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DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is made and entered into as of this 19 day of April 2018, by and between Brooks Cove, LLC (hereinafter collectively referred to as "Developer"), and Draper City, a municipal corporation of the State of Utah (hereinafter referred to as the "City").

RECITALS

- A. Developer owns approximately 2.2 acres of real property located near 13568 South 300 East within City's boundaries (the "Property"). The legal description of the Property is set forth on Exhibit "A" attached hereto.
- B. The Property currently is zoned RA1 (Residential Agricultural, 40,000 square foot lots), a residential zoning designation identified in Title 9, Chapter 10 of the Draper City Municipal Code (the "Code").
- C. Developer has made application to City for a general plan map amendment and rezone or map amendment necessary to assign the RM1 (Multiple-family residential, up to 8 units per acre) zoning designation to the Property in anticipation of developing the Property as a single-family residential subdivision (the "Project").
- D. The intent of this Agreement is to facilitate development of the Project in accordance with the Code and the site-specific land uses and development standards specified in this Agreement.
- E. City, acting pursuant to its authority under UTAH CODE ANN. §§ 10-9a-101, et seq. ("LUDMA") has made certain determinations with respect to the Property and the proposed Project, and, in the exercise of its legislative discretion, has elected to process and approve this Agreement after all necessary public hearings and procedures have been conducted.
- F. The Parties recognize the RM1 zone allows a multi-family product to be built upon the approval of a conditional use permit. Developer agrees by the acceptance and execution of this agreement to build only single-family detached units and agrees to comply with the development standards listed herein that are not generally applicable to single-family detached units.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City and Developer hereby agree as follows:

AGREEMENT

- 1. **Incorporation of Recitals; Entire Agreement.** The above recitals and the exhibits referenced in this Agreement are hereby incorporated by reference as part of this Agreement. This Agreement integrates and constitutes all of the terms and conditions pertaining to the subject matter hereof and supersedes all prior negotiations, representations, promises, inducements, or previous agreements between the Parties hereto with respect to such subject matter.
- 2. **Condition Precedent.** This Agreement is contingent upon and shall only become effective at such time, and in the event that: (a) the Draper City Council (the "Council"), in the independent, unfettered exercise of its legislative discretion, elects to approve the proposed rezoning of the Property to the RM1 zoning designation; and (b) Developer in fact acquires fee title to the Property.

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08/16/2018 12:04 PM #0-00
Book - 10705 Pg - 5866-5924
ADP:IM ISARD:INER
RECORDER, SALT LAKE COUNTY, UTAH

CITY OF DRAPER
1020 E PIONEER RD
DRAPER UT 84020
BY: PSA, DEPUTY - MA 59 P.

This Agreement is not intended to and does not affect or in any way bind or supersede the independent exercise of legislative discretion by the Council in deciding whether to approve or deny the application for the rezoning of the Property. If any such rezoning occurs by legislative action of the Council but subsequently is reversed or revoked by any means other than legislative action of the Council, then this Agreement shall be deemed void ab initio.

3. **Plan.** Subject to Section 4 below, a plan (the "Plan") depicting the permissible lots, building envelopes, street(s) and certain other dimensions and physical attributes of the Project is attached hereto as Exhibit B and is incorporated herein by this reference. The Project shall be limited to a maximum of ten (10) Lots and a maximum residential density of 4.88 dwelling units per acre, which Lots shall be exclusively used for single family residential purposes and shall be configured and located substantially as shown on the Plan. The approval of the Plan as part of this Agreement satisfies any Code requirement for a concept plan or any other similar requirement for the Project, provided that the Plan shall not constitute a preliminary or final subdivision plat for the Project.

4. **Project-Specific Development Standards.**

4.1. **Site Standards.** By this Agreement, the Parties intend to define the uses, development standards and other regulations otherwise applicable to the Property under the RM1 zoning designation as described in Title 9, Chapter 10 of the Code in order to promote the efficient and creative development of the Property. The specific allowed land uses, development standards and regulations for the Project that are to be used in substitution for the uses, development standards and other regulations contained in Title 9 of the Code are described below. Development standards that are not addressed in this Agreement shall be those development standard set forth in Title 9 of the Code. Developer shall develop the Project in accordance with the Plan (subject to Section 4.3) and in full compliance with the Site Standards and the Code.

4.2 **Minimum Lot Size.** The minimum lot size shall be 6,256 square feet.

4.3 **Unit Variety.** To avoid an undesirable aesthetic impression that may be created by building neighboring uniform models, Developer shall provide for a variety of models with different building elevations and finishes for the units in the Project which may consist of color change and roofline change. Unit variety shall be as depicted in the elevations and renderings attached as Exhibit C.

4.4 **Unit Exterior Building Materials.** The architecture and design will consist of 25% brick and 75% siding, or 25% cultured stone and 75% siding. The front elevations will have different facades with different percentages of exterior materials after minimum requirements are met. The dwellings will include the following 7 architectural features as required in RM 1 and RM2 zones:

- A. Porch with support columns (6 foot minimum depth).
- B. Portico entrance at front driveway
- C. Moldings around windows (4 inch minimum width).
- D. Decorative brackets under eaves.
- E. Exterior crown molding with eave returns.
- F. Roof gable with staggered shingle.
- G. Roof dormer.
- H. Board and batten look achieved through vertical fiber cement siding.
- I. Corner trim extending from the base to roofline.

4.5 Unit Size. The single-family structures will range in size from 2,300 Square Feet to 4,800 Square Feet with optional basement included.

4.6 Unit Height. Height of all units will be a maximum of thirty-five feet (35').

4.7 Percentage of Open Space. The project shall include 13,766 square feet of open space.

4.8 Unit Garages. Each unit will include a two-car garage. Each driveway shall be a minimum of twenty feet (20') long.

4.9 Unit Set-backs. Front set-back twenty feet, side set-backs six feet, and corner set-backs to be twenty foot on one side and six feet on the other side, and rear set-backs to be twenty feet, except on a corner lot the rear may be six feet.

4.10 A pedestrian access at 5' will be between Lot #7 and Lot #8 (2' 6" on each lot)

4.11 Private Roads. As depicted in EXHIBIT B, the road into the Project will be a private lane with a cross-section of 36 feet from property line on the North to backside of sidewalk on the South. The hammerhead portion will be 27 feet from back of sidewalk on the west to back of curb on the East. Both sections of the private lane will include a five-foot sidewalk on one side. Developer shall maintain the private roads.

4.12 CC&Rs and HOA. Developer shall establish a homeowners association ("HOA") and adopt conditions, covenants and restrictions ("CC&Rs") and will ensure that reserves are put in place to maintain the private lanes. CC&Rs will require HOA to maintain the lawns weekly, which include mowing, trimming, weeding, and fertilizing the common landscape areas. CC&Rs are attached hereto as Exhibit E.

5. Vested Rights.

5.1. Vested Rights. Developer shall have the vested right to have preliminary and final subdivision plats, or preliminary and final site plans, as applicable, approved and to develop and construct the Project in accordance with and subject to compliance with the terms and conditions of this Agreement and applicable provisions of the Code. To the extent that there is any conflict between the main body (text portion) of this Agreement and the exhibits to this Agreement, the more specific language or description, as the case may be, shall control. Where any conflict or ambiguity exists between the provisions of the Code and this Agreement (including the exhibits to this Agreement), this Agreement shall govern. Notwithstanding the foregoing, however, the rights vested as provided in this Agreement are not exempt from the application of the Code and to subsequently enacted ordinances to the extent such exemption would impair City's reserved legislative powers under Section 8.2, below.

5.2. Reserved Legislative Powers. The Parties acknowledge that City is restricted in its authority to limit its police power by contract and that the limitations, reservations and exceptions set forth herein are intended to reserve to City those police powers that cannot be so limited. Notwithstanding the retained power of City to enact such legislation under the police powers, such legislation shall only be applied to modify any development standards that are applicable to the Project under the terms of this Agreement based upon the policies, facts and circumstances meeting the compelling, countervailing public interest

exception to the vested rights doctrine of the State of Utah. Any such proposed legislative changes shall be of general application to all development activity in City. Unless City declares an emergency, Developer shall be entitled to prior written notice and an opportunity to be heard with respect to any proposed change and its applicability to the Project under the compelling, countervailing public interest exception to the vested rights doctrine.

6. Approval Process for Development Applications. City shall process applications for development of the Project in accordance with the Code. Nothing in this Agreement shall be deemed to relieve Developer of the obligation to comply with all of the applicable requirements for approval of a conditional use permit and preliminary and final subdivision plats, or preliminary and final site plans, as applicable, for the proposed development of the Project consistent with the terms and conditions of this Agreement and the applicable provisions of the Code.

7. Development Standards. Except as otherwise set forth in this Agreement, Developer shall adhere to the land use regulations of the Draper City Municipal Code.

8. Successors and Assigns.

8.1 Binding Effect. This Agreement shall be binding upon the successors and assigns of Developer in the ownership or development of any portion of the Project.

8.2 Assignment. Neither this Agreement nor any of its provision, terms or conditions may be assigned to any other party, individual or entity without assigning the rights as well as the responsibilities under this Agreement and without the prior written consent of the City, which consent shall not be unreasonably withheld. Any such request for assignment may be made by letter addressed to the City, and the prior written consent of the City may also be evidenced by letter from the City to Developer or its successors or assigns.

9. Default. If a Party fails to timely perform its obligations hereunder or to comply with the terms hereof, the Party believing that a default has occurred shall provide written notice (a "Notice of Default") to the defaulting Party as provided herein. Upon the issuance of a Notice of Default, the Parties shall meet within ten business days and confer in an attempt to resolve the issues that are the subject matter of the Notice of Default. If, after meeting and conferring, the Parties are not able to resolve the default, then the Parties shall have the rights and remedies available at law and in equity including, without limitation, injunctive relief, specific performance and termination, but not including compensatory damages, punitive damages or attorney's fees.

10. Notices. Any notices, requests and demands required or desired to be given hereunder shall be in writing and shall be served personally upon the party for whom intended, or if mailed, be by certified mail, return receipt requested, postage prepaid, to such party at its address shown below.

To Developer: Brooks Cove, LLC

Attn: Chris Roth

P.O. Box 640

Draper, UT 84020

To the City:

Attention: Draper City Manager

1020 E. Pioneer Road
Draper, UT 84020

Any party may change its address or notice by giving written notice to the other party in accordance with the provisions of this section.

11. General Terms and Conditions.

11.1 Terms of Agreement. The term of this Agreement shall be for a period of five (5) years following the date of its adoption unless both parties otherwise agreed to extend this time via written amendment.

11.2 Agreement to Run with the Land. This Agreement shall be recorded in the office of the Salt Lake County Recorder against the Property and its intended to and shall be deemed to run with the land and shall be binding on all successors in the ownership of any portion or the Property.

11.3 Entire Agreement. This Agreement, together with the exhibits hereto, integrates all of the terms and conditions pertaining to the subject matter hereof and supersedes all prior negotiations, representations, promises, inducements, or previous agreements between the parties hereto with respect to the subject matter hereof. Any amendments hereto must be in writing and signed by the respective parties hereto.

11.4 Headings. The headings contained in this Agreement are intended for convenience only and are in no way to be used to construe or limit the text herein.

11.5 Non-liability of City Officials or Employees. No officer, representative, agent, or employee of the City shall be personally liable to Developer, in the event of any default or breach by the City or for any amount, which may become due, or its successors or assignees, for any obligation arising out of the terms of this Agreement.

11.6 No Third-Party Rights. The obligations of the parties set forth in this Agreement shall not create any rights in or obligations to any persons or parties other than to the City and Developer. The City and Developer alone shall be entitled to enforce or waive any provisions of this Agreement to the extent that such provisions are for their benefit.

11.7 Severability. Should any portion of this Agreement for any reason be declared invalid or unenforceable, the invalidity or unenforceability of such portion shall not affect the validity of any of the remaining portions, and the same shall be deemed in full force and effect as if this Agreement had been executed with the invalid portions eliminated.

11.8 Waiver. No waiver of any of the provisions of this Agreement shall operate as a waiver of any other provision regardless of any similarity that may exist between such provisions nor shall a waiver in one instance operate as a waiver in any future event. No waiver shall be binding unless executed in writing by the waiving party.

11.9 Governing Law. This Agreement and the performance hereunder shall be governed by the laws of the State of Utah.

11.10 Exhibits. Any exhibit to this Agreement is incorporated herein by this reference, and failure to attach any such exhibit shall not affect the validity of this Agreement or of such exhibit. An

unattached exhibit is available from the records of the parties.

11.11 Homeowner's Association. A Homeowner's Association shall be created to govern its internal affairs including, but not limited to, providing maintenance of any required common areas or specified park strip areas. Developer shall prepare and submit for review, comment and approval by the City, which approval shall not be unreasonably withheld or delayed, proposed conditions, covenants and restrictions ("CC&Rs"), as may be amended from time to time, for the Homeowner's Association. The CC&RS shall incorporate by reference the Supplementary Development Standards of the City set forth at Chapter 9-27 of the Draper City Municipal Code. The CC&Rs shall provide that all roads within the Project are private roads to be maintained by the Homeowner's Association and that the City shall have no responsibility for such roads.

EXHIBIT A
LEGAL DESCRIPTION

BEGINNING AT A POINT WHICH IS NORTH 00°20'01" WEST 1018.25 FEET AND NORTH 89°38'17" WEST 34.01 FEET FROM THE CENTER OF SECTION 6, TOWNSHIP 4 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE NORTH 89°38'17" WEST 384.13 FEET; THENCE NORTH 20°04'44" WEST 319.51 FEET; THENCE SOUTH 89°50'47" EAST 259.79 FEET; THENCE SOUTH 00°21'22" WEST 153.45 FEET; THENCE SOUTH 89°38'16" EAST 235.84 FEET; THENCE SOUTH 00°20'01" WEST 146.88 FEET TO THE POINT OF BEGINNING.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by and through their respective duly authorized representatives as of the day and year first written above.

Brooks Cove, LLC a Utah Limited liability company

By: *Chris Roth*
Printed Name: Chris Roth
Title: *MANAGER*



Approved as to Form:
[Signature]
City Attorney

ATTEST: *[Signature]*
Draper City

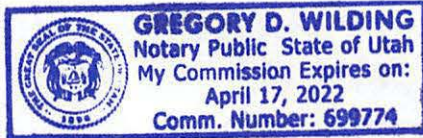
By: *[Signature]*
Troy K Walker, Mayor
City Recorder

STATE OF UTAH)

;SS
COUNTY OF) *SALT LAKE*
8th *AUGUST*

On this *8th* day of *AUGUST*, 2018, personally appeared before me *Chris Roth* who being duly sworn did confirm that he a manager of Brooks Lane, LLC a Utah limited liability company, and that the foregoing instrument was signed on behalf of said company by authority of its operating agreement, and acknowledged to me that said company is bound by the same.

[Signature]
Notary Public



STATE OF UTAH)

;SS
COUNTY OF)

On this *14* day of *Aug*, 2018, personally appeared before me Troy K. Walker, who being duly sworn did confirm that he is the duly elected Mayor of Draper City and that foregoing instrument was signed on behalf of Draper City.

Kellie Challburg
Notary Public



NOTARY PUBLIC STATE OF UTAH

My Commission Expires on: April 17, 2023
Comm. Number: 69277A

Gregory D. Wilding

My Commission Expires on: April 17, 2023
Comm. Number: 69277A

Gregory D. Wilding
Notary Public, State of Utah
My Commission Expires on:
April 17, 2023
Comm. Number: 69277A



My Commission Expires on: April 17, 2023
Comm. Number: 69277A

Gregory D. Wilding

Wendy L. Challurg
Notary Public, State of Utah
My Commission Expires on:
January 7, 2019
Comm. Number: 680202



EXHIBIT E

Space Above for Recorder's Use

DECLARATION OF
COVENANT, CONDITIONS, AND RESTRICTIONS
ESTABLISHING A PLANNED UNIT DEVELOPMENT
FOR
BROOKS COVE, LLC

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COVENANT, CONDITIONS, AND RESTRICTIONS
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FOR
BROOKS COVE, LLC

TABLE OF CONTENTS

	<u>PAGE</u>
RECITALS:	1
I. DEFINITIONS	1
II. SUBMISSION	6
III. COVENANTS, CONDITIONS AND RESTRICTIONS	6
1. Description of Improvements	7
2. Description and Legal Status of the Property	7
3. Membership in the Association	7
4. Conveyancing	7
5. Provisions Binding	7
6. Ownership and Use	7
a) Nature and Restrictions on Ownership and Use in General	7
b) Title to the Common Areas	8
c) Mandatory Association Membership	8
d) Member's Easements and Rights-of-Way	8
e) Rules and Regulations	8
:t) Restrictions and Limitations ofUse	8
(1) Parties Bound	8
(2) Nuisance	8
(3) Unsightly Work, Hobbies or Unkempt Conditions	9
(4) Removing Garbage, Dust & Debris	9
(5) Subdivision of a Unit.	9
(6) Firearms, Incendiary Devices and Graffiti	9
(7) Temporary Structures	10

	(8) Trees, Shrubs and Bushes; Maintenance of Proper Sight Distance at Intersections	10
	(9) Swamp Coolers or Evaporative Coolers	10
	(10) Plants	10
	(11) Clothes Drying	10
	(12) Exterior Alteration	10
	(13) Signs	10
	(14) Solar Equipment	10
	(15) Business Use	11
	(16) Storage and Parking of Vehicles	11
	(17) Antennae	12
	(18) Windows and Window Coverings	13
	(19) Pets	13
	(20) Insurance	14
	(21) Laws	14
	(22) Damage or Waste	14
	(23) Structural Alterations	14
7.	Leases	14
8.	Easements; Drainage, Support, Maintenance and Repair	15
9.	Liability of Owners and Residents for Damages	15
10.	Encroachments	15
11.	Board of Trustees	15
12.	Status and General Authority of Board	15
a)	To Enter	16
b)	Grant Easements	16
c)	Execute Documents	16
d)	Standing	16
e)	Enter Into Contracts	16
f)	To Purchase	16
g)	To Add Property	16
h)	Promulgate Rules	16
i)	Meetings	16
j)	All Other Acts	17
13.	Delegation of Management Responsibilities	17

14.	Member Meetings	17
15.	Classes of Membership and Voting Allocations	17
16.	Operation, Maintenance and Alterations	17
	a) Area of Common Responsibility :	17
	b) Landscaping Restrictions	18
	c) Snow and Ice Accumulations	18
	d) Area of Personal Responsibility	18
	e) Utilities	18
	f) Party Walls	19
	g) Standard of Care/General.	19
	h) Standard of Care/Landscaping	19
	i) Neglect	19
	(1) Assessment	20
	(2) Notice of Intent to Repair	20
	(3) Emergency Situation	20
	(4) Optional Repairs	20
	(5) Right of Entry	20
	j) Changes to Areas of Personal or Common Responsibility	20
	k) Alterations to the Common Area	20
17.	Common Area Expenses	20
	a) Purpose of Common Area Expenses	21
	b) Creation of Common Area Assessments	21
	c) Budget	21
	(1) Itemization	21
	(2) Basis	21
	d) Transfer fee	21
	e) Apportionment	21
	f) Approval of Budget and Assessments	22
	g) Payment of Common Area Assessments	22
	h) Personal Obligation of Owner	22
	i) Equitable Changes	22
	j) Reserve Account	22
	k) Acceleration	22
	l) Statement of Common Area Assessments Due	23
	m) Superiority of Common Area Assessments	23
	n) Termination of Utility Service	23

0)	Suspension of Right to Vote for Non-Payment	23
p)	Failure to Assess	23
18.	Special Assessments	23
a)	Board-Based Assessment	23
b)	Association Approval.	23
19.	Specific Assessments	23
a)	No Obligation or Waiver	24
b)	Enabling Power	24
(1)	Benefit Only to Specific Unit..	24
(2)	Unequal or Disproportionate Benefit	24
20.	Individual Assessments	24
21.	Collection of Assessments	24
a)	Time is of the Essence	24
b)	Delinquent Assessments	24
c)	Late Assessment and Accruing Interest..	25
d)	Notice of Delinquency	25
e)	Notice of Lien	25
f)	Foreclosure of Lien and or Collection Action	25
g)	Personal Obligation	25
h)	No Waiver	25
i)	Duty to Pay Independent	25
j)	Application of Payments	25
k)	Foreclosure of Lien as Mortgage or Trust Deed	25
l)	Appointment of Trustee	26
m)	Attorney-in-Fact	26
n)	Property Insurance	26
o)	Liability Insurance	26
p)	Director's and Officer's Insurance	26
q)	Fidelity Bond	26
(1)	Agents	27
(2)	Amount of Coverage	27
(3)	Quality of Coverage	27
r)	Earthquake Insurance	27
s)	Miscellaneous Items	27

	(1) Quality of Carrier	27
	(2) The Insured	28
	(3) Designated Representative	28
	(4) Certificate of Insurance	28
	(5) Deductible	28
	(6) Special Endorsements	28
	(7) Intent	28
t)	Additional Property Insurance	28
	22. Owner's Insurance	28
	a) Primary Coverage	29
	b) Certificate of Insurance	29
	c) Prompt Repair	29
	d) Failure to Repair	29
	(1) Assessment	29
	(2) Notice of Intent to Repair	29
	(3) Optional Repairs	29
	(4) Right of Entry	29
	23. Consent in Lieu of Vote	29
	a) Ninety-Day Limit.	29
	b) Change in Owners	30
	24. Mortgagee Protection	30
	a) Effects of Voluntary and Involuntary Sale	30
	b) Books and Records Available for Inspection	30
	c) Right to Financial Statement..	30
	d) Eligible Mortgagee	30
	(1) Condemnation Loss or Award	30
	(2) Delinquency	31
	(3) Lapse of Insurance	31
	(4) Consent Required	31
	e) No Right of First Refusal	31
	25. Amendment	31
	a) Consent of the Owners	31
	b) Consent of Eligible Mortgagees ,	31
	26. Notice and Hearing	32

a)	Notice	32
b)	Owner's Request	32
c)	Costs and Assessments	32
d)	Final Determination	32
27.	Declarant's Sales Program	32
a)	Sales Office and Model Units	33
b)	Promotional	33
c)	Common Area Use	33
d)	Relocation and Removal	33
28.	Limitation on Improvements by Association	33
29.	Declarant's Rights Assignable	33
30.	Working Capital Fund	33
31.	Transfer of Management	34
32.	Certain Provisions Applicable to Declarant..	34
33.	Interpretation	34
34.	Covenants to Run with Land	35
35.	Enforcement and Right to Recover Attorney' s Assessments	35
36.	Security	35
37.	Mechanics Liens	35
a)	Association/Goods or Services	35
b)	Unit Owner/Goods or Services	36
c)	Constructive Consent	36
38.	Dispute Resolution	36
39.	Agent for Service of Process	36
40.	Expansion	36
41.	Effective Date	36
42.	Counterparts	36

**DECLARATION OF
CONENANTS, CONDITIONS &
RESTRICTIONS
BROOKS COVE, LLC**

THIS Declaration of Covenants, Conditions and Restrictions (the "Declaration") is made and executed as of this 19th day of October, by BROOKS COVE, LLC, a Utah limited liability company of Draper, Utah (hereinafter referred to as the "Declarant").

RECITAL

- A. This Declaration affects that certain real property located at approximately 13568 South 300 East, Draper, Salt Lake County, Utah, described with particularity in Article II below (hereinafter referred to as the "Tract").
- B. Declarant is or was the Owner of the Tract.
- C. Declarant has constructed, is in the process of constructing or will construct, upon the Tract a residential planned unit development which shall include certain Units, Common Area, and other improvements. All of such construction has been, or is to be, performed in accordance with the plans.
- D. Declarant intends to sell to various purchasers the fee title to the individual Units contained in the Tract, and a corresponding membership interest in the Association of Unit Owners (which shall own the Common Area), subject to the Plat Map, and the covenants, conditions and restrictions set forth herein.
- E. Declarant hereby conveys and grants an easement over the roadways of the Project (as defined in the Declaration) and the right to use the Common Area in order to facilitate the development of the Project.
- F. Declarant desires, by filing this Declaration, to submit the Tract and all improvements now or hereafter constructed thereon to the terms, covenants and conditions of this Declaration, and the Project is to be known as BROOKS LANE, LLC. This Declaration replaces and supersedes any Declaration previously filed and any amendments thereto.

NOW, THEREFORE, for the reasons recited above and subject to the covenants, conditions and restrictions set forth below, Declarant hereby makes the following Declaration:

I. DEFINITIONS

When used in this Declaration (including in that portion hereof entitled "Recitals"), each of the following terms shall have the meaning indicated.

1. Additional Charges shall mean and refer cumulatively to all collection and administrative costs, including but not limited to all attorney's fees, late charges, service fees, filing and recordation fees, accruing interest, fines, and expenditures actually incurred or assessed by the Association.

2. Articles of Incorporation shall mean and refer to the Articles of Incorporation of the BROOKS COVE, LLC HOMEOWNERS' ASSOCIATION, a non-profit corporation, on file or to be filed with the Utah Department of Commerce.

3. Assessment shall mean and refer to the fees, dues and amounts assessed against a Unit Owner to pay for the expenses incurred in the operation, management, maintenance, repair, replacement, control and regulation of the Project.

4. Association shall mean and refer to the association of Unit Owners at BROOKS COVE, LLC, which association shall be known as the BROOKS COVE, LLC HOMEOWNERS' ASSOCIATION.

5. Board of Trustees (sometimes referred to as "Board") shall mean and refer to those Unit Owners duly elected, in accordance with the Bylaws and this Declaration, and qualified to manage, operate and regulate the Association.

6. Building shall mean and refer to any of the structures now or hereafter constructed in the Project.

7. Business and Trade shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form or consideration, regardless of whether such activity is engaged in full- or part-time; such activity is intended to or does generate a profit; or a license is required, therefore.

8. Bylaws shall mean and refer to the Bylaws of the Association, including any amendments thereto, which may be called either Bylaws or Rules and Regulations, with the same effect.

9. Capital Improvement shall mean and refer to all nonrecurring expenses (as opposed to day-to-day expenses) to repair, maintain or replace significant fixed assets in the Project intended to restore, enhance, improve or ameliorate the utility, value or beauty of the Common Area or Facilities.

10. Class B Control Period shall mean and refer to the period of time until four (4) months after Declarant has closed the sale of 80% or more of the Units in the PUD, or until the other Events set forth in paragraph 3.2(b) of the Bylaws have occurred.

11. Common Area shall mean and refer to all real property in or adjacent to the Project in which the Association or its Members have a right of use or owns an interest for the

Common use and benefit of its Members, their successors, assigns, tenants, families, guests and invitees, including but not limited to the following items:

- a) The real property and interests in real property submitted hereby, including the entirety of the Tract and all improvements constructed thereon, excluding the individual Units.
- b) All Common Area and Facilities designated as such in the Plat Map or Maps, and amendments or supplements thereto;
- c) All utility installations and all equipment connected with or in any way related to the furnishing of utilities to the Project and intended for the common use of all Unit Owners, such as telephone, electricity, gas, water and sewer.
- d) The Project's outdoor grounds, landscaping, street lighting, perimeter and preservation fences, sidewalks, parking spaces and roadways;
- e) All portions of the Project not specifically included within the individual Units; and
- f) All other parts of the Project normally in common use or necessary or convenient to the use, existence, maintenance, safety, operation or management of the Property owned by the Association for the common benefit of its Members.

The Common Area is more particularly identified on the attached Exhibit "B".

12. Common Expenses shall mean and refer to the actual and estimated expenses of operating, managing, maintaining, repairing, replacing, controlling and regulating the Project, or any portion thereof, including any reasonable reserve.

13. Community shall mean and refer to the Project.

14. Community Standards shall mean and refer to the standard of conduct, maintenance, or other activity generally prevailing in the Community as determined by the Board of Trustees from time to time.

15. Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions of BROOKS COVE, LLC recorded in the Plat Maps on October 19, 2017 as Entry No. 11781729, Book No. 2013p, Page No. 269 of the official records of the Salt Lake County Recorder.

16. Declarant shall mean and refer to BROOKS COVE, LLC, a Utah limited liability company, its successors and assigns.

17. Eligible Insurer shall mean and refer to an insurer or governmental guarantor of a mortgage or trust deed who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

18. Eligible Mortgagees shall mean and refer to a mortgagee, beneficiary under a trust deed, or lender who has requested notice in writing of certain matters from the Association in accordance with this Declaration.

19. Eligible Votes shall mean and refer to those votes available to be cast on any issue before the Association or the Board. A vote which is for any reason suspended is not an "eligible vote."

20. Family shall mean and refer to a group of natural persons residing in the same residential structure and maintaining a common household.

21. Guest shall mean and refer to a temporary visitor, invitee or person whose presence within the Project is approved by or is at the request of a particular resident.

22. Improvement shall mean and refer to all existing physical structures and appurtenances to the Property of every kind and type, including but not limited to all buildings, dwelling units, fixtures, plumbing, electrical, heating, air conditioning and utility systems, roads, walkways, driveways, parking areas, fences, walls stairs, landscaping, trees, shrubs, bushes and green space.

23. Land shall mean and refer to all of the real property subject to this Declaration.

24. Limited Common Area shall mean and refer to the front and side yards of each Unit within the Project. The Limited Common Areas are more particularly shown on the attached Exhibit "B".

25. Majority shall mean and refer to those eligible votes of Owners or other groups as the context may indicate totaling more than fifty percent (50%) of the total eligible number.

26. Manager shall mean and refer to the person or entity appointed or hired to manage and operate the Project.

27. Member shall mean and refer to an Owner, obligated by virtue of ownership, to membership in the Association.

28. Mortgage shall mean and refer exclusively to either a first mortgage or first deed of trust on any Unit, but shall not mean or refer to an executory contract of sale.

29. Notice and Hearing shall mean and refer to the procedure which gives an Owner or resident due process.

30. Owner or Unit Owner shall mean and refer to the person or persons, including Declarant, who is the owner of record (in the office of the County Recorder of Salt Lake County, Utah) of a fee or an undivided fee interest in a Unit, including but not limited to both the seller and buyer under an executory sales contract (e.g., uniform real estate, land sales contract, or Other similar instrument). The term Owner or Unit Owner does not mean or include a mortgagee or a beneficiary or 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.

31. Person shall mean and refer to a natural person, corporation, partnership, trust, limited liability Company, or other legal entity.

32. Plat Map or Map shall mean and refer to any Plat Map or Maps of BROOKS COVE, LLC, on file in the office of the County Recorder of Salt Lake County as they may be amended from time to time. The Plat Map will show the location of the Units, Common Area and Limited Common Area.

33. Project shall mean and refer to the BROOKS COVE, LLC, located in Salt Lake County, Utah, as more particularly described in Exhibit "A" hereto, including any Additional Land hereafter included by means of a supplemental declaration, modifying or expanding this Declaration.

34. Project Documents shall mean the Declaration, any Declaration, Bylaws, Rules and Regulations, and/or Articles of Incorporation.

35. Property shall mean and refer to all of the land or real estate, improvements and appurtenances pertaining to and subject to this Declaration, as described in Exhibit "A" hereto.

36. Recreational, Oversized or Commercial Vehicle shall mean and refer to any recreational, commercial or oversized vehicle, motor home, commercial vehicle, tractor, golf cart, mobile home or trailer (either with or without wheels), camper, camper trailer, boat or other watercraft, boat trailer, or any other recreational, oversized or commercial transportation device of any kind.

37. Rules and Regulations shall mean the rules and regulations established by the Board of Trustees to control, regulate or establish guidelines for the conduct of owners and others on the Project.

38. Single-Family Home or Residence shall mean and refer to both the architectural style of a dwelling unit and the nature of the residential use permitted.

39. Supplemental Declaration shall mean and refer to any Supplemental Declaration of Covenants, Conditions and Restrictions for BROOKS COVE, LLC.

40. Unit or Dwelling Unit shall mean and refer to a portion of the Property, other than the Common Area, intended for any type of independent ownership and use as may be set out in this Declaration or as shall be shown on any Plat Map pertaining to this Declaration or any amendments thereto. Where the context indicates or requires, the term Unit includes any single-family residential structures and improvements constructed as part of the townhome comprising said Unit.

41. Unit Number shall mean and refer to the number, letter or combination thereof designating a particular Unit.

II. SUBMISSION

The Land, described with particularity on Exhibit "A", attached hereto and incorporated herein by this reference, is located in Salt Lake County, Utah, is hereby submitted to the terms, covenants and conditions of this Declaration, and is hereby made subject to, and shall be governed and regulated by, this Declaration of restrictive covenants. In addition:

The Land is SUBJECT TO the described easements and rights-of-way, TOGETHER WITH all easements, rights-of-way, and other appurtenances and rights incident to, appurtenant to, or accompanying the above-described parcel of real property, including any easement or right-of-way created by this Declaration.

ALL OF THE FOREGOING IS SUBJECT TO: All liens for current and future taxes, assessments, and charges imposed or levied by governmental or quasi-governmental authorities; all Patent reservations and exclusions; any mineral reservations of record and rights incident thereto; all instruments of record and rights incident thereto; all instruments of record which affect the Tract or any portion thereof, including, without limitation, any mortgage or deed of trust; all visible and necessary easements and rights-of-way; all easements and rights-of-way of record; any easements, rights-of-way, encroachments, or discrepancies shown on or revealed by the Plat Maps or otherwise existing; an easement for each and every Common Area improvement, equipment, pipes, lines, cables, wires, utility systems, or similar facilities which traverse or partially occupy the above-described Tract; and all easements necessary for servicing, repairing, ingress to, egress from, maintenance of, and replacement of all such Common Area improvements, equipment, pipes, lines, cables, wires, utility systems, and similar facilities.

The Project may be expended to include Additional Land and/or Units upon the filing of an appropriate amendment to this Declaration and the Map as provided herein.

III. COVENANTS, CONDITIONS AND RESTRICTIONS

The foregoing submission is made upon and under the following covenants, conditions and restrictions:

1. Description of Improvements. The significant improvements in the Project include, or shall include, twenty-one (21) Units; Dwelling Units constructed with cement footings and foundations, wood siding, stucco and/or cobblestone rock exteriors, and wood, composite asphalt shingles on the roof; and Common Area consisting open parking spaces, green space, landscaping, roadways, a common utility system, as well as entrances to and exits from the Community. The Project will also contain other improvements of a less significant nature. All Dwelling Units and residential structures will be of like kind, color, and quality (in the sole discretion of the Declarant or its successor in interest).

2. Description and Legal Status of the Property. The Units shall be individually owned and the Common Area, including the Limited Common Area and Green Strips, shall be owned by the Association.

3. Membership in the Association. Membership in the Association is appurtenant to the ownership of a Unit, and may not be partitioned therefrom.

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

All of lots 1-21 contained within the BROOKS COVE, LLC as the same is identified in the Record of Plat Maps recorded on _____ as Entry No. _____
Book No. _____, Page No. _____.

Together with the use and enjoyment of the private roads and common areas within BROOKS COVE, LLC, as set forth on the recorded plat.

5. Provisions Binding. Regardless of whether or not the description employed in any such instrument is in the above-specified form, all provisions of this Declaration shall be binding upon and shall inure to the benefit of any party who acquires any interest in a Unit. Neither the membership in the Association, nor the right of nonexclusive use of a Common Area shall be separated from the Unit to which it appertains; and, even though not specifically mentioned in the instrument of transfer, such mandatory membership in the Association and such right of exclusive use shall automatically accompany the transfer of the Unit to which they relate.

6. Ownership and Use. Each Owner shall be entitled to the exclusive ownership and possession of his Unit and to membership in the Association as set forth herein, subject, however, to the following:

a) Nature and Restrictions on Ownership and Use in General. Each Owner shall have and enjoy the privileges of fee simple ownership of his Unit. There shall be no requirements concerning who may own a Unit, it being intended that they may and shall be owned as any other Property rights by persons. This is a residential Community and as such the Units shall be used only for residential purposes, except as set forth below. The Common Area shall only be used in a manner consistent with the residential nature of the Project.

b) Title to the Common Areas. The Common Area, the Limited Common Area, and the Green Strips, identified with particularity on Exhibit "B", which is attached hereto and incorporated herein by this reference, shall be owned by the Association. The Members shall have the right to use all of the Common Area, and each Owner shall have the right to use the Limited Common Area associated with the Owner's Unit, subject to the payment of the appropriate maintenance expenses pursuant to the terms of this Declaration.

c) Mandatory Association Membership. Each purchaser of a Unit shall automatically become a member of the Association.

d) Member's Easements and Rights-of-Way. Every Member of the Association shall, as an Owner, have the right and nonexclusive easement to use and enjoy the Common Area. Such right and easement shall be appurtenant to and shall pass with the title to every Unit, subject to the following restrictions:

(1) The right of the Association to limit the number of guests and residents;

(2) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for the purpose of providing utilities and similar or related purposes. During the Developer's period of development of the Project, any such dedication or transfer shall be effective only if approved in writing by the Declarant.

e) Rules and Regulations. The Board of Trustees shall have the power and authority to adopt, amend or repeal administrative rules and regulations from time to time.

1) Restrictions and Limitations of Use. The use of the Units, of whatever kind, is subject to the following guidelines, limitations and restrictions:

(1) Parties Bound. The Project Documents shall be binding upon all Owners and residents, their family members, guests and invitees.

(2) Nuisance. It shall be the responsibility of each Owner and resident to prevent the creation or maintenance of a nuisance in, on or about the Project. 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 Unit or the Common Area;

b. The storage of any item, property or thing that will cause any Unit or the Common Area to appear to be in an unclean or untidy condition or that will be noxious to the senses;

c. The storage of any substance, thing or material upon any Unit or in the Common Area that will emit any foul, unpleasant or noxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other residents at the Project;

d. The creation or maintenance of any noxious or offensive condition or activity in or about any Unit or the Common Area;

e. Actions or activities tending to cause embarrassment, discomfort, annoyance, distress or a disturbance to any other residents, their guests or invitees, particularly if the police or sheriff must be called to restore order;

f. Maintaining any plants, animals, devices or items, instruments, equipment, machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community by other residents, their guests or invitees.

g. Too much noise in, on or about any Unit or the Common Area, especially after 10:00 p.m. and before 7:00 a.m.

h. Too much traffic in, on or about any Unit or the Common Area, especially after 10:00 p.m. and before 7:00 a.m.; and

i. Loitering.

(3) **Unsightly Work, Hobbies or Unkempt Conditions.** The pursuit of hobbies or other activities, including but not limited to the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any part of the Project.

(4) **Removing Garbage, Dust & Debris.** All rubbish, trash, refuse, waste, dust, debris and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate thereon.

(5) **Subdivision of a Unit.** No Unit shall be subdivided or partitioned.

(6) **Firearms, Incendiary Devices and Graffiti.** The use of firearms and Incendiary devices, or the painting of graffiti within the Project is prohibited. The Term "firearms" includes but is not limited to all guns, pistols, handguns, rifles, automatic weapons, semi-automatic weapons, BB guns, pellet guns, sling shots, wrist-rockets, blow-dart guns, and other firearms of all types, regardless of size.

(7) **Temporary Structures.** No Owner or resident shall place upon any part of the Project any temporary structures including but not limited to tents, trailers, or sheds, without the prior written consent of the Board. Anything to the contrary notwithstanding and until the occurrence of the Events referred to herein, the Developer may install and use temporary structures in the development of the Project and marketing of the Units.

(8) **Trees, Shrubs and Bushes; Maintenance of Proper Sight Distance at Intersections.** All property located at or near driveways, entrances, exits, walkways, paths and street intersections or comers shall be landscaped so as to remove any obstructions and to permit safe sight. No fence, wall, hedge, shrub, bush, tree or monument, real or artificial, shall be planted or placed by any Owner or resident in, on or about the Common Area without the prior written consent of the Board. The Board of Trustees may alter or remove any objects planted or placed in violation hereof.

(9) **Swamp Coolers or Evaporative Coolers.** No Owner shall place upon any part of the Project, Unit or Common Area any swamp cooler or evaporative cooler.

(10) **Plants.** No plants or seeds infected with noxious insects or plant diseases shall be brought upon, grown, or maintained upon the Project.

(11) **Clothes Drying.** No exterior clotheslines shall be erected or maintained and there shall be no outside drying or laundering of clothes.

(12) **Exterior Alteration.** No Owner shall make any alterations or modifications to the exterior of any Buildings, fences, railings, or walls situated within the Project without the prior written consent of the Association.

(13) **Signs.** No signs shall be erected or displayed on the Common Area or any Unit except signs placed by authority of the Board of Trustees. Notwithstanding any provision in this Declaration to the contrary, so long as the Declarant retains ownership of any Units, Declarant may erect signs as it reasonably determines are necessary for the sale or promotion of such Units. No sign other than one (1) sign of customary and reasonable size shall be erected or displayed on any Unit without prior written permission of the Board of Trustees. The sign must be no larger than 2' X 3', and only displayed in a window. No signs, whatsoever, may be displayed anywhere outside the Unit unless the Board of Trustees first issues written permission to the Owner.

(14) **Solar Equipment.** No Owner may install any solar energy device without the express written consent of the Board of Trustees.

(15) **Business Use.** No commercial trade or business may be conducted in or from any Unit unless: a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the residence; b) the business activity conforms to all zoning requirements for the Project; c) the business activity does not involve persons coming onto the Project who do not reside in the Project or door-to-door solicitation of residents of the Project; and d) the business activity is consistent with the residential character of the Project and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Project, as may be determined in the sole discretion of the Board of Trustees.

Notwithstanding the above, the leasing of a residence shall not be considered a trade or business.

(16) **Storage and Parking of Vehicles.** The driving, parking, standing and storing of motor vehicles in, on or about the Project shall be subject to the following:

a. Except for purposes of moving in or out of a Unit, or, during business hours, for the purposes of loading or unloading passengers, appliances, furniture or the like, no recreational, commercial or oversized vehicle parking is allowed in the Project;

b. No parking on the street is allowed in the Project except as set forth in paragraph 16(a) above;

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

d. Residents may only park their motor vehicles within their garages and driveways;

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

f. No garage may be altered in such a manner that the number of motor vehicles which may reasonably be parked therein after the alternation is less than the number of motor vehicles that could have been reasonably parked in the garage as originally designed and constructed;

g. All parking areas shall be used solely for the parking and storage of vehicles.

h. Garage doors shall remain closed except when the garage is in use.

i. Guest parking is limited to the guest parking spaces and homeowners' driveways.

j. Vehicles parked in violation of this Declaration may be impounded or towed without further notice, and at the vehicle owner's sole expense.

k. Driving at speeds in excess of 15 mph is prohibited.

l. Driving recklessly is prohibited.

m. No draining of car fluids is allowed on the property. No dumping of vehicle fluids in storm drains. Residents are not to leave containers of vehicle fluids in garages. If antifreeze is spilled, it should be immediately cleaned up.

n. Driving motor-powered vehicles (mini-bikes, motorcycles, go-carts, mopeds, cars, etc.) on sidewalks or landscaped areas is prohibited. All drivers of motorized vehicles must have a valid driver's license.

(17) **Antennae.** One (1) small and inconspicuous satellite dish antenna having a diameter of 18" or less, which is installed on a Unit and is integrated with the Unit structure and surrounding landscape, shall be permitted upon a Unit. Unless otherwise approved by the Board of Trustees, the antenna shall be located on the south side of the roof. All wiring must be concealed. A satellite dish larger than 18" in diameter, or any dish which is not installed on a Unit and integrated with the surrounding landscaping may be approved by the Board of Trustees on a case-by-case basis. The location and screening of the satellite dish shall be specified by the Board of Trustees to ensure that the satellite dish is not visible from the street. Notwithstanding anything to the contrary, any unapproved satellite dish antenna having a diameter of more than 18", and all other

microwave dish antennae, satellite dish antennae, exterior radio antennae, television antennae, or other electronic signal receiving or transmitting equipment are prohibited within the Project; provided, however, that to the extent any of the provisions hereof are contrary to any laws, rules or ordinances of any governmental entity that are applicable to the Project, those laws, rules or ordinances shall take precedence.

(18) **Windows and Window Coverings.** No aluminum foil, newspapers, reflective film coatings, or any other similar materials may be used to cover the exterior windows of any Dwelling Unit or garage. Sun shades and tinted windows are allowed. All windows and window panes in the Project shall be harmonious, and comparable in size, design and quality, so as not to detract from uniformity in appearance and construction.

(19) **Pets.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept at the Project, except that no more than two (2) dogs, cats or other normal household pets may be kept in Units subject to rules and regulations adopted by the Association through its Board of Trustees, provided that such pets are not kept, bred, or maintained for any commercial purpose.

a. Notwithstanding this provision, no pet enclosures shall be erected, placed or permitted to remain on any portion of the Common Area, nor shall pets be kept tied to any structure outside the Unit.

b. Pets shall be on a leash at all times when outside a Unit.

c. No pet shall be permitted to urinate or defecate on any portion of the Common Area, and the Owner of such pet shall immediately remove feces left upon the Common Area by their pet.

d. In addition, any pet which endangers the health or welfare of any Owner or Resident or which creates a nuisance (e.g., unreasonable barking, howling, whining or scratching) or an unreasonable disturbance or is not a common household pet, as may be determined in the sole discretion of the Board of Trustees, must be permanently removed from the Project upon seven (7) days written notice by the Board of Trustees.

e. Owners are responsible to remove dog feces from front yards prior to mowing by the landscaper: the landscaper may refuse to mow a front yard at their discretion, if this is not done. The owner would then be responsible to keep the front yard mowed and the beds maintained.

f. Owners are responsible to restore the lawn and flowerbeds to the original condition due to damage from animals.

(20) Insurance. Nothing shall be done or kept in, on or about any Unit or the Common Area which may result in the cancellation of any insurance on the Property or an increase in the rate of the insurance on the Common Area over what the Board of Trustees, but for such activity, would pay.

(21) Laws. Nothing shall be done or kept in, on or about any Unit or Common Area, or any part thereof, which would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body having authority.

(22) Damage or Waste. No damage to, or waste of, the Common Area shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Board of Trustees, Declarant and the other Owners harmless against all loss resulting from any such damage or waste caused by that Owner or an invitee, provided, however, that any invitee of the Declarant shall not under any circumstances be deemed to be an invitee of any other Owner.

(23) Structural Alterations. No structural alterations to the Common Area is allowed without the prior written consent of the Board of Trustees.

7. Leases. Any agreement for the leasing, rental, or occupancy of a Unit (hereinafter in this Section referred to as a "Lease") shall be in writing. Any Owner who leases his Unit shall provide written notice of the existence of the Lease to the Association no later than thirty (30) days after the commencement of the Lease. Every Lease shall provide that its terms shall be subject in all respects to the provisions of the Project Documents. Said Lease shall further provide that any failure by the resident thereunder to comply with the terms of the foregoing documents shall be a default under the Lease. If any Lease does not contain the foregoing provisions, such provisions shall nevertheless be deemed to be a part of the Lease and binding on the Owner and resident by virtue of their inclusion in this Declaration. No Owner shall be permitted to lease his Unit for transient, hotel, seasonal, rental pool, or corporate executive use or purposes, which shall be deemed to be any rental with an initial term of less than six (6) months. Daily or weekly rentals and timeshares are prohibited. No Owner may lease individual rooms to separate persons or less than his entire Unit. Any Owner who shall lease his Unit shall be responsible for assuring compliance by the resident with the Project Documents. Failure by an Owner to take legal action, including the institution of a forcible entry and unlawful detainer proceeding against the resident who is in violation of the Project Documents within ten (10) days after receipt of written demand so to do from the Board of Trustees, shall entitle the Association to take any and all such action including the institution of proceedings in forcible entry and unlawful detainer on behalf of such Owner against his resident. Neither the Association nor any agent retained by the Association to manage the Project shall be liable to the Owner or resident for any eviction under this Section that is made in good faith. Any expenses incurred by the Association, including attorney's fees and costs of suit, shall be repaid to it by such Owner. Failure by such Owner to make such repayment within ten (10) days after receipt of a written demand therefor shall entitle the Association to levy an individual assessment against such Owner and his Unit for all such expenses incurred by the Association. In the event such assessment is not paid within thirty (30) days of its due date, the Board of Trustees may resort to

all remedies of the Association for the collection thereof. Other than as stated in this Section, there is no restriction on the right of any Owner to lease or otherwise grant occupancy rights to a Unit.

8. Easements; Drainage. Support, Maintenance and Repair. There are hereby reserved and the Association is hereby granted the following easements and rights-of-way:

a) A nonexclusive easement over, across, through, above and under the Units and the Common Area for the operation, maintenance and regulation of the Common Area, amenities and facilities; and

b) A reciprocal easement on, over, under, through and across all Units and Common Area for the drainage of surface waters on, over, under, through and across the Project. The Declarant shall establish a storm drainage system designed to serve the entire Project (the "Master Storm Drain System"). No Unit Owner shall interfere with the Master Storm Drain System established by the Declarant, or its successors or assigns. Each Unit Owner shall be responsible to develop his Unit in a manner consistent with the Master Storm Drain System, and so as not to detract therefrom or interfere therewith, or the Established Drainage Pattern on any other Unit in the Project. No changes to the Established Drainage Pattern on any Unit shall be permitted without the prior written consent of the Board of Trustees. The term "Established Drainage Pattern" is defined as the approved drainage pattern, facilities and improvements, including but not limited to all drawings on record and in existence at the time such Unit is conveyed to an Owner by the Declarant, its successor or assign. The cost of all improvements, maintenance, repairs and replacements of the Master Storm Drainage System Storm Drainage System shall be the responsibility of the Association

9. Liability of Owners and Residents for Damages. Any Owner or resident shall be liable to the Association or other Owners or residents for damages to person or property in the Project caused by his or her negligence.

10. Encroachments. In the event that any portion of the Common Area or a Unit encroaches or comes to encroach upon other Common Area or a Unit as a result of construction, reconstruction, repair, shifting, settling, or movement, an easement for such encroachment is created hereby and shall exist so long as such encroachment exists.

11. Board of Trustees. The Association shall be managed by a Board of Trustees, which shall appoint officers, hold meetings, and conduct the business of the Association as more particularly set forth in the Bylaws.

12. Status and General Authority of Board. Any instrument executed by the Board of Trustees that recites facts which, if true, would establish the Board's power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The Association shall, in connection with its exercise of any of the powers delineated below, constitute a legal entity capable of dealing, in the name of the

Board. In addition to the powers and authority set forth in the Bylaws, the Board of Trustees shall have, and is hereby granted, the following authority and powers:

a) **To Enter.** The power and authority to enter upon the Limited Common Area for any Unit to make repairs to the exterior of a Unit and to do other work in the Limited Common Area reasonably necessary for the proper maintenance and operation of the Project. Except in the case of any emergency, reasonable notice shall be given to the residents. In no case shall the Association or the Board of Trustees have the right to enter uninvited into any Unit or into any back yard associated with any Unit.

b) **Grant Easements.** The authority, without the vote or consent of the Owners, mortgagees, insurers or guarantors of any mortgage, or of any other person, to grant or create, on such terms as it deems advisable, reasonable permits, licenses, and nonexclusive easements over, under, across and through the Common Area for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance, operation or regulation of the Project.

c) **Execute Documents.** The authority to execute and record, on behalf of all Owners, any amendment to this Declaration or Plat Map which has been approved by the vote or consent necessary to authorize such amendment, subject to any applicable limitations set forth in this Declaration.

d) **Standing.** The power to sue and be sued.

e) **Enter Into Contracts.** The authority to enter into contracts which in any way concern the Project, so long as any vote or consent necessitated by the subject matter of the agreement has been obtained.

f) **To Purchase.** The power and authority to purchase, otherwise acquire, and accept title to, any interest in real property, so long as it has been approved by at least seventy-five percent (75%) of the Members in the Association.

g) **To Add Property.** The power and authority to add any real property (obtained pursuant to Section 12(t)), or interest therein to the Project, so long as it has been approved by at least seventy-five percent (75%) of the Members of the Association.

h) **Promulgate Rules.** The authority to promulgate such reasonable administrative guidelines, rules, regulations, and procedures as may be necessary or desirable to aid the Board in carrying out any of its functions or to ensure that the Project is maintained and used in a manner consistent with this Declaration.

i) **Meetings.** The authority to establish procedures for the conduct of its meetings, including but not limited to the power to decide what portion of the meeting shall be open or closed to Members of the Association or residents not on the Board, to retire to executive session, to regulate record keeping, and to allow, control or prohibit the electronic reproduction (video or audio) of Board Meetings.

j) All Other Acts. Except as expressly limited by the Bylaws, the power and authority to perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the Board of Trustees to perform its functions on behalf of the Owners.

13. Delegation of Management Responsibilities. The Board may delegate some of its management responsibilities to either a professional management company, an experienced on-site manager, independent contractors, through service contracts, or any combination thereof. The termination provision of any such contract must not require a termination penalty or any advance notice of more than sixty (60) days, no such contract shall be for a term greater than one (1) year.

14. Member Meetings. The Association Members shall meet regularly and for any special reason, at a meeting duly called for that purpose, as more particularly set forth in the Bylaws. Notice for any and all such meetings, together with determining the presence of a quorum and voting shall all likewise be governed pursuant to the Bylaws.

15. Classes of Membership and Voting Allocations. The Association shall have two (2) classes of membership - Class A and Class B, as more particularly described in the Bylaws. Class A Members shall be all Owners with the exception of the Class B Member, if any. The Class B Member shall be the Declarant and any successor of Declarant who takes title for the purpose of development and sale of Units, and who is designated as such in a recorded instrument executed by Declarant. The Class B Member shall originally be entitled to three (3) votes per Unit owned. The Class B membership and the Class B Control Period shall terminate, and Class B membership shall convert to Class A membership upon the happening of the earlier of the Events set forth in paragraph 3.2(b) of the Bylaws.

16. Operation, Maintenance and Alterations. The Units and Common Area, including the Limited Common Area and Green Strips, shall be maintained by the Unit Owners and the Association as follows:

a) Area of Common Responsibility. An overriding purpose of the Association is to maintain a uniform look and aesthetic for the front exterior of each Unit as well as the landscaping associated therewith, as well as the Common Area. To this end, the Association shall maintain, repair and replace, as needed from time to time, the Common Area, the Limited Common Area, the Green Strips, and certain improvements constructed or installed thereon including, but not limited to, all entrances to and exits from the Project, streets, open parking spaces, street lighting, common sidewalks, curbs and gutters, landscaping, green space and sprinkler systems, central utility systems for power, light and water, and all grass edging and mowing as well as the preparation, maintenance and planting of all flower beds. The foregoing items are hereinafter referred to as the "Area of Common Responsibility." The Areas of Common Responsibility for landscaping, mowing and maintenance of flower beds as described herein shall apply to the Common Area, the Limited Common Area and Green Strips. No back yard for any Unit shall be considered an Area of Common Responsibility.

b) **Landscaping Restrictions.** Unit Owners shall not modify the landscaping, green space, sod, plant and flower beds, sprinkling system, or drainage in, on or about the Common Area, the Green Strips, or the Limited Common Area (i.e. front and side yards of each Unit) without the prior written consent of the Board of Trustees.

c) **Snow and Ice Accumulations.** The Association shall remove all ice and snow accumulations from the streets and common walkways. Each Unit Owner shall remove all ice and snow accumulations from all other locations, including but not limited to the driveway and all walkways (and steps) leading to the Dwelling Unit's main entrance, as well as on the sides and to the rear of the Dwelling Unit.

d) **Area of Personal Responsibility.** Each Owner shall maintain his Unit and Unit, and all of the improvements constructed or installed thereon. The following items are expressly included in the Area of Personal Responsibility: the back yard and all fencing associated therewith, all roofs, foundations, footings, columns, girders, beams, supports and main walls of any Dwelling Unit and garage, all individual utility services such as power, light, gas, hot and cold water, heating, refrigeration and air conditioning systems, fixtures, windows, doors, patios, balconies and decks, garage doors, garage door systems, and interior fence surfaces. If an item is not included in the Area of Common Responsibility and it is located in, on, under or above a Unit, then it shall be the responsibility of the Unit Owner, unless otherwise determined in writing by the Board (hereinafter referred to as the "Area of Personal Responsibility"). The rear yard of each Unit shall be landscaped within three (3) months after a Unit is occupied, weather permitting, thereafter, the rear yard shall be maintained in a neat and orderly condition.

e) **Utilities.** The Association shall provide those utility services not separately metered and billed to the individual Owners by the provider. The back yard for each Unit shall have separately metered water, which the Owner shall be responsible to pay for. The Association will provide water for the Limited Common Areas (i.e., the front and side yards for each Unit), but each Owner shall pay for the water used which is attributable to his Unit. The Association shall bear the cost of providing water to, and for the general maintenance and upkeep of the Green Strips.

In addition, each Owner of a Unit which has a power box and/or meter attached to the outside of the Unit, hereby grants a utility easement to the Owner of the adjacent, attached Unit for any and all utility lines to pass from the Unit with the power box or meter, thence along the side of the Unit toward the street to a point in the front yard of the Unit, where the power cable joins together with phone, cable and other utilities, and thence along the front (and under the driveway of) the Unit, to the property line of the adjacent Unit. The scope of the easement is as follows: power, phone and cable lines will be trenched underground to service adjacent Units. These lines will be connected to meters and boxes located on one side of one of the adjacent Units, which meters and boxes will serve both adjoining Units. Said utility lines will then run from the meters and boxes around the front and sides of the respective Units, as efficiently and unobtrusively as possible to service both Units. The size and location of each utility easement may be

more particularly determined as indicated on the plat map, and/or on other documents of record, including, but not limited to deeds of conveyance. No Owner shall interfere with or obstruct the utilities which service an adjoining Unit, nor shall any owner interfere with or obstruct the utility easement described herein.

f) **Party Walls.** Each Unit shares (or may share) a common wall with another adjacent Unit (a "Party Wall"). The Owners on each side of the Party Wall shall maintain in good condition and repair their respective portions of the Party Wall. If a Party Wall, or any portion thereof, is damaged by the negligence or willful misconduct of an Owner (or a family member, invitee, guest or agent of an Owner), then the Owner at fault shall promptly make all needed repairs to the Party Wall at that Owner's sole cost and expense, including all costs of re-establishing and/or reconnecting any and all utilities to both Units contained therein. If neither Owner is at fault for any damage to a Party Wall, or fault cannot otherwise be attributed to either Owner with respect to any damage to a Party Wall, then each Owner shall pay one-half of the expense of repairing and rebuilding the Party Wall, together with one-half of the costs of re-establishing and/or reconnecting any utilities contained therein.

g) **Standard of Care/General.** The Property shall be maintained in a usable, clean, functional, attractive and good condition, consistent with Community Standards. Aesthetic considerations alone, and matters of taste, are sufficient to enjoin a violation of this Declaration.

h) **Standard of Care/Landscaping.** All landscaping in the Project shall be maintained and cared for in a manner consistent with Community Standards and the quality of design and construction originally established by Declarant. Specific guidelines and restrictions on landscaping may be established by the Board of Trustees from time to time. All landscaping shall be maintained in a neat and orderly condition. Any weeds or diseased or dead lawn, trees, ground cover or shrubbery shall be removed and replaced. All lawn areas shall be neatly mowed, and trees, shrubs and bushes shall be properly pruned and trimmed. In short, all landscaping shall be tasteful, so as not to affect adversely the value or use of any other Unit, or to detract from the uniform design and appearance of the Project. Unless the replacement of landscaping Capital Improvements is made necessary by the negligence of the Association, the cost of replacing or restoring the asset shall be the Unit Owner's responsibility.

i) **Neglect.** If the Board determines that any Owner has failed or refused to discharge properly his obligation with regard to the maintenance, repair, or replacement of items for which he is responsible hereunder; or that the need for maintenance, repair, or replacement of the Common Area is caused through the willful or negligent act of any Owner, his family, guests, lessees, or invitees, and it is not covered or paid by insurance, in whole or in part, then the Association may, but is not obligated to, provide such maintenance, repair or replacement at the Owner's sole cost and expense, subject to the following:

(1) **Assessment.** Such costs as are incurred by the Association in the performance of an item included in the Area of Personal Responsibility shall be added to and become a part of the assessment to which such Owner and Unit is subject, and shall be secured by a lien against the Unit regardless of whether a notice of lien is filed.

(2) **Notice of Intent to Repair.** Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide necessary maintenance, repair, or replacement at Owner's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary by the Board. The Owner shall have ten (10) days after receipt of notice within which to complete maintenance or repair, or if the maintenance or repair is not capable of completion within such time period, to commence replacement or repair within ten (10) days.

(3) **Emergency Situation.** If the Board determines that an emergency exists, i.e., there is an imminent threat to life or property, then notice and the opportunity to cure the default is not necessary.

(4) **Optional Repairs.** The Association may, but is not obligated to, provide any such maintenance, repair, or replacement in the manner described above.

(5) **Right of Entry.** The Association or its agents or employees shall have a right to enter upon or into the Limited Common Area for any Unit or any other Common Area as necessary to perform such work and shall not be liable for trespass for such entry or work.

j) **Changes to Areas of Personal or Common Responsibility.** The Board of Trustees may, in its sole discretion, add items to or subtract items from the Areas of Personal or Common Responsibility upon at least thirty (30) days' prior written notice to the Unit Owners.

k) **Alterations to the Common Area.** Anything to the contrary notwithstanding and until the occurrence of the Events, the Declarant may make changes to the Common Area, the Limited Common Area and the Green Strips without the consent of either the Association or the Board of Trustees; provided, however, no Owner or resident may make any structural alterations, modifications, changes or improvements to the Common Area, the Limited Common Area or the Green Strips, including but not limited to any additions, extensions, enclosures, fencing, decks, patios, walkways, structures or sheds not shown on the approved plans and specifications, without the prior written consent of the Board.

17. **Common Area Expenses.** Each Owner, upon receipt of a deed to a Unit, shall pay all Assessments subject to and in accordance with the restrictions set forth below; provided, however, anything to the contrary notwithstanding, the Developer shall not be obligated to pay

Assessments until such time as any Building or Dwelling Unit is substantially complete and a permanent certificate of occupancy has been issued or, in the alternative, the Developer elects in writing to commence payment, whichever first occurs.

a) Purpose of Common Area Expenses. The Assessments provided for herein shall be used for the general purpose of operating the Project, promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and residents, including the maintenance of any real and personal property owned by the Association, and regulating the Community, all as may be more specifically authorized from time to time by the Board.

b) Creation of Common Area Assessments. The Assessments shall pay for the common expenses of the Association as may be from time to time specifically authorized by the Board of Trustees. Each Owner, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association in a timely manner all Assessments assessed.

c) Budget. At least thirty (30) days prior to the Annual Homeowners Meeting, the Board of Trustees shall prepare and deliver to the Owners a proposed budget which:

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

(2) Basis. Shall be based upon advance estimates of cash requirements by the Board of Trustees to provide for the payment of all estimated expenses growing out of or connected with the maintenance and operation of the Common Area, which estimates shall include but are not limited to expenses of management, grounds maintenance, taxes and special assessments, premiums for all insurance which the Board is required or permitted to maintain, common lighting and heating, water charges, carpeting, painting, repairs and maintenance of the Common Area and replacement of those elements of the Common Area that must be replaced on a periodic basis, wages for Board of Trustees employees, legal and accounting fees, any deficit remaining from a previous period, the creation of a reasonable contingency reserve, surplus or sinking fund, capital improvement reserve, and other expenses and liabilities which may be incurred by the Association for the benefit of the Owners under and by reason of this Declaration.

d) Transfer fee. Each new owner shall be charged a \$250.00 enrollment fee. This fee is to be collected at closing and paid to the HOA. Said monies are to be used to the benefit of the HOA.

e) Apportionment. The common profits of the property, if any, shall be distributed among, and the common expenses shall be charged (and voting rights shall be

allocated) to the Unit Owners equally. For example, but not by way of limitation, the Association shall bill the Owners the cost of the water used by the Association for the Green Strips, at the rate of 1132 to each Owner. The Association shall also bill the cost of road maintenance at the rate of 1132 to each Owner.

t) **Approval of Budget and Assessments.** The proposed budget and the Assessments shall become effective unless disapproved at the Annual Meeting by a vote of at least a majority of the Owners. Notwithstanding the foregoing, however, if the Members disapprove the proposed budget and Assessments or the Board of Trustees fails for any reason to establish the budget and Assessments for the succeeding year, then and until such time as a new budget and new Assessment schedule shall have been established, the budget and the Assessments in effect for the then current year shall continue for the succeeding year.

g) **Payment of Common Area Assessments.** The Board of Trustees has the sole authority and discretion to determine how and when the annual Assessments are paid.

h) **Personal Obligation of Owner.** Owners are liable to pay all Assessments accruing interest, late Assessments and collection costs, including attorney's fees; provided, however, no first Mortgagee (but not the Seller under an executory contract of sale such as a uniform real estate contract, land sales contract, or other similar instrument), who obtains title to a Unit pursuant to the remedies provided in the Mortgage (e.g., through the non-judicial foreclosure of a trust deed) shall be liable for unpaid Assessments which accrued prior to the acquisition of title. The term "Owner" shall mean and refer jointly and severally to: (i) the owner of both the legal and equitable interest in any Unit, (ii) the owner of record in the offices of the County Recorder of Salt Lake County, Utah, and (iii) both the Buyer and Seller under any executory sales contract or other similar instrument.

i) **Equitable Changes.** If the aggregate of all monthly payments on all of the Units is too large or too small as a result of unanticipated income or expenses, the Board may from time to time make an equitable change in the amount of said payments. Owners shall be given at least thirty (30) days' written notice of any changes.

j) **Reserve Account.** The Board shall establish and maintain a reserve account to pay for unexpected operating expenses and capital improvements. The reserve account shall be funded out of regular Assessments.

k) **Acceleration.** Assessments shall be paid in the manner and on dates fixed by the Board which may, at its option and in its sole discretion, elect to accelerate the entire annual Assessment for delinquent Owners. If, however, the Assessment is accelerated and an Owner subsequently files bankruptcy or the Board otherwise decides that acceleration is not in its best interest, the Board, at its option and in its sole discretion, may elect to decelerate the obligation.

1) **Statement of Common Area Assessments Due.** Upon written request, the Board shall furnish to any Owner a statement of assessments due, if any, on his Unit. Failure to provide the certificate within ten (10) days after a written request shall be deemed conclusive evidence that all Assessments are paid current. The Association may require the advance payment of a processing charge not to exceed \$10.00 for the issuance of such certificate.

m) **Superiority of Common Area Assessments.** All Assessments and liens created to secure the obligation to pay Assessments are superior to any homestead exemptions to which an Owner may be entitled.

n) **Termination of Utility Service.** At the discretion of the Board, the utility service to any Owner paid for by Assessments may be terminated if the Owner is in arrears on his obligation to pay Assessments and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

o) **Suspension of Right to Vote for Non-Payment.** At the discretion of the Board, the right of an Owner to vote on issues concerning the Association may be suspended if the Owner is delinquent in the payment of his Assessments, and has failed to cure or make satisfactory arrangements to cure the default after reasonable notice of at least ten (10) days.

p) **Failure to Assess.** The omission or failure of the Board of Trustees to fix the Assessment amounts or rates or to deliver or mail to each Owner an Assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay Assessments. In such event, each Owner shall continue to pay annual Assessments on the same basis as for the last year for which an Assessment was made until a new Assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

18. **Special Assessments.** In addition to the other Assessments authorized herein, the Association may levy special Assessments in any year, subject to the following:

a) **Board-Based Assessment.** So long as the special Assessment does not exceed the sum of Five Hundred and 00/100 Dollars (\$500.00), the "Special Assessment Limit" per Unit in anyone fiscal year, the Board may impose the special assessment without any additional approval.

b) **Association Approval.** Any special Assessment which would exceed the Special Assessment Limit shall be effective only if approved by a majority of the Members of the Association. The Board in its discretion may allow any special assessment to be paid in installments.

19. **Specific Assessments.** The Board of Trustees shall also have the power specifically to assess the Owners in a particular area as, in its discretion, it shall deem necessary or appropriate, subject to the following:

a) **No Obligation or Waiver.** Failure of the Board to exercise its authority hereunder shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority in the future with respect to any expense for which the Board has not previously exercised its authority under this provision.

b) **Enabling Power.** The Board may specifically assess an Owner in a particular area in the manner set forth below; provided, however, the specific assessment is not for any maintenance, repair or replacement ordinarily required by this Declaration and the Owner has the choice to accept or reject the benefit.

(1) **Benefit Only to Specific Unit.** If the expense benefits less than all of the Units, then those Units benefited may be specifically assessed, and the specific assessment shall be equitably apportioned among those Units according to the benefit received.

(2) **Unequal or Disproportionate Benefit.** If the expense benefits all Units, but does not provide an equal benefit to all Units, then all Units shall be specifically assessed, but the specific assessment shall be equitably apportioned among all Units according to the benefit received.

20. **Individual Assessments.** Individual Assessments shall be levied by the Board against a Unit and its Owner to reimburse the Association for:

- a) **Fines levied and costs incurred in enforcing Project Documents;**
- b) **Costs associated with the maintenance, repair, replacement or reconstruction for which the Unit Owner is responsible;**
- c) **Any other charge, fee, due, expense, or Cost designated as an individual Assessment in the Project Documents; and**
- d) **Attorney's fees, interest, and other charges relating thereto as provided in this Declaration.**

21. **Collection of Assessments.** Assessments must be paid in a timely manner and shall be collected as follows:

- a) **Time is of the Essence.** Time is of the essence and all Assessments shall be paid promptly when due.
- b) **Delinquent Assessments.** Any Assessments which are not paid when due are delinquent and a lien against the Unit affected shall attach automatically, regardless of whether a notice of lien is recorded.

c) **Late Assessment and Accruing Interest.** Any Assessments delinquent for a period of more than ten (10) days shall incur a late charge of Twenty-five Dollars (\$25.00) or five percent (5%) of the delinquent amount, whichever is greater. Interest at the rate of one percent (1.0%) per month shall accrue on all delinquent accounts. The Board may, in its sole discretion, change the amount of the late fee or waive late payments and accruing interest but is not required to do so.

d) **Notice of Delinquency.** The Association shall give a notice of delinquency to any Owner who has not paid the Assessments in a timely manner.

e) **Notice of Lien.** If any Assessment is unpaid a notice of lien evidencing the unpaid amounts, accruing interest, late charges, attorney's fees, the cost of a foreclosure or abstractor's report, and any other Additional Charges permitted by law may be filed with the County Recorder. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Owners; It may be executed by the Association's attorney, manager, Board member, or other designated agent.

f) **Foreclosure of Lien and/or Collection Action.** If any Assessment remains unpaid, the Association may, as determined by the Board, institute suit to collect the amounts due and/or to foreclosure the lien.

g) **Personal Obligation.** Each Owner, by accepting a deed to a Unit or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring an action against him or her personally for the collection of the charges as a debt or to foreclose the lien in the same manner as mechanics liens, mortgages, trust deeds or encumbrances may be foreclosed.

h) **No Waiver.** No Owner may waive or otherwise exempt himself or herself from liability for the Assessments provided for herein, including but not limited to the non-use of Common Area or the abandonment of his or her Unit.

i) **Duty to Pay Independent.** No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of each Owner.

j) **Application of Payments.** All payments shall be applied as follows: Additional Charges, delinquent Assessments, and current Assessments.

k) **Foreclosure of Lien as Mortgage or Trust Deed.** The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's interest therein by

the Board. The sale or foreclosure shall be conducted in the same manner as foreclosures of deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of a foreclosure report, and reasonable attorney's fees. The Board may bid for the Unit at foreclosure or other sale and hold, lease, mortgage, or convey the same.

1) **Appointment of Trustee.** If the Board elects to foreclose the lien in the same manner as foreclosures of deeds of trust, then the Owner by accepting a deed to the Unit hereby irrevocably appoints the attorney of the Association, provided he is a Member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, § 57-1-23 (2001), as amended. In addition, the Owner hereby transfers in trust to said Trustee all of his right, title and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein.

m) **Attorney-in-Fact.** Each Owner by accepting a deed to a Unit hereby irrevocably appoints the Association as his attorney-in-fact to collect rent from any person renting his Unit, if the Unit is rented and the Owner is delinquent in *his* Assessments. Rent due shall be paid directly to the Association, upon written demand, until such time as the Owner's Assessments are current; and the Owner shall credit the renter, against rent due, for the amount of money paid to the Association.

n) **Property Insurance.** To the extent that such insurance is reasonably available, the Association shall provide property and liability insurance as required by Utah law (see Utah Code Ann 57-8a-403). Specifically, the Association shall provide blanket property insurance or guaranteed replacement cost insurance on the physical structure of all attached dwellings, limited common areas appurtenant to a dwelling on a lot, and common areas in the Project, subject to Utah Code Ann 57-8a-405. The Board of Trustees has discretion to determine whether such insurance is readily available.

o) **Liability Insurance.** To the extent that such insurance is reasonably available, the Association shall also provide liability insurance covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership or maintenance of the common areas, subject to Utah Code Ann 57-8a-406. The Board of Trustees has discretion to determine whether such insurance is readily available.

p) **Director's and Officer's Insurance.** Adequate director's and officer's liability insurance (a.k.a. Errors and Omissions insurance).

q) **Fidelity Bond.** A separate fidelity bond in a reasonable amount to be determined by the Board of Trustees to cover all non-compensated officers as well as all employees for theft of Association funds, subject to the following:

(1) Agents. Where the Board or the Association has delegated some or all of the responsibility for the handling of funds to a manager, such bonds are required for the Manager's officers, employees and agents handling or responsible for funds of or administered on behalf of, the Board or Association.

(2) Amount of Coverage. The total amount of fidelity bond coverage required shall be based upon the Board's best business judgment, but shall not be less than the estimated maximum amount of funds, including reserve funds, in the custody of the Board, the Association, or the Manager, as the case may be, at any given time during the term of each bond. Nevertheless, in no event may the amount of such bonds be less than a sum equal to three (3) months' aggregate assessments on all Units, plus reserve funds.

(3) Quality of Coverage. The bonds required shall meet the following additional requirements:

a. They shall name the Board, the Association, and the Property Manager as obligee;

b. The premiums on all bonds required herein for the Board and the Association (except for premiums on fidelity bonds maintained by a Management agent for its officers, employees and agents) shall be paid by the Board or the Association as part of the Common Expenses; and

c. The bonds shall provide that they may not be canceled or substantially modified, including cancellation or nonpayment of premium, without at least thirty (30) days' prior written notice to the Board and the Association.

r) Earthquake Insurance shall not be required unless requested by at least seventy-five percent (75%) of the Members of the Association.

s) Miscellaneous Items. The following provisions shall apply to all Insurance coverage:

(1) Quality of Carrier. A "B" or better general policyholder's rating or a "6" or better financial performance index rating in Best's Insurance Reports, an "A" or better general policyholder's rating and a financial size category of "VIII" or better in Best's Insurance Reports - International Edition, an "A" or better rating in Demotech's Hazard Insurance Financial Stability Ratings, a "B-bq" qualified solvency or a "BBB" or better claims-paying ability rating in Standard and Poor's Insurers Solvency Review, or a "BBB" or better claims-paying ability rating in Standard and Poor's International Confidential Rating service - if the carrier is issuing a master policy or an insurance policy for the Common Area in the Project.

(2) The Insured. The name of the insured under each policy required to be maintained hereby shall be set forth therein substantially as follows: "BROOKS COVE, LLC HOMEOWNERS' ASSOCIATION."

(3) Designated Representative. The Association may designate an authorized representative of the Association, including any Insurance Trustee with whom the Association has entered into an Insurance Trust Agreement, or any successor to such Trustee, for the use and benefit of the individual Owners.

(4) Certificate of Insurance. Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

(5) Deductible. The deductible on any claim made against the Association's property insurance policy shall be paid for by the Association.

(6) Special Endorsements. Each policy shall contain or provide those endorsements commonly purchased by other community associations in the county, including but not limited to, a guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost and/or a Replacement Cost Endorsement under which the insurer agrees to pay up to 100% of the property's insurable replacement cost, but no more, an Inflation Guard Endorsement when it can be obtained, a Building Ordinance or Law Enforcement Endorsement, if the enforcement of any building, zoning or land-use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs, and increased costs of reconstruction.

(7) Intent. The foregoing provisions shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Board of Trustees or Association may deem necessary or appropriate from time to time.

t) Additional Property Insurance. In addition to the property insurance described above, the Board of Trustees may, but is not required to, purchase blanket property insurance using the standard "Special" or "All-Risk" building form. Loss adjustment shall be based upon replacement cost. For purposes of this subsection, the term "casualty insurance" shall not mean or refer to "earthquake" or other special risks not included in the standard planned residential development casualty policy. This additional coverage may be added by the Board as it deems necessary in its best judgment and in its sole discretion.

22. Owner's Insurance. Each Owner and resident shall purchase and maintain adequate liability and property insurance on his Unit, Dwelling Unit, personal property and contents.

a) **Primary Coverage.** The insurance coverage of an Owner shall be primary. The Association shall not maintain insurance on an Owner's Unit, Dwelling Unit, personal property, or contents

b) **Certificate of Insurance.** Upon reasonable request from the Association, each Owner shall provide a current certificate of insurance to the Association for the Owner's Unit, Dwelling Unit, personal property and contents. The Association may not ask any Owner to provide any such certificate more than once per calendar year.

c) **Prompt Repair.** Each Owner further covenants and agrees that in the event of any partial loss, damage or destruction of his Unit or Dwelling Unit, the Owner shall promptly proceed to repair or to reconstruct the damaged structure in a manner consistent with the original construction.

d) **Failure to Repair.** If the Board determines that any Owner has failed to promptly discharge his obligation with regard to the repair or reconstruction of the damaged structure, then the Association may, but is not obligated to, provide such repair or reconstruction at the Owner's sole cost and expense subject to the following:

(1) **Assessment.** Such costs as are incurred by the Association in the repair or reconstruction of an Owner's Unit or Dwelling Unit, shall be secured by a lien against the Unit regardless of whether or not a notice of lien is filed.

(2) **Notice of Intent to Repair.** Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide repair or reconstruction at the Owner's cost and expense. The Association shall set forth with reasonable particularity the repair or reconstruction deemed necessary by the Board. The notice shall establish a reasonable time after receipt of notice within which the Owner shall commence and complete such repair or reconstruction.

(3) **Optional Repairs.** The Association may, but is not obligated to, provide such repair or reconstruction in the manner described above.

(4) **Right of Entry.** The Association or its agents or employees shall have the right to enter upon or into any Unit or Dwelling Unit as necessary to perform such work and shall not be liable for trespass for such entry or work.

23. **Consent in Lieu of Vote.** In any case in which this Declaration requires the vote of an Owner for authorization or approval of an act or a transaction, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Owners who collectively hold the required percentages, subject to the following conditions:

a) **Ninety-Day Limit.** All necessary consents must be obtained prior to the expiration of ninety (90) days from the time the first written consent is obtained.

b) **Change in Owners.** Any change in Ownership of a Unit which occurs after consent has been obtained from the Owner having an interest therein shall not be considered or taken into account for any purpose.

24. **Mortgagee Protection.** The lien or claim against a Unit for unpaid Assessments levied by the Board of Trustees or by the Association pursuant to this Declaration shall be subordinate to any mortgage recorded on or before the date such Assessments become due, subject to the following:

a) **Effects of Voluntary and Involuntary Sale.** The lien or claims against a Unit for such unpaid Assessments shall not be affected by any sale or transfer of such Unit, except that a sale or transfer pursuant to a foreclosure of the mortgage affecting such Unit or the exercise of a power of sale available thereunder shall extinguish any debt payable prior to such sale or transfer. Nevertheless, any such unpaid Common Area Assessments which are extinguished in accordance with the foreclosure or power of sale shall not relieve the purchaser or transferee of such Unit from liability for the lien of any Assessments becoming due thereafter.

b) **Books and Records Available for Inspection.** The Board or the Association shall make available to the Owners, to Mortgagees, and lenders, and to holders, insurers, or guarantors of any mortgage current copies of this Declaration, By Laws, Articles of Incorporation, and administrative rules and regulations concerning the Project, as well as the books, records, and financial statements of the Board and the Association. The term "available," as used herein shall mean available for reasonable inspection upon request during normal business hours or under other reasonable circumstances. The Association shall have the right to recover its photocopying and service charges incurred in making the inspection and photocopying available.

c) **Right to Financial Statement.** The holder, insurer or guarantor of any Mortgage shall be entitled, upon written request, to a financial statement for the immediately preceding fiscal year. Any financial statement requested pursuant hereto shall be furnished to the requesting party within a reasonable time following such request.

d) **Eligible Mortgagee.** Upon written request to the Board or the Association by the holder, insurer or guarantor of a Mortgage (which request identifies the name and address of such holder, insurer or guarantor and the Unit number or address of the property encumbered by the Mortgage held or insured by such holder, insurer, or guarantor), such holder, insurer, or guarantor shall be deemed thereafter to be an "Eligible Mortgagee" or "Eligible Insurer" or "Eligible Guarantor", as the case may be, shall be included on the appropriate lists maintained by the Association, and shall be entitled to timely written notice of any of the following:

(1) **Condemnation Loss or Award.** Any condemnation loss or any casualty loss which affects a material portion of the Project or any Unit on which there is a mortgage held, insured, or guaranteed by such Eligible Insurer or Guarantor.

(2) Delinquency. Any delinquency in the payment of Assessments owed by an Owner of a Unit subject to a Mortgage held, insured or guaranteed by such Eligible Mortgagee, Insurer or Guarantor, which delinquency remains uncured for a period of sixty (60) days.

(3) Lapse of Insurance. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Board or the Association.

(4) Consent Required. Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees.

e) No Right of First Refusal. The right of an Owner to sell, transfer, or otherwise convey his Unit shall not be subject to any right of first refusal or similar restriction.

25. Amendment. This Declaration may be amended as follows:

a) Consent of the Owners. Subject to the rights of Declarant described herein, the affirmative vote of at least sixty-seven percent (67%) of the Owners shall be required and shall be sufficient to amend this Declaration or the Plat Map. Any amendments so authorized shall be accomplished through the recordation of an instrument executed by the Board of Trustees. In such instrument the Board shall certify that the required vote for amendment has occurred, and, if approval of a specified percentage of Eligible Mortgagees is required for such amendment, that such approval has been obtained; and

b) Consent of Eligible Mortgagees. The consent of at least *sixty-seven* percent (67%) of the Eligible Mortgagees shall be required to any amendment which would terminate the legal status of the Project; and the consent of Eligible Mortgagees holding at least fifty-one percent (51%) of the undivided ownership interest in the Common Area shall be required to add to or amend any material provision of this Declaration or the Plat Map which establishes, provides for, governs, or regulates any of the following: (1) voting rights; (2) increases in assessments that raise the previously assessed amount by more than 25%, assessment liens, or the priority of assessment liens; (3) reductions in reserves for maintenance, repair, and replacement of the Common Area; (4) insurance or fidelity bonds; (5) limitations and restrictions on the right to use the Common Area; (6) responsibility for maintenance and repairs; (7) expansion or contraction of the Project or the addition, annexation or withdrawal of property to or from the Project; (8) the boundaries of any Unit; (9) the percentages of ownership interest in the Common Area; (10) convertibility of a Unit into Common Area or Common Area into a Unit; (11) the imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his Unit; (12) express benefits or rights of Mortgagees, Eligible Mortgagees, or Eligible Insurers or Guarantors; and (13) the requirement that the Project be professionally managed rather than self-managed. Any

addition or amendment shall not be considered material if it is for clarification only or to correct a clerical error. Notice of any proposed amendment to any Eligible Mortgagee to whom a written request to approve an addition or amendment to this Declaration or the Plat Map is required shall be mailed, postage prepaid, to the address for such Mortgagee shown on the list maintained by the Association. Any Eligible Mortgagee who does not deliver to the Board or Association a negative response to the notice of the proposed amendment within thirty (30) days from the date of such mailing shall be deemed to have approved the proposal.

26. **Notice and Hearing.** If a Unit Owner or resident is charged with a material violation of the Project Documents, then:

a) **Notice.** Written notice specifying the nature of the violation (and providing any other appropriate information) and stating the time, date and place that the Member will have an opportunity to be heard shall be provided by the Board of Trustees. Written notice shall be given at least fifteen (15) days prior to the date set for the hearing and may be delivered either personally or by mail. If delivery is made by mail, it shall be deemed to have been delivered seventy-two (72) hours after it has been deposited in the United States Mail, first-class postage prepaid, addressed to the Member at the address given by the Member to the Board of Trustees or to the address of the Member's Unit if no other address has been provided. Any address may be changed from time to time by giving written notice to the Board of Trustees.

b) **Owner's Request.** Any Owner charged with a non-material violation of the Project Documents may request a hearing by the Board of Trustees within five (5) days of receipt of a ticket or other notice of any such violation.

c) **Costs and Assessments.** At any hearing, the Board of Trustees shall (1) determine whether a violation has occurred and, if so, may assess costs, impose a fine and/or issue sanctions; or (2) take such other action as may be appropriate. The Board of Trustees may impose an appropriate late fee if any assessment on fine is not promptly paid. All such assessments, fines and fees shall constitute a lien on the Owner's Unit and shall be subject to interest, notice, collection and foreclosure pursuant to paragraph 24 hereof

d) **Final Determination.** The determination of the Board of Trustees shall be final. However, nothing herein shall be construed to prevent the Board of Trustees from making any emergency repairs or taking any other emergency action it deems necessary and subsequently providing Notice and Hearing.

27. **Declarant's Sales Program.** Notwithstanding anything to the contrary, until Declarant has sold all the Units owned by it in the Project, including any possible expansion thereof, or the expiration of four (4) years after the date on which the last Unit is completed, whichever occurs last, neither the Owners, Association, Board, or any member thereof shall interfere with the completion of improvements or Declarant's sales program, and Declarant shall

have the following rights in furtherance of any sales, promotions or other activities conducted on the Project.

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

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

c) **Common Area Use.** Declarant shall have the right to use the Common Area of the Project to facilitate sales.

d) **Relocation and Removal.** Declarant shall have the right from time to time to locate or relocate any of its sales offices, models, or signs, banners or similar devices, but in connection with each such location or relocation shall observe the limitations imposed herein. Within a reasonable period of time after the conclusion of Declarant's sales program, Declarant shall have the right to remove from the Project any signs, banners, flags or similar devices and any separate structure or facility which was placed on the Property for the purpose of aiding Declarant's sales effort.

28. **Limitation on Improvements by Association.** Until the occurrence of the Events described above, neither the Association nor the Board shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Area created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Area as originally created or constructed by Declarant.

29. **Declarant's Rights Assignable.** All of the rights of Declarant under this Declaration may be assigned or transferred either by operation of law or through a voluntary conveyance, transfer or assignment. Any Mortgage covering all Units or Buildings in the Project, title to which is vested in Declarant shall, at any given point in time and whether or not such Mortgage does so by its terms, automatically cover, encumber, and include all of the then unexercised or then unused rights, powers, authority, privileges, protection and controls which are accorded to Declarant (in its capacity as Declarant) herein.

30. **Working Capital Fund.** A working capital fund shall be established by the Declarant to meet unforeseen expenditures and/or to purchase any additional equipment or services. The initial working capital fund shall be in an amount equal to two (2) months' of estimated Common Area Assessments for each Unit. Each Unit's share of the working capital fund shall be collected either at the time the sale of any Unit is closed or when control of the Project is transferred to the Unit Owners, whichever first occurs. Any amounts paid into the working capital fund shall not be considered as advance payments of regular monthly

assessments. The working capital fund shall be transferred to the Association for deposit to a segregated fund when control of the Association is transferred to the Unit Owners. The Declarant is prohibited from using the working capital fund to defray any of its expenses, reserve contributions, or construction costs or to make up any budget deficits while it is in control of the Association.

When a Unit is sold, however, the Declarant may reimburse itself for monies it has paid the Association for an unsold Unit's share of the working capital fund by using funds collected at closing when the Unit is sold.

31. **Transfer of Management.** Anything to the contrary notwithstanding, Declarant may at any time elect to relinquish its reserved right to select Members of the Board and transfer Management of the Project to the Association. If and when Declarant elects to do so, Declarant shall send written notification to each Owner of the effective date of the transfer (the "Transfer or Transition Date") at least forty-five (45) days prior thereto. Thereupon, the Owners shall call a meeting to elect the Members of their own Board of Trustees to take office as of the Transfer Date. Declarant covenants to cooperate with the Owners in effecting an orderly transition of management. Moreover, Declarant shall cause all obligations for Common Area expenses of the Board incurred prior to the Transfer Date to be paid in full on or before such date.

32. **Certain Provisions Applicable to Declarant.** Notwithstanding any other provision herein contained, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve the Declarant from any obligation of an Owner to pay Assessments, except as herein otherwise provided, as to each Unit owned by Declarant in accordance with the Declaration.

a) Declarant specifically disclaims any intent to have made any warranty or representation in connection with the Project or Declaration except as specifically set forth herein or in any agreement for sale of a Unit, and no person shall rely upon any warranty or representation not so specifically made therein.

b) No amendment may be made to this Declaration without the written consent of Declarant so long as Declarant retains the ownership of four (4) or more Units in the Project; provided, however, that the obligation to acquire said written consent of Declarant shall cease on the occurrence of the Events.

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

34. **Covenants to Run with Land.** This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitude, as the case may be, and shall be binding upon and shall inure to the benefit of the Association, all other signatories hereto, all parties who hereafter acquire any interest in a Unit or in the Project, and their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Owner or resident of a Unit shall comply with, and all interests in all Units shall be subject to, the terms of the Project Documents and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring any interest in a Unit in the Project, the party acquiring such interest consents to, and agrees to be bound by, every provision of the Project Documents.

35. **Enforcement and Right to Recover Attorney's Assessments.** The Association, Board of Trustees, or any Unit Owner may take action, at law or in equity, to enforce the terms, covenants or conditions of the Project Documents. Should the Association, Board of Trustees or Unit Owner be required to take action to enforce the Project Documents, or to pursue any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise, they may recover all Additional Charges, including a reasonable attorney's fee, which may arise or accrue.

36. **Security.** The Association may, but shall not be obligated to, maintain or support any systems, programs or activities within the Project designed to make the Project safer than it otherwise might be. Neither the Association nor the Board shall in any way be considered insurers or guarantors of security within the Project, nor shall they be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. All Owners and residents, as well as their guests and invitees, where applicable, acknowledge by taking occupancy of a Unit or entering the Project that neither the Association nor the Board represent or warrant that any security measures undertaken will ensure their safety, and further acknowledge that neither the Association nor the Board are insurers or guarantors of their safety, and they hereby expressly assume all risks for loss or damage to their person or property, and they further acknowledge that neither the Association nor the Board have made any representations or warranties, nor have they relied upon any representations or warranties, expressed or implied, including any warranty or merchantability.

37. **Mechanics Liens.** Mechanics liens shall be filed in the office of the County Recorder as follows:

a) **Association/Goods or Services.** Mechanics liens for labor, materials or supplies purchased by the Association shall be filed against all Unit Owners in the Project and their appurtenant interest in the Common Area, and shall be indexed in the public records under the name of the Association. If the Association has encumbered the Common Area and thereafter defaults on its obligations, the lien holder must exercise its rights against the Common Area before it may proceed against any Unit. Any Owner wishing to release that lien as to his Unit may pay the pro rata share of the total amount of the lien and that shall be sufficient to release the lien against his Unit.

b) Unit Owner/Goods or Services. Mechanics liens filed for labor, materials or supplies benefiting a particular Unit shall be filed against that Unit and its appurtenant interest in the Limited Common Area.

c) Constructive Consent. Any person or entity who elects to perform labor or provide materials at the Project agrees to be bound by and subject to the terms hereof.

38. Dispute Resolution. The Board of Trustees may, but shall not be obligated to, exercise jurisdiction over and act as an arbiter with respect to any dispute between or among Unit Owners or residents. In such instance, the parties shall divide the expense equally, and consent to and sign an arbitration agreement prepared by the Association's legal counsel and the decision of the Board shall be binding and final.

39. Agent for Service of Process. After the occurrence of the Events, the President of the Association shall be the person designated as the agent to receive service of process. The initial Registered Agent shall be Chris W. Roth and the initial office of the Registered Agent shall be 78 West 13775 South, STE. 1, Draper, Utah 84020.

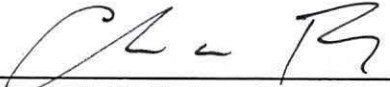
40. Expansion. Some Additional Land may be annexed to the Project only by the Declarant and/or its successors and assigns and, together with the additional townhome units constructed thereon, shall thereafter automatically become subject to this Declaration, subject to the jurisdiction of the Association, without the assent of the Association or its Members, on condition that a supplemental Declaration shall be recorded in the office of the Salt Lake County Recorder. The supplemental Declaration shall incorporate this Declaration and any amendments thereto by reference and may contain such complimentary additions and modifications of the Covenants and Restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added property, and as are not inconsistent with the scheme of this Declaration. Notwithstanding any other provision of this Declaration, Declarant may upon such terms and conditions as are appropriate, grant an easement over the roadways of the Project or the right to use the Common Area's in order to facilitate the expansion of the Project or the development by Declarant of property proximate to the Project. In addition, the owner(s) of any Additional Land which is annexed to the Project shall, upon the annexation of the Additional Land, pay to the Declarant and/or its successors and assigns, an annexation fee in the amount of \$45,000, together with a cost-of-living increase of 3% per annum for every year after the recording of this Declaration in the Salt Lake County Recorder's office. Said fee shall be secured by a lien in favor of the Declarant and against the Additional Land regardless of whether a notice of lien is recorded.


41. Effective Date. This Declaration, any amendment or supplement hereto, and any amendment or supplement to the Plat Map shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

42. Counterparts. This Declaration may be executed in multiple counterparts, each of which, when executed and delivered, shall be deemed an original, and all of which counterparts together shall constitute one and the same instrument.

EXECUTED the day and year first above written.

DECLARANT:
BROOKS COVE, LLC,
a Utah limited liability company

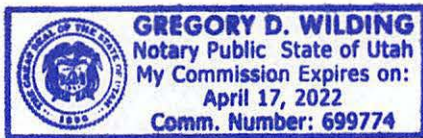

By: Chris W. Roth
Its: Manager

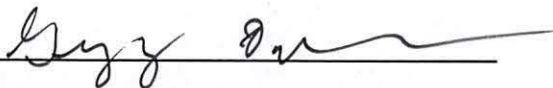

By: Dan Stewart
Its: Manager

ACKNOWLEDGEMENTS

STATE OF UTAH)
)
COUNTY OF SALT LAKE)

On the 8th day of August, 2018, personally appeared before me Chris W. Roth, who by me being duly sworn, did say that he is a Managing Member of BROOKS COVE, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said company pursuant to its Operating Agreement, and by authority of a resolution of its Managers, and duly acknowledged to me that BROOKS COVE, LLC, executed the same.




NOTARY PUBLIC

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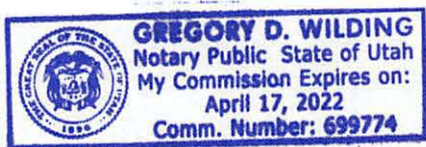
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GREGORY D. WILDING
Notary Public State of Utah
My Commission Expires on:
April 17, 2025
Comm. Number: 692734



STATE OF UTAH)
)
COUNTY OF SALT LAKE)

On the 8th day of August, 2019, personally appeared before me **Dan Stewart**, who by me being duly sworn, did say that he is a Managing Member of BROOKS COVE, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said company pursuant to its Operating Agreement, and by authority of a resolution of its Managers, and duly acknowledged to me that BROOKS COVE, LLC, executed the same.




NOTARY PUBLIC

CREORY D. WILDING
Notary Public State of Utah
My Commission Expires on:
April 17, 2025
Comm. Number: 69379





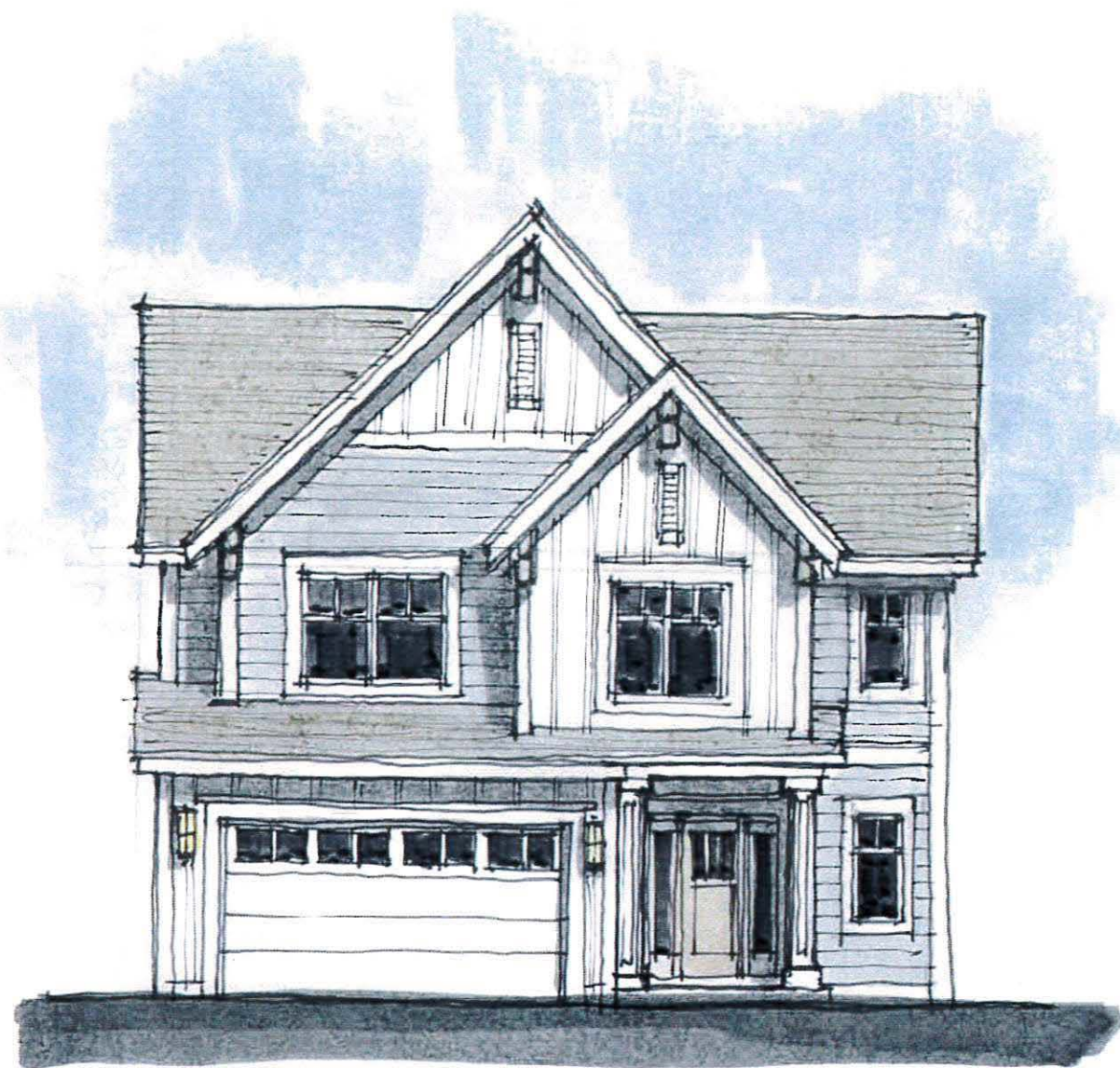
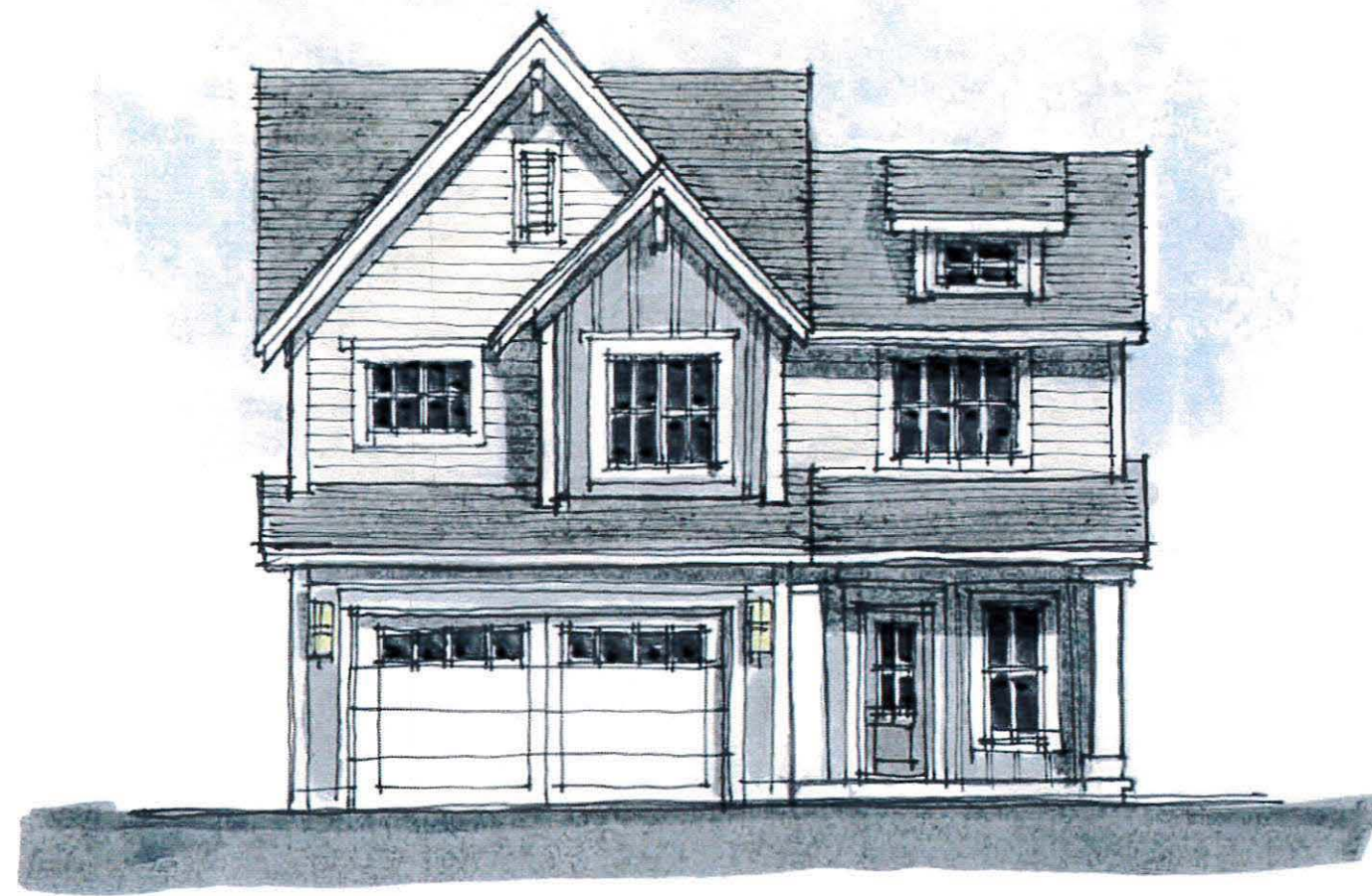


EXHIBIT C



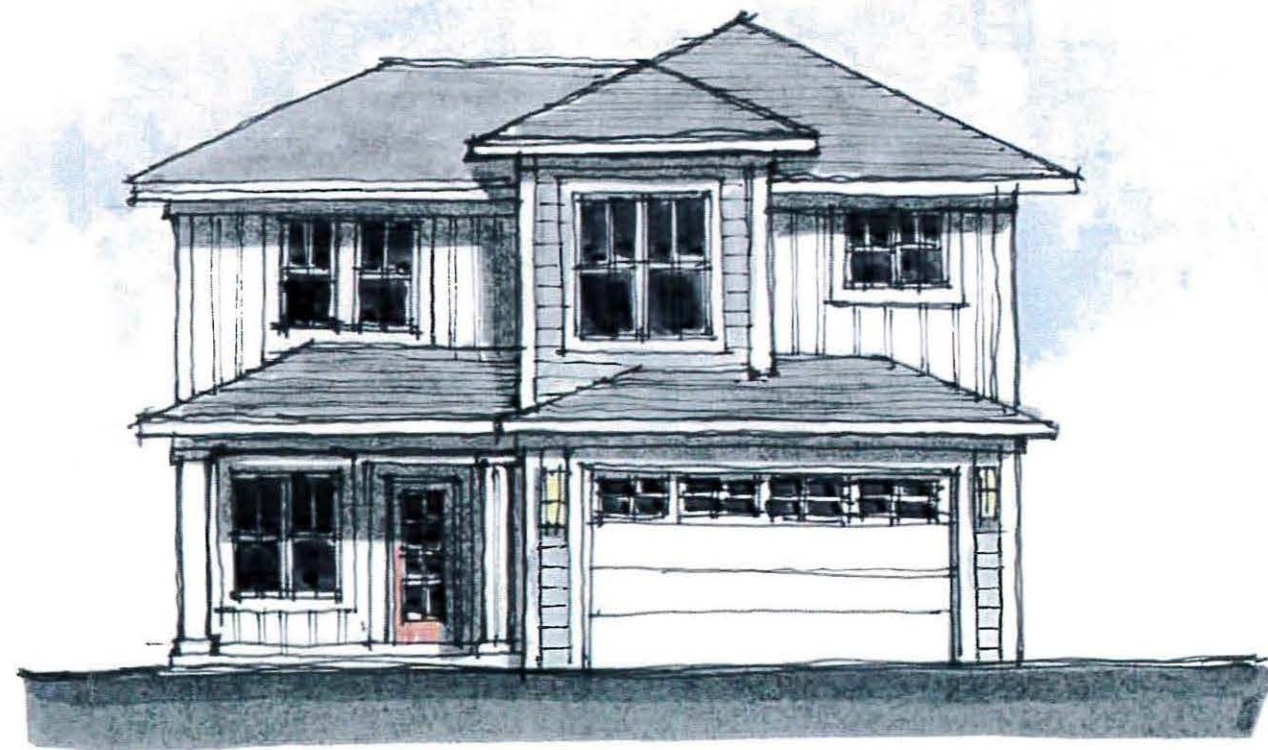
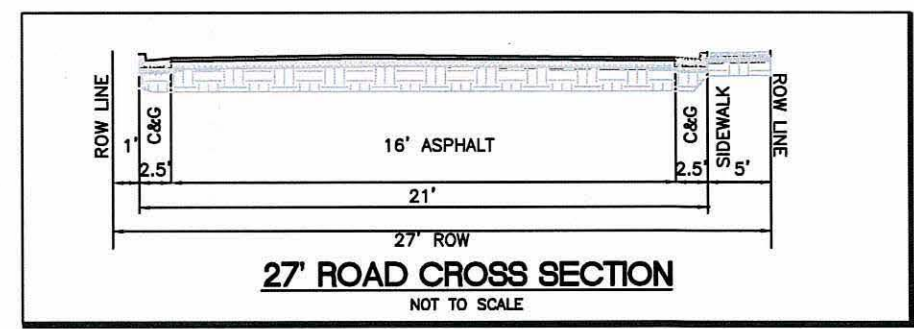
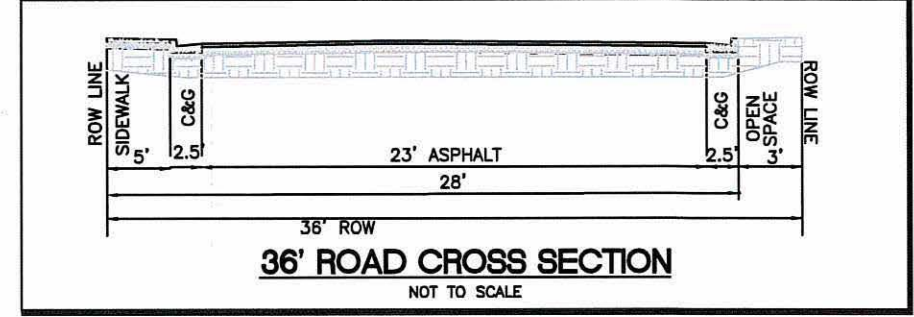
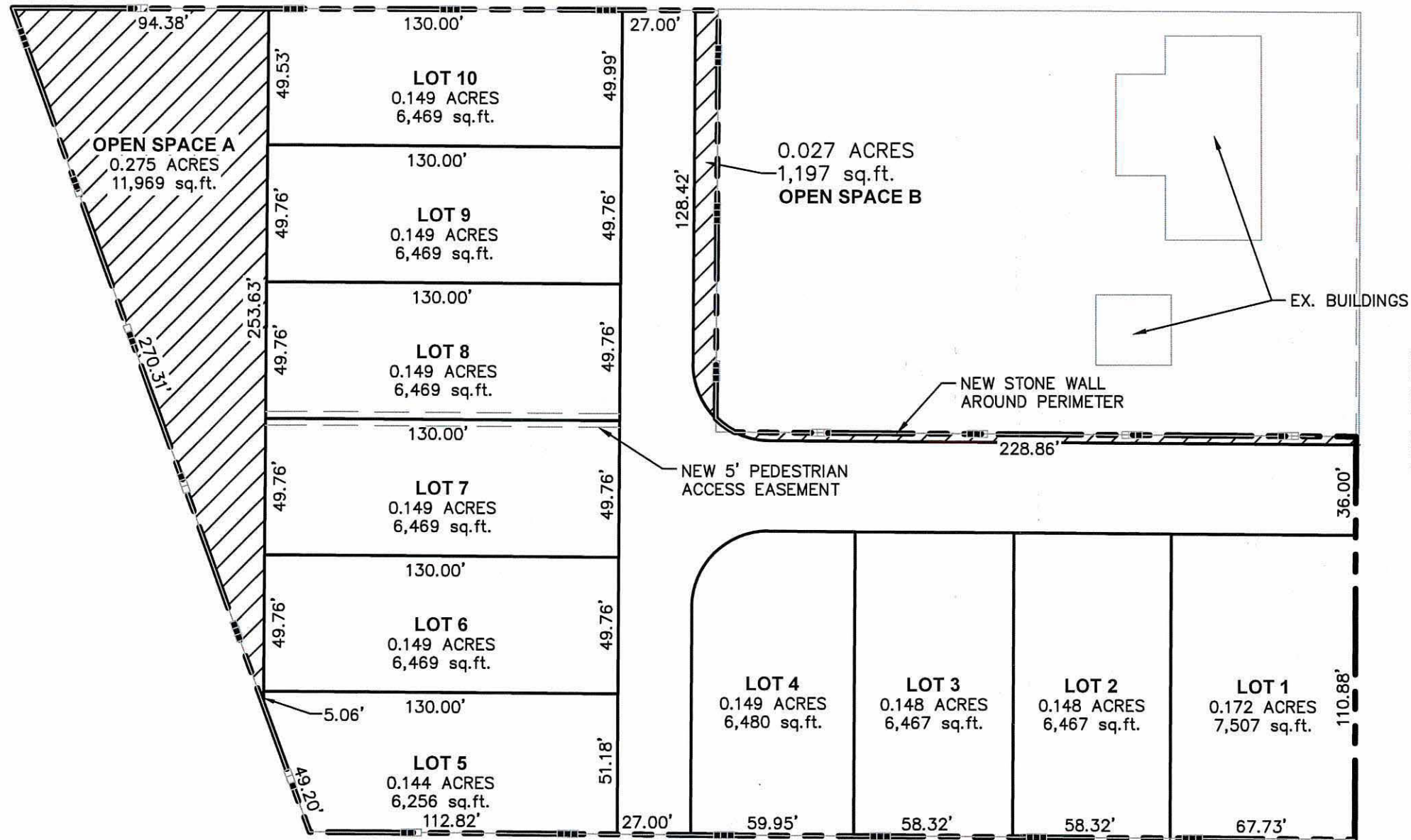
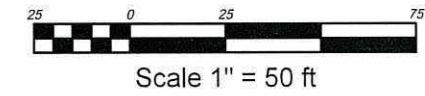




EXHIBIT 'B'

BROOKS LANE



300 EAST

- NOTES:
1. EACH LIVING UNIT TO BE PROVIDED A 2-CAR GARAGE.
 2. LENGTH OF DRIVEWAY FOR EACH UNIT SHALL BE A MINIMUM OF 20 FEET.
 3. RM1 ZONE

NO.	REVISION	DATE

DRAWING TITLE	CONCEPT PLAN
LOCATION	13606 SOUTH 300 EAST
	DRAPER, UTAH

PROJECT NAME	TRI CITY CONSTRUCTION	
DRAWN	KMD	CHECKED GDW
FILE NAME:	G:\CONTRACTS\TRI...\CONCEPT B.DWG	

DATE	4/12/2018
SCALE	1"=50'
SHEET	1 OF 1