soon as circumstances will permit. Unless delayed by Clearfield City/Davis County approval or insurance carrier approval, no damaged structure will be permitted to remain on any Lot for more than 90 days without repairs commencing and any damaged structure which does remain unrepaired after 90 days following the occurrence of damage is deemed a nuisance which may be abated by the Association.

ARTICLE V MEMBERSHIP

5.1) Membership in the Association shall at all times consist exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner has an ownership interest in a Lot and such membership shall automatically terminate when the Owner cease to have an ownership interest in the Lot. Upon the transfer of an ownership interest in a Lot the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Lot is held by more than one Person, the membership appurtenant to that Lot shall be shared by all such Person in the same proportional interest and

by the same type of tenancy in which title to the Lot is held. Notwithstanding the foregoing, the Declarants shall also be granted voting rights as a Class "B" Member, as defined below.

ARTICLE VI VOTING

6.1) The Association shall have two (2) classes of voting membership, Class "A" and Class "B", as follows:

(a) Class "A". Class "A" Members shall be all Owners with the exception of Class "B" membership, if any. Class "A" membership shall be entitled to one (1) equal vote for each Lot in which they are an Owner. Since an Owner may be more than one Person, if only one of such Person(s) is present at the meeting of the Association that Person shall be entitled to cast all votes appertaining to that Lot. But if more than one of such Person(s) is present, the votes appertaining to that Lot shall be cast only in accordance with the agreement of a majority of them, and such consent shall be conclusively presumed if any one of them purports to cast the votes appertaining to that Lot without protest being made forthwith by any of the others to the person presiding over the meeting. The votes appurtenant to any one Lot may not be divided between Owners of such Lot or with respect to matters before the Association, and all such votes appurtenant to any one Lot shall be voted in one block. If the vote of a majority of the owners of a Lot cannot be determined, no vote shall be cast in relation to such Lot.

(b) Class "B". The Class "B" Member shall be the Declarants. In all matters requiring a vote, the Class "B" membership shall receive one hundred (100) votes for each recorded Lot owned by Declarants. The Class "B" membership shall also be entitled to appoint the members of the Board and Association during the Class "B" Control Period.

ARTICLE VII CONTROL PERIOD

7.1) The Class "B" Control Period runs until ninety (90) days after the first to occur of the following:

(a) When the total number of votes for the Class B Member is less than the total number of votes for the Class A Members; or

(b) When, at its discretion, the Class B Member so determines.

7.2) Notwithstanding anything to the contrary in this Declaration, Declarants may exercise its discretionary termination of control in whole or in part as to any portion of the Subdivision at its sole election and determination. In doing so as to a portion of the Subdivision, it does not waive any reversionary or remaining control as to all other portions of the Subdivision, the control of which is not expressly terminated by the Declarants.

ARTICLE VIII HOMEOWNER ASSOCIATION

8.1) Organization. The Association has been created to effectively enforce the Governing Documents and shall operate as a non-profit corporation. The Association shall be comprised of the Owners within the Project, and is established for the benefit of the Owners and the enforcement of the Governing Documents. Membership in the Association is deemed an appurtenance to the Lot, and is transferable only in conjunction with the transfer of the title to the Lot. The Association shall serve as the organizational body for all Owners.

8.2) Enforcement Powers. The Association shall have all powers granted to it by the Governing Documents and the Act to enforce these covenants and restrictions by actions in law or equity brought in the name of the Association, and the power to retain professional services needed to the enforcement of the Governing Documents and to incur expenses for that purpose, including but not limited to: (1) record, lien, foreclose and other enforcement and collection actions against an Owner and their Lot; (2) initiate legal or similar proceedings; (3) impose fines; (4) collect any rents directly from tenant for past due assessments; (5) terminate an Owners' right to receive utility service paid as a common expense (with the exception of water, sewer, power and natural gas); (6) terminate an Owner's right to utilize Common Area and/or amenities; and (7) any other action or remedy allowed by the Governing Documents or Utah law.

(a) The Association shall have the exclusive right to initiate enforcement actions in the name of the Association. The Association may appear and represent the interest of the Project at all public meetings concerning zoning, variances, or other matters of general application and interest to the Owners.

(b) The Association shall have the authority to initiate and compromise claims and litigation on behalf of the Association resulting from the enforcement of the Governing Documents. In the event that the Association initiates legal action against a specific Owner or Owners to enforce these Governing Documents, whether or not such action results in the commencement of a formal legal proceeding, the Association shall have the right to assess the costs of such litigation, dispute, or enforcement action, including reasonable attorney fees, against the Owner(s) or Lot(s) in question and collect those assessment in any manner authorized in the Governing Documents or Utah law.

(c) The Board shall be afforded discretion to utilize its reasonable judgment to determine whether and how to: impose fines, record liens, pursue legal action; otherwise enforce the Governing Documents; or when and how to settle or compromise claims.

8.3) Assessments. Assessments will be made to meet the anticipated and recurring costs, expenses and Common Expenses of the Association. The Association has the power to levy assessments against each Lot as necessary to carry out its functions. Assessments shall be levied against all Lots in the Property, whether vacant or improved. Each Owner shall by acquiring or in any way becoming vested with his/her interest in a Lot, be deemed to covenant and agree to pay to the Association the assessments described in these covenants, together with late payment fees, interest and costs of collection (including reasonable attorney fees), if and when applicable.

(a) All such amounts shall be, constitute and remain:(a) a charge and continuing lien upon the Lot with respect to which such assessment is made until fully paid; and (b) the personal, joint and several obligations of the Owner or Owners 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 in 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 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 therefor.

(b) Special Assessment. The Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required repairs or replacement of the Common Areas.

(c) Individual Assessment. The Association may levy individual assessments on every Lot, Owner or occupant that shall cause any damage to the Project or otherwise causes the Association to incur any individual expense for maintenance, repairs, or enforcement action taken under the provisions of the Governing Documents. The amount of any such individual assessments shall be determined by the cost of such repairs, maintenance or enforcement action, including all overhead and administrative costs (including reasonable attorney fees), and shall be allocated among the affected Owner(s) or Lot(s) according to the cause of damage, maintenance, repair work or enforcement action, as the case may be, which individual assessment may be levied in advance of the performance of work.

(d) Reserve Fund. The Association may levy a reserve fund assessment, as set forth in this article.

(e) The Association may levy other assessments or fees, as authorized by the Governing Documents.

8.4) Budget. The Board is authorized and required to adopt a budget annually, which shall be presented to the Owners at a meeting of members.

(a) The Board may revise the approved budget from time to time as necessary to accurately reflect actual and/or anticipated expenses that are materially greater than previously budgeted.

(b) The budget shall estimate and include the total amount for the Common Expenses, shall contain an appropriate amount for reserves, and may include an amount for other contingencies. The budget shall also be broken down into reasonably detailed expense and income categories.

(c) Unless otherwise established by the Board, regular Assessments shall be paid in equal monthly installments.

8.5) Reserve Fund Analysis. Following the Class B Period, the Board shall cause a reserve analysis to be conducted no less frequently than every six (6) years to analyze the cost of repairing, replacing or restoring Common Area that have a useful life of three years or more and a remaining useful life of less than 30 years. This reserve analysis should be reviewed no less frequently than every three (3) years and updated if necessary. The Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the reserve analysis.

8.6) Reserve Fund Account Creation. The Board shall create a reserve fund account that is separate and distinct from the Association's general account, which account shall be funded from the reserve fund assessments. The amount of the reserve fund assessment shall be a separate line item in the approved budget. The Board shall cause an assessment to be made against all Owners in an amount sufficient, within the Board's discretion, to fund the reserve account.

8.7) Reinvestment Fee. With the exception of those Lots conveyed by Declarant or Declarant Related Entities, the Board shall levy a one-time reinvestment fee when a change in ownership of a Lot occurs in the amount of \$400, unless a different amount is adopted by the Board.

8.8) Date of Commencement of Assessments. Assessments provided for herein shall commence as to each Lot on the first day of the first month following the effective date of the first budget. Assessments shall be due and payable in a manner and on a schedule, as the Board may provide. Notwithstanding, Assessments for those Lots owned by Declarants or their assigns, successors, subsidiaries, related construction entities, or other entities established by Declarants, or Declarants members, for the purpose of constructing Dwellings on the Lot (collectively "Declarants Related Entities") shall not commence until the completed Dwelling is conveyed to an Owner that is not the Declarants or a Declarants Related Entity. No amendment of this Declaration changing the allocation assessments with regard to Declarants or Declarants Related Entities shall be valid without the consent of the Declarants.

8.9) Fines. Following notice as required by the Act, the Association shall have the power to assess a fine against an Owner (or their Lot) for a violation of the terms and conditions of the Governing Documents in an amount set by the Board.

8.10) Hearing Process. The Board shall have authority to create a reasonable hearing process, consistent with the Act, applicable when the Association takes an adverse action related to any particular Owner(s).

8.11) Association Rules. The Board from time to time and subject to the provisions of the Governing Documents, may adopt, amend, repeal and enforce Rules governing: (a) the use of the Common Areas; (b) the use of any facilities owned by the Association; (c) the collection and disposal of refuse; (d) the maintenance of animals in the Project; (e) collection policies and

procedures; and (f) other matters concerning the use and enjoyment of the Property and the conduct of residents, as deemed necessary by the Board. The Rules may supplement, clarify and add detail to issues addressed in Governing Documents. However, the Rules may not contradict the Governing Documents.

(a) During the Class B Period, Declarants shall be exempt from the rule making procedure required by Utah Code § 57-8a- 217.

8.12) Statement of Account & Payoff Information. Upon a written request from an Owner that the Association provide the Owner with a statement of his/her account, the Association may charge a fee, not to exceed \$10.00, for providing such statements. In addition, when a request is made to the Association to provide payoff information needed in connection with the financing, refinancing, or closing of a Lot Owner's sale of his/her Lot, the Association may charge a fee not to exceed \$50.00.

8.13) Availability of Documents. The Association shall make appropriate documents available to Owners (and their lenders, insurers and/or authorized agents) consistent with the Act and the Utah Revised Non-Profit Act. The Board may adopt a record retention policy to govern its record retention procedures.

8.14) Indemnity of Association Board and Officers. The Association will indemnify the officers, agents and Board of the Association against any and all claims arising against them personally which are a result of the good faith exercise of the powers, duties and responsibilities of their office under the Governing Documents.

8.15) Election, Notice of Election, Notice of Meeting and Special Meetings. Election procedures and notice of any meeting shall be conducted as set forth in the Articles of Incorporation and Bylaws of the Association.

8.16) Number of Board, Term of Office. The appointment, election and term of the Members of the Board are set forth in the Bylaws and Articles. Members of the Board of Directors may serve consecutive terms, and may also serve as officers of the Association.

8.17) Independent Accountant/Bookkeeper. The Association may retain the services of an independent accountant or bookkeeper to assist the Board of Directors and officers to maintain accurate financial records of the Association.

8.18) Maintenance of Common Areas and Easements. The Association will maintain all common areas, including Parcel A which encompasses the retention basin, the retention basin overflow, the retention basin drainage and retention basin easement. The Association will maintain the retention basin overflow and drainage area as well. This includes the overflow and drainage area/easement that runs through Autumn Ridge Phase 1 Lot 4.

ARTICLE IX
NONPAYMENT OF ASSESSMENTS & THE APPOINTMENT OF TRUSTEE

9.1) **Delinquent Assessment.** Any assessment not timely paid shall be delinquent, and the Association may invoke any and all remedies to recover said delinquent assessments including by: suit, judgment, lien, foreclosure, or other remedy authorized by the Governing Documents or the Act.

9.2) **Due Date, Charges & Interest.** Unless otherwise established by the Board, monthly assessments shall be due and payable on the first of each month and late if not received by the 10th of each month. The Board may charge a late fee in an amount set by the Board, but not to exceed 10% of the assessment amount due. Thereafter, the Association may charge \$3 per day for each day payment continues delinquent. In addition to late fees, interest shall accrue on all unpaid balances, including prior, unpaid interest and attorney fees (resulting in compounding interest), late fees, and assessments at 18% per annum or 1.5% per month. The Board may also impose other reasonable charges imposed by a Manager related to collections.

9.3) **Lien.** Upon recording of a notice of lien on any Lot, there shall exist a perfected lien for unpaid assessments prior 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 first or second mortgage of record made in good faith and for value recorded prior to a recorded notice of lien by the Association.

9.4) **Foreclosure.** The Association shall have the power to bid for the Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be charged or levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged had such Lot not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid assessments and attorney fees shall be maintainable without foreclosing or waiving the lien securing the same.

9.5) **Other Remedies.** All rights and remedies of the Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy. The "One Action Rule" shall not be a defense to the enforcement of all rights and remedies of the Association. The Association may elect to bring an action to recover for a delinquent Assessment against the Owner or other obligee personally. Any attorney fees or costs incurred in these efforts shall also be assessed against the Owner(s), their Lot(s), and/or other obliges jointly and severally.

9.6) **Payment by Tenant.** The Association shall be entitled to demand and collect from a tenant of any Lot, the amount of any assessment that is more than sixty (60) days past due.

9.7) **Attorney Fees.** In addition to the recovery of costs and attorney fees as provided herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner breach of the Governing Documents, including meetings, research, memoranda, monitoring and other legal work incurred in response to an Owner breach or violation of the Governing Documents. These fees may be collected by special or individual assessment against the subject Owner(s) or Lot(s).

9.8) Appointment of Trustee. The Declarants hereby convey and warrant pursuant to U.C.A. Sections 57-1-20 and 57-8a-402 to Burt R. Willie, Esq., a licensed member of the Utah State Bar, with power of sale, the Lot and all Improvements to the lot for the purpose of securing payment of assessments under the terms of this Declaration.

ARTICLE X

SUBORDINATION OF LIEN TO INSTITUTIONAL FIRST AND SECOND MORTGAGES

10.1) The lien of assessments, including interest, late charges (subject to the limitations of Utah law), and costs (including attorney fees) provided for herein, shall be subordinate to the lien of any institutional first or second mortgage of record made in good faith and for value, recorded prior to a recorded notice of lien by the Association. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a prior, recorded institutional first or second mortgage shall extinguish the lien of such assessments as to payments that became due prior to such sale or transfer; provided, that to the extent there are any proceeds of the sale on foreclosure of such mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such mortgage, the lien shall apply to such excess. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the mortgagee holding an institutional first or second mortgage of record or other purchaser of a Lot obtains title pursuant to remedies under the mortgage, its successors and assigns shall not be liable for the share of the assessments by the Association chargeable to such Lot that became due prior to the acquisition of title to such Lot by such acquirer. No foreclosure, sale or transfer shall relieve any Owner who was the Owner prior to such foreclosure, sale or transfer from personal liability for any assessments due and owing prior to such foreclosure, sale or transfer.

ARTICLE XI

USE LIMITATIONS & RESTRICTIONS

11.1) Single Family. All Lots shall be used only for single-family residential purposes. "Single Family" shall mean one household of persons related to each other by blood, marriage, or adoption, or one group of not more than two unrelated persons per bedroom.

11.2) Zoning Regulations. The lawfully enacted zoning regulations of Clearfield City and/or Davis County, and any building, fire, and health codes are in full force and effect in the Project. No Lot may be occupied in a manner that is in violation of any statute, law or ordinance.

11.3) Acceptable Business Uses. No portion of the Subdivision may be used for any commercial business use. Notwithstanding, nothing in this provision is intended to prevent (a) the Declarants, or other builders, from using one or more Lots for purposes of a construction office or sales office during the actual period of construction of the Subdivision Improvements or until 100% of the Lots are sold in the Subdivision, whichever occurs later; or (b) the use by any Owner of his Lot for a home occupation pursuant to Clearfield City or Davis County ordinance. Businesses, professions or trades may not: require heavy equipment, create a nuisance within the Project, or unreasonably increase the traffic flow to the Project.

11.4) No Noxious or Offensive Activity. No noxious or offensive activity shall be carried out on any Lot or the Project, including the creation of loud or offensive noises or odors that detract from the reasonable enjoyment of nearby Lots. No Owner or occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule or regulation of any local, Clearfield City, Davis County, state of Utah or federal body.

11.5) No Hazardous Activity. No activity may be conducted on any Lot that is, or would be considered by a reasonable person to be unreasonably dangerous or hazardous, which would cause the cancellation of conventional homeowners' insurance policy. This includes, without limitation, the storage of caustic, toxic, flammable, explosive or hazardous materials in excess of those reasonable and customary for household uses, the discharge of firearms, and setting open fires (other than property supervised and contained).

11.6) No Unsightliness. No unsightliness is permitted on any Lot. This shall include, without limitation: the open storage of any building materials, construction equipment, or construction debris (except during authorized construction of an Improvement); accumulations of debris or waste; and the storage or accumulation of any other material that is unsightly.

11.7) No Annoying Lights. No outdoor lighting shall be permitted except for lighting that is designed to aim downward and reasonably limit the field of light to the confines of the Lot on which it is installed. This shall not apply to street lighting maintained by Clearfield City and/or Davis County. Holiday or seasonal decorative lights, that otherwise comply with the terms of the Governing Documents, are permitted.

11.8) Signs. No signs whatsoever (including, without limitation, political signs) shall be erected or maintained on any Lot, except:

- (i) Such signs as may be required by legal proceedings;
- (ii) Construction identification signs 2 feet by 3 feet or less for each Dwelling;
- (iii) A "For Sale" or "For Rent" sign, not more than 2 feet by 2 feet, and consistent with other requirements adopted by the Board.

11.9) Trash Containers and Collection. All garbage, trash and recycling shall be placed and kept in covered containers as provided by the local collection agencies. The Board may adopt further rules and policies governing trash containers and collection.

11.10) Animals. Animals shall be kept in accordance with Davis County codes and restrictions.

11.11) Vehicles. The Association reserves the right to adopt Rules relating to the parking of vehicles within the Project including, without limitation: (1) the right to immediately remove or cause to be removed any vehicles that are improperly parked or stored, (2) restrictions on the time period and duration that any guest or visitor parking may be utilized; (3) restrictions or bans on vehicles without Department of Transportation compliant mufflers and exhaust systems, and

(4) the assessment of fines to Owners and occupants who violate these and other Rules adopted by the Board.

11.12) **Firearms, Incendiary Devices and Graffiti.** The use of firearms, incendiary devices, or graffiti within the Project is prohibited. The term firearms include, but are not limited to: all guns, pistols, handguns, rifles, automatic weapons, semi-automatic weapons, pellet guns, blow-dart guns, and other firearms of all types, regardless of size. Notwithstanding, this provision is not intended to regulate the ownership of firearms, or the carrying of a firearm to and from an Owner's Dwelling, as otherwise authorized by Utah law.

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

ARTICLE XII GENERAL ARCHITECTURAL RESTRICTIONS ON IMPROVEMENTS

12.1) **Dwelling Quality, and Size.** It being the intention and purpose of the covenants to assure that all Dwellings will be of a quality of workmanship and materials substantially the same or better than that which can be produced on the date these covenants are recorded. No Dwelling shall be permitted on any Lot without meeting the requirements stated below.

12.2) All Owners shall complete the front yard landscaping within twelve (12) months of certificate of occupancy being issued by Clearfield City. This shall include a sprinkler system and lawn. The back yard landscaping shall be completed within twenty-four (24) months after receiving certificate of occupancy that's issued by Clearfield City.

12.3) Front elevations of all Dwellings shall be all brick, rock or stucco. All side and rear exterior finishes may be brick, stucco, rock, vinyl siding, or combinations thereof. No two Dwellings with the same elevation shall be constructed side by side. Any stucco finishes shall not be installed using an exterior insulated finish system (EIFS). Each dwelling shall also have either: a full 3 foot corner wrap of brick, rock, stucco or fiber cement, or a minimum of a 3 foot wainscot of brick, rock, stucco or fiber cement on each side. Each dwelling shall be constructed with six (6) inch fascia. Each dwelling shall have a 6/12-ratio pitch roof and have architectural shingles. Each dwelling needs at least 1/3 brick or rock on the front of the home on the first level. Any combination of brick, rock, stucco or fiber cement will be required for the front of the dwelling on the second floor if a 2-story or multi-level home.

12.4) If a Dwelling is a one story home with a basement the main floor area, exclusive of garages areas, porches or basement shall not be less than 1,400 finished square feet above ground, plus an attached 2 or 3 car garage.

12.5) If a Dwelling is a two-story or multi-level home, there shall be at least 1,800 finished square feet above ground, exclusive of porches, garage areas or basement, plus an attached 2 or 3 car garage.

12.6) If a Dwelling is a slab on grade home, there shall be at least 1,800 finished square feet above ground, exclusive of porches, garage areas or basement, plus an attached 2 or 3 car garage.

12.7) No split entry or tri-level dwellings shall be allowed.

12.8) Only single family residential dwellings are allowed in the Subdivision. The term *single family* refers to both the architectural style and the nature of the activities permitted therein.

12.9) The height of any Dwelling shall not exceed two stories above ground. All residential units shall have basements.

12.10) The side and rear elevation exterior construction materials for each dwelling may include maintenance-free stucco or maintenance-free vinyl siding.

12.11) Any detached accessory building(s) must conform in design and construction materials with the primary residential Dwelling.

12.12) Basements are allowed in the Subdivision. All liability by Clearfield City and the Declarants has been waived if the homeowner decides to proceed with a basement.

12.13) There shall be no mobile home or manufactured home of any type permitted within the subdivision.

12.14) Site Grading and Drainage. No Lot Owner shall modify site grading or storm drainage facilities without the prior written consent of the Architectural Control Committee.

12.15) Clearfield City, Davis County and Other Approval. Approval of any improvements by the Architectural Control Committee does not waive the requirement for any other required public agency review or permit approval process. By approving plans, the Architectural Control Committee takes no responsibility for plan conformity to any other criteria other than the requirements of this Declaration and any Architectural Guidelines, which may adopted by the ACC.

12.16) Completion Required Before Occupancy. No Dwelling may be occupied prior to its completion and the issuance of a certificate of occupancy by Clearfield City and/or Davis County.

12.17) Building location.

(a) Location of building must meet Clearfield City requirements on setbacks and yard lines.

(b) For the purpose of this covenant, eaves, steps, and open porches shall not be considered as part of a building, provided, however, that this shall not be construed to permit any portion of any building on a Lot to encroach upon another lot.

12.18) **Underground Utilities.** All gas, electrical, telephone, television, and any other utility lines in the Project are to be underground, including lines within any Lot which service installations entirely within that Lot. No above ground propane tanks, with the exception of small tanks related to barbeque grills, shall be allowed.

12.19) **Sewer Connection Required.** All Lots are served by sanitary sewer service, and no cesspools, septic tanks, or other types of waste disposal systems are permitted on any Lot. All Dwelling must be connected to the sanitary sewer system.

12.20) **Drainage.** No Owner shall alter the direction of natural drainage from his Lot, nor shall any Owner permit accelerated storm run-off to leave his Lot without first using reasonable means to dissipate the flow energy.

12.21) **No Re-Subdivision.** No Lot may be re-subdivided.

12.22) **Exception for Declarants.** Declarants shall be exempt from the provisions of this Article. Notwithstanding, the restrictions contained in this Article, Declarants shall have the right to use any Lot or Dwelling owned by it, and any part of the Common Areas reasonably necessary or appropriate, in furtherance of any construction, marketing, sales, management, promotional, or other activities designed to accomplish or facilitate improvement of the Common Areas or improvement and/or sale of all Lots owned by the Declarants.

ARTICLE XIII ARCHITECTURAL CONTROL COMMITTEE

13.1) **Architectural Control Committee.** The Board may appoint a three-member Committee, the function of which shall be to ensure that all Improvements and landscaping within the property harmonize with existing surroundings and structures (herein ACC, Architectural Control Committee or Committee). If such a Committee is not appointed the Board shall perform the duties required of the Committee. The Architectural Control Committee reserves the right to utilize its discretion in approving or disapproving the construction of any home in the Subdivision in order to enhance and protect the value, desirability and attractiveness of the Lots. It is contemplated by this Declaration, and agreed to by all Owners, that there will be variations and adjustments made by the Architectural Control Committee in approving and disapproving building plans. The process of approval by the Architectural Control Committee may be subjective, but not arbitrary, in approving building plans in substantial conformity with this Declaration. The Architectural Control Committee is made up of:

Douglas B. Hamblin
Jason D. Hamblin
Shane D. Hamblin

13.2) Submission to Committee. No Dwelling, accessory building or structure or addition to a Dwelling and no landscape additions and changes shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any Dwelling, nor of any court enclosure, except as herein otherwise mentioned, shall be performed, unless complete plans and specifications therefor have first been submitted to and approved by the Committee. All such plans and specifications shall be consistent with any adopted architectural guidelines which shall be from time to time adopted by the Board.

13.3) Standard. In deciding whether to approve or disapprove plans and specifications submitted to it, the Committee shall use its best judgment to ensure that all improvements, construction, landscaping and alterations on Lots within the Properly conform to and harmonize with existing surroundings and structures and that such proposed improvements enhance the value and aesthetics of the Project.

13.4) Approval Procedure. Any plans and specifications submitted to the Committee shall be submitted on a form provided by the Committee and in triplicate. A preliminary review of design drawings will be required with a final review to be made of working drawings. Upon completion of each review, one set of plans will be retained by the Association, one set will be retained by the reviewing architect (if any) and the remaining set of plans will be returned to the property owner. All plans and specifications shall be approved or disapproved by it in writing within thirty (30) days after submission. In the event the Committee fails to take any action within such period it shall be deemed to have approved the material submitted.

13.5) Liability for Damages. The Owner is responsible for any and all damage to concrete, sidewalks or subdivision infrastructure. The Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article.

13.6) Exception for Declarants. The foregoing provisions of this Article shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarants on any Lot or on any part of the Common Areas and which occurs at any time during Class B Control Period.

ARTICLE XIV INSURANCE

14.1) Insurance Requirement. The Association shall obtain insurance as required in this Declaration and as required by the Act. 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.

14.2) Property Insurance.

(a) Hazard Insurance.

(i) **Blanket Policy of Property Insurance.** The Association shall maintain a blanket policy of property insurance covering all Common Areas.

(1) At a minimum, any required blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, theft, and storm water run-off, if reasonably available; and (2) all perils normally covered by "special form" property coverage.

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

(b) **Flood Insurance.** If the property insured by the Association is not situated in a Special Flood Hazard Area, the Association may nonetheless, if approved by a majority of Owners, purchase flood insurance to cover water and flooding perils not otherwise covered by blanket property insurance.

(c) **Earthquake Insurance.** The Association may nonetheless, if approved by a majority of Owners, purchase earthquake insurance to cover earthquakes not otherwise covered by blanket property insurance.

(d) **Associations Obligation to Segregate Property Insurance Deductible.** The Association shall keep an amount equal to the Association's property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.

(e) **Association's Right to Not Tender Claims that are Under the Deductible.** If, in the exercise of its business judgment, the Board of Directors determines that a claim is likely not to exceed the Association's property insurance policy deductible the Association need not tender the claim to the Association's insurer.

14.3) **Comprehensive General Liability (CGL) Insurance.** The Association shall obtain CGL Insurance insuring the Association, the agents and employees of the Association, and the Owner, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than One Million Dollars (\$1,000,000) covering all claims for death of or injury to any one person or property damage in any single occurrence.

14.4) **Director's and Officer's Insurance.** The Association shall obtain Directors' and Officers' liability insurance protecting the Board of Directors, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Governing Documents, and breach of contract (if available). The policy shall:

- (a) Include coverage for volunteers and employees;
- (b) Include coverage for monetary and non-monetary claims;
- (c) Provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims.
- (d) Provide coverage for defamation. In the discretion of the Board of Directors, the policy may also include coverage for any manager and any employees of the manager and may provide that such coverage is secondary to any other policy that covers the manager or any employees of the manager.

14.5) Insurance Coverage for Theft and Embezzlement of Association Funds. The Association may obtain insurance covering the theft or embezzlement of funds that shall:

- (a) Provide coverage for an amount of not less than the sum of three months regular assessment in addition to the prior calendar year's highest monthly balance on all operating and reserve funds; and
- (b) Provide coverage for theft or embezzlement of funds by:
 - (i) Officers and Board of Directors member of the Association;
 - (ii) Employees and volunteers of the Association;
 - (iii) Any manager of the Association; and
 - (iv) Officers, directors and employees of any manager of the Association.

14.6) Association's Right to Negotiate All Claims and Losses and Receive Proceeds. Insurance proceeds for a loss under the Association's property insurance policy shall be payable to the Association; and shall not be payable to a holder of a security interest. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any proceeds remaining after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Dwellings. Each Owner hereby appoints the Association, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and the execution of releases of liability, and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representative, successors or assigns of an Owner.

14.7) Owner Act Cannot Void Coverage under Any Policy. An Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

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

14.9) Owners' Individual Coverage. **EACH OWNER SHOULD PURCHASE INDIVIDUAL INSURANCE COVERAGE FOR THEIR LOT IN THE AMOUNT RECOMMENDED BY THE OWNER'S INSURANCE AGENT.**

ARTICLE XV DAMAGE & DESTRUCTION

15.1) Immediately after damage or destruction by fire or other casualty to all or any part of the Common Areas covered by insurance written in the name of the Association, the Board, or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Common Areas. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Common Areas to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

15.2) Any damage or destruction to the Common Areas shall be repaired or reconstructed unless Owners representing at least seventy-five (75%) percent of the total vote of the Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the costs of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Areas shall be repaired or reconstructed; provided, however, this provision shall not apply to construction mortgagees providing construction financing for such damaged property.

15.3) In the event, that it should be determined in the manner described above that the damage or destruction to the Common Areas shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Common Areas shall be restored to their natural state and maintained by the Association, in a neat and attractive condition.

ARTICLE XVI DISBURSEMENT OF PROCEEDS

16.1) If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Areas shall be retained by and for the benefit of the Association and placed in a capital

improvements and/or reserve account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner(s) shall be retained by and for the benefit of the Association and placed in a capital improvements and/or reserve account.

ARTICLE XVII REPAIR AND RECONSTRUCTION

17.1) If the damage or destruction to the Common Areas for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the members, levy a special assessment against all Owners as provided in the Governing Documents.

ARTICLE XVIII CONDEMNATION

18.1) Whenever all or any part of the Common Areas shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of members representing at least sixty-seven percent (67%) of the total Association vote by any authority having the power of condemnation or eminent domain), each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows: if the taking involves a portion of the Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking the Owners representing at least sixty-seven percent (67%) of the total vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Areas to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If the taking does not involve any improvements of the Common Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

ARTICLE XIX MISCELLANEOUS PROVISIONS

19.1) Violation Deemed a Nuisance. Any violation of these covenants that is permitted to remain on the Property is deemed a nuisance, and is subject to abatement by the Association or by any other Owner.

(a) Any single or continuing violation of the covenants contained in this Declaration may be enjoined in an action brought by an Owner or by the Association. In any action brought to enforce these covenants, the prevailing party shall be entitled to recover as part of its judgment the reasonable costs of enforcement, including reasonable attorney fees and court costs.

(b) Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state or local laws and ordinances for the abatement of nuisances, health and safety, or other matters. This Declaration is to be construed as being in addition to those remedies available at law.

(c) The remedies available under this Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.

(d) The failure to take enforcement action shall not be construed as a waiver of the contents contained in this Declaration in the future or against other similar violations.

19.2) Association Litigation.

(a) In recognition of the expenses and disruption associated with litigation, the Association shall not commence a judicial or administrative proceeding without the approval of the Declarants for so long as the Declarants governs the Association and thereafter only upon the approval of Owners representing at least 80% of the total vote of the Association.

(b) Neither the Association nor any Owner shall institute an action against any person which arises out of an alleged defect in the development of the Subdivision until: (i) Declarants and the person(s) who physically constructed the portion of the subdivision in which the alleged defect exists have been notified and given a reasonable time and opportunity in which to inspect, assess, correct, or redesign any alleged defect or other portions of the Subdivision (provided, however, that the terms of this Section shall not create an obligation of any person to effect a repair of an alleged defect); (ii) the Association or Owner(s) have pursued their remedies under any express warranty covering all or any portion of the alleged defect; (iii) the Declarants and the affected contractor(s) have been given the opportunity to be heard at a meeting of the Association regarding the alleged defect; and (iv) all proposed parties to the action have been given a reasonable opportunity to mediate any dispute or disagreement relating to the alleged defect, and have either participated or refused to participate in such mediation.

(c) Notwithstanding any other provision to the contrary in this Declaration, the Association shall not file, commence or maintain any lawsuits, actions or legal proceedings against Declarants, the individual managers, owners, members or officers of Declarants, Declarants contractors, Declarants Related Entities or any other person or entity involved in the construction of the Dwellings unless and until all of the following requirements have been satisfied:

(i) The Association has obtained a legal opinion from an attorney licensed to practice law in Utah having at least ten (10) years of experience in litigation practice, with the legal opinion providing in substance the following: (i) a description of the factual allegations and legal claims to be asserted in the action; (ii) an analysis of the facts and legal claims explaining why it would be in the best interests of the Association to file and pursue such action, taking into account the

anticipated costs and expenses of litigation, the likelihood of success on the merits of the claims, and the likelihood of recovery if a favorable judgment is obtained by the Association; and (iii) providing a budget of the estimated amounts of legal fees, costs, expert witness fees and other expenses likely to be incurred in connection with such action (the "Litigation Budget"); and

(ii) The Association has collected funds from the Owners, by special assessment or otherwise, equal to at least one-half (1/2) of the Litigation Budget.

(d) If any claims or actions falling within the scope of this Section are filed without satisfying all of the requirements set forth above, such claims/action shall be dismissed without prejudice and shall not be re-filed unless and until all such requirements have been satisfied. In any action to enforce the requirements of this Section, the prevailing party shall be entitled to an award of reasonable attorney fees and costs. Individual Owners, however, shall not be allowed to file or pursue any actions or claims belonging to other Owners or to the Association.

(e) No action affected by this Section shall be conducted utilizing legal counsel who are compensated on a contingency fee or similar means of compensation in which litigation costs and attorney's fees are not paid on a current basis or are paid out of the settlement or judgment amount recovered by the Association in such action.

(f) This Section shall not apply to: (i) actions brought by the Association to enforce the Governing Documents (including, without limitation, the foreclosure of liens); (ii) the collection of assessments; (iii) proceedings involving challenges to ad valorem taxation; (iv) counterclaims brought by the Association in proceedings instituted against it; or, (v) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of an express contract with the Association or its manager for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

19.3) Repurchase Option for Construction Defect Claims. In the event any Owner shall commence or threaten to commence legal action against Declarants or Declarants Related Entities in connection with any alleged construction defects in such Owner's Dwelling or Lot, Declarants shall have the option, but not the obligation, to purchase such Dwelling/Lot on the following terms and conditions:

(a) The purchase price shall be an amount equal to the sum of the following, less any sums paid to such Owner under any homeowner's warranty, in connection with the alleged defect:

(i) The purchase price paid by the original Owner of the Dwelling & Lot when originally purchased from Declarants;

(ii) The agreed upon value of any improvements made to the Dwelling by anyone other than Declarants; and

(iii) The Owner's reasonable moving costs.

(b) Close of escrow shall occur not later than forty-five (45) days after written notice from Declarants to the Owner of Declarants intent to exercise the option herein.

(c) Title shall be conveyed to Declarants free and clear of all monetary liens and other encumbrances other than non-delinquent real estate taxes.

(d) Exercise of the repurchase option, as provided for herein above, shall constitute full and final satisfaction of all claims relating to the subject Dwelling and Lot. The Owner shall promptly execute and deliver any notice of dismissal or other document necessary or appropriate to evidence such satisfaction.

19.4) Amendment Requires Consent of Declarants. Notwithstanding any other provision of this Declaration, this Article and its subsections may not be amended except with the prior written consent of the Declarants during the Class B Control Period.

19.5) Severability. Each of the covenants contained in this Declaration shall be independent of the others, and in the event that any one is found to be invalid, unenforceable, or illegal by a court of competent jurisdiction, the remaining covenants shall remain in full force and effect.

19.6) Consent, Power of Attorney, Waiver. By acceptance of a deed, lease, or other conveyance of an interest in Dwelling, each Owner or Occupant consents to the rights reserved to the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process, and record necessary and appropriated documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in- fact of such Owner or Occupant to execute such documents and to do such things on Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

19.7) No Representations and Warranties. Each Owner and occupant understands, agrees, and acknowledges through taking title or residing in the Project that the Declarants, Association and the Board have not made any representations or warranties of any kind related to the Project and that each Owner or occupant has not relied upon any reorientations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose relative to the Project.

19.8) Amendment. At any time while this Declaration is in effect, the covenants herein contained can be modified by the Declarants or Declarants successors and assigns during the Class B Control Period at the sole discretion of the Declarants. Thereafter, the covenants herein contained can only be modified by the affirmative vote of the Owners representing not less than sixty-seven (67%) percent of the total votes of the Association. No meeting or voting shall be required for an amendment, if the required, written consent is obtained from the requisite number of Owners.

19.9) Constructive Notice. Every person who owns, occupies or acquires any right, title or interest in any Lot in the Project is conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of each of the provision of this Declaration against his/her Lot, whether or not there is any reference to this Declaration in the instrument by which he/she acquires interest in any Lot.

19.10) Notices. All notices under this Declaration are provided as set forth in the Bylaws.

19.11) Liberal Interpretation. The provisions of this Declaration shall be interpreted liberally to further the goal of creating a uniform plan for the development of the Project. Headings are inserted for convenience only and shall not be considered in interpretation of the provisions. Singular will include plural, and gender is intended to include masculine, feminine and neuter as well.

19.12) Right to Modify Lot Boundaries and Interior Boundary Lines. Declarants reserve the unilateral right to modify Lot boundaries and interior boundary lines and/or combine Lots or Dwellings so long as it owns the Lots; provided, however, such changes may not extensively alter the boundaries of the Common Area and Facilities nor change the percentages of ownership interest.

ARTICLE XIV ANNEXATION & DE ANNEXATION

14.1) Annexation. Additional phases of Subdivision may be added to the Property pursuant to the following procedures, and subject to the limitations as follows:

14.2) Annexation by Declarants. Declarants may from time to time expand the Property subject to this Declaration by the annexation of additional property. The annexation of any such land shall become effective upon the recordation in the office of the Davis County Recorder of Davis County, Utah, of a subdivision plat covering the land to be annexed. If applicable, Declarants may record a supplemental declaration when additional limitations, restrictions, covenants and conditions as are applicable to the annexed land. When any such annexation becomes effective, the annexed land shall become part of the Subdivision and subject to this Declaration.

14.3) Annexation by the Association. Following the Class B Control Period, the Association may annex land to the Subdivision by obtaining approval of such annexation from

(a) the owner or owners of the land to be annexed and

(b) 67% of the Owners. Nothing in this paragraph shall be construed to require any prior approval for, or to limit or present, any annexation performed by Declarants.

14.4) No Obligation to Annex or Develop. Declarants have no obligation hereunder to annex any additional land to the Subdivision. No land other than the Property as defined on the date hereof and land annexed thereto in accordance with the terms of this Declaration shall be deemed to be subject to this Declaration, whether or not shown on any subdivision plat or map filed by Declarants or described or referred to in any documents executed or recorded by Declarants.

HAMBLIN INVESTMENTS, INC., the Declarant

Doug B. Hamblin

By: Doug B. Hamblin Its: Authorized Member

STATE OF UTAH)

: ss

COUNTY OF Davis)

On this 2nd day of Sept, ²⁰²⁰~~2019~~, personally appeared before me Doug B. Hamblin ^{President of Hamblin Investments} ~~Hamblin Inc.~~, who being by me duly sworn, did say that he is a Member of Hamblin Investments, Inc., a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company by authority and said member duly acknowledged to me that said limited liability company approved the same.

Katelyn Klobdanz

Notary Public

Residing at: clearfield My Commission Expires: 7/14/2021

Mike Schultz Construction Inc, the Declarant

Mike Schultz

By: Mike Schultz Its: Authorized Member

STATE OF UTAH)

: ss

COUNTY OF Weber)

On this 9 day of September, ²⁰²⁰~~2019~~, personally appeared before me Mike Schultz, who being by me duly sworn, did say that he is a Member of Mike Schultz Construction Inc., a Utah limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company by authority and said member duly acknowledged to me that said limited liability company approved the same.

Joni Nielsen



Notary Public

Residing at: Roy My Commission Expires: 9/8/2023



10-9-2020

AUTUMN RIDGE ESTATES PHASE 5

PART OF THE NORTHWEST QUARTER OF SECTION 2, TOWNSHIP 4 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE EASTERLY LINE OF LOT 3 OF CLAIR & JOAN HESLOP SUBDIVISION, SAID POINT BEING S89°51'46"E 220.20 FEET AND S00°08'14"W 544.96 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 2; THENCE S89°50'12"E 201.34 FEET TO A POINT ON THE WESTERLY LINE OF THE 200 NORTH STREET CLEARFIELD CITY SUBDIVISION; THENCE S00°01'26"E ALONG SAID WESTERLY LINE 159.69 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF 200 NORTH STREET; THENCE S89°55'31"E ALONG SAID RIGHT OF WAY LINE 65.38 FEET TO THE WESTERLY LINE OF AUTUMN RIDGE ESTATES PHASE 4; THENCE ALONG SAID WESTERLY LINE THE FOLLOWING FIVE (5) COURSES: (1) S00°04'29"W 110.00 FEET; (2) S89°51'46"E 27.53 FEET; (3) S00°08'14"W 330.89 FEET; (4) N89°55'31"W 79.66 FEET; (5) S00°04'29"W 170.03 FEET TO THE NORTHERLY LINE OF AUTUMN RIDGE ESTATES PHASE 1; THENCE N89°55'31"W 215.53 FEET ALONG SAID NORTHERLY LINE; THENCE NORTH 1.92 FEET; THENCE N41°59'01"E 0.70 FEET TO THE EXTENSION OF THE EASTERLY LINE OF CLAIR & JOAN HESLOP SUBDIVISION; THENCE N00°07'00"E 768.52 FEET ALONG SAID EASTERLY LINE AND EXTENSION THEREOF TO THE POINT OF BEGINNING.

CONTAINING 195,666 SQUARE FEET OR 4.492 ACRES, MORE OR LESS.