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ERNEST D ROWLEY, WEBER COUNTY RECORDER  
05-NOV-12 145 PM FEE \$104.00 DEP SGC  
REC FOR: DURFEE CREEK ASSOC. INC

**AMENDED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR DURFEE CREEK ESTATES SUBDIVISION**

**THIS AMENDED DECLARATION** is made on the date hereinafter set forth by Durfee Creek Association, Inc., a Utah nonprofit corporation, and its Members, hereinafter referred to as the "Association", the owners of Durfee Creek Estates Subdivision located in Weber County, Utah as more fully described on Recorded Plats and listed in Exhibit "A" attached hereto.

**WITNESSETH:**

**WHEREAS**, the Developer of the Community made the Declaration of Covenants, Conditions and Restrictions for Durfee Creek Estates Subdivision, dated August 20, 1992 and the Declaration of Covenants, Conditions and Restrictions for Durfee Creek Estates Phase II, dated October 16, 1998 ("Initial Declarations"); and

**WHEREAS**, the conditions affecting the Community, including, but not limited to, the laws of the State of Utah and Weber County Ordinances, have significantly changed since the Initial Declarations were made and, as such, many of the covenants, conditions and restrictions contained therein are no longer applicable or do not conform to state and local law and ordinances; and

**WHEREAS**, the Association desires to combine and amend the Initial Declarations and its Board of Directors has obtained the consent of Members required to adopt such an amendment.

**NOW THEREFORE**, The Association hereby combines and amends the Initial Declarations and adopts an Amended Declaration of Covenants, Conditions and Restrictions Durfee Creek Estates Subdivision as follows:

**ARTICLE I: Creation of the Community**

**1.1. Purpose and Intent**

The Association, and its Members as owners of the real property described on the Recorded Plats for Durfee Creek Estates and listed in Exhibit "A" are Recording this Amended Declaration to re-establish a general plan for the Community as well as its continued administration, operation, maintenance and preservation. An integral part of the plan is the Association comprised of all Durfee Creek Estates Lot Owners, to own, operate and/or maintain various Common Areas and Community improvements, including a Wastewater Disposal System, and to administer this Amended Declaration and the other Governing Documents.

This document does not and is not intended to create a cooperative or condominium under Utah law.

**1.2. Binding Effect**

This Amended Declaration shall govern the real property listed in Exhibit "A" in perpetuity; shall run with the title to such property and; shall bind anyone having any right, title, or interest in any portion of such property, their heirs, successors, successors-in-title, and assigns.

The Association, any Member, and their respective legal representatives, heirs, successors, and assigns may enforce this Amended Declaration. This Amended Declaration shall be effective for a minimum of 20-years from the date Recorded. After 20-years, this Amended Declaration shall continue to automatically renew for successive 1-year periods.

**1.4. Governing Documents**

The Governing Documents create a general administrative and development plan for Durfee Creek Estates. The following diagram identifies and summarizes the Governing Documents, each as they may be amended and revised, from time-to-time.

Amended Declaration (Members Approve and Board Adopt -Recorded)	Creates obligations that are binding on the Association and all present and future Owners of all Lots in Durfee Creek Estates.
Restated Articles of Incorporation (On file with the Utah Division of Corporations and Commercial Code)	Establishes the Association as a non-profit corporation under Utah Code Title 16, Chapter 6a.
Revised By-Laws (Members Approve and Board Adopts - Recorded)	Governs the Association's internal affairs, such as voting rights, elections, meetings, officers, etc.
Development Guidelines (DRC Recommends and Board Adopts - Recorded)	Establishes site planning, architectural design, landscaping and construction criteria for improvements and modifications to Lots. Also establishes an orderly process for the review and approval of proposed improvements or modifications.
Common Area Rules (Board Adopts - Recorded)	Governs the use of and activities within the Common Area of Durfee Creek Estates
Internal Controls (Board Adopts)	Establishes accounting, administrative and other business policies and procedures applicable to the day-to-day business activities of the Association.

The Governing Documents shall apply to all Lot Owners. They shall also apply to all guests, visitors, invitees, tenants and contractors.

If the provisions of the Governing Documents are more stringent than any applicable statute, law, ordinance or regulation, the provisions of the Governing Documents shall control. The Governing Documents shall not authorize any uses, improvements or activities that are prohibited by any governmental body.

If any court determines that any provision of this Amended Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity or other provisions or other applications of the provision.

#### 1.5. Definitions.

The words used in this Amended Declaration shall have their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in the Recorded Revised By-Laws for Durfee Creek Association Inc. unless the context indicates otherwise.

### Article II. Use and Conduct

#### 2.1. Use and Occupancy

The Community is a cluster subdivision that has been approved by Weber County to be primarily used for single-family residential and recreational purposes. Recreational uses include hiking, horseback riding, hunting, cross-country skiing, bicycle riding and snowshoeing.

#### 2.2. Lot Use Restrictions

(a). Animals. Dogs, cats and other ordinary household pets may be kept on any Lot so long as the Owner or a tenant occupies the Lot and at all times complies with the applicable provisions of Weber County Ordinance, Title 2 - Comprehensive Animal Control, as amended.

Horses may be kept on any Lot strictly in compliance with Weber County Zoning Ordinance, Title 28, Chapter 8. If allowed by Weber County Ordinance, horses shall be kept in an enclosed stable with a perimeter fence. The stable shall be architecturally compatible with the Residence and approved by the DRC in accordance with Article IV.

All other livestock, including but not limited to cows, chickens, ducks, geese, goats, llamas and sheep are prohibited.

(b). Home Occupations. Home occupations are allowed in accordance with the regulations and restrictions of Weber County Zoning Ordinance, Title 28, Chapter 34, as amended.

(c). Hazardous Activity. No activity shall be conducted on any Lot that is dangerous or hazardous as defined by law, regulation or ordinance. This includes, without limitation, the storage of caustic, toxic, flammable, explosive, or otherwise hazardous materials in quantities in excess of those customary used for residential purposes, the discharge of firearms and fireworks, and the setting of open fires other than those permitted by Weber Fire District or in a properly supervised contained barbeque, fireplace and fire pit.

(d). Nightly Rentals. Nightly rentals as defined by Weber County Ordinance Title 23, Chapter 25, as amended, shall only be allowed when listed as either a permitted or conditional use in Weber County Ordinance Title 28, Chapter 8, as amended.

(e). Signage. No signage shall be permitted on any Lot, except real estate signs, in a size not exceeding 24" x 36", indicating a Lot is for sale, no-trespassing signs and small signs indicating the Lot and/or Residence is protected by a security and/or surveillance system.

(f). Trash Containers and Collection. No garbage, trash or recyclable material shall be placed or kept on any Lot, except in secure, covered containers provided by the company providing a collection service to the Community. Owners shall take reasonable precautions to prevent containers from overflowing and are responsible for collecting any loose trash and other debris that may have been carried on their respective Lots by wind, water or any other means.

(g). Vehicles and Parking. The term "vehicles" includes without limitation, automobiles, trucks, boats, trailers, motorcycles, tractors, snowmobiles, motor homes, truck campers, vans, and all-terrain vehicles.

Owners shall provide off-street parking for vehicles in a manner that complies with Weber County Zoning Ordinance, Title 28, Chapter 24, as amended and the Association's Development Guidelines.

Vehicles may be parked overnight on the right-of-way along a roadway if temporary parking is required to accommodate an Owner's guests or a contractor(s) providing services to the Owner. No vehicles or equipment shall be parked on or along a roadway in a manner that interferes with the bi-directional flow traffic.

Inoperable or abandoned vehicles as defined in and prohibited by Weber County Ordinance Title 21, Chapter 5, as amended, shall not be kept in the Community.

(h). Wastewater Disposal. The Utah Division of Water Quality and the Weber-Morgan County Health Department have permitted the Community Wastewater Disposal System. In accordance with the conditions of those permits, Owners of Lots 34-65 shall be required

to install a septic tank on their Lot in a location between the Residence and the point of connection to the collection line serving the Lot. The septic tank shall be of the size and specifications required by the Weber-Morgan Health Department and shall be installed and maintained at the Owner's expense.

### **2.3. Owners' Acknowledgement and Notice to Purchasers**

Each Owner, by accepting a deed, has acknowledged and agreed that the Governing Documents, as amended, can affect the use of his or her Lot and the Common Area. All Lot purchasers are hereby notified that the Association may have adopted changes in the Governing Documents and that such changes may not be set forth in a Recorded document. Copies of the current Governing Documents may be obtained from the Association.

### **2.4. Common Area Rules**

In the manner set forth in Utah Code, Title 57, Chapter 8a, Section 217, as amended, the Board may adopt, change, modify, cancel, limit, create exceptions to, expand or enforce Common Area Rules.

### **2.5. Limits on Association Rules**

The Association's rules and any amendments shall be subject to the limitations set forth in Utah Code Title 57, Chapter 8a, Section 218, as amended.

## **Article III. Architecture and Landscaping**

### **3.1. General**

No Residence, accessory building larger than 150 square and/or landscape improvements shall be constructed, erected, or installed or other related work, including clearing, excavation, grading, removal of native vegetation and exterior additions or alterations except in compliance with this Article and the Recorded Development Guidelines.

Development review approval shall not be required to repaint the exterior of a structure in accordance with the most recently approved color scheme or to rebuild in accordance with previously approved plans and specifications. Owners may remodel, paint or redecorate the interior of a Residence or other structures without development review approval.

Owners may supplement or replace original landscape features with water-wise plantings without development review approval. New or supplemental landscaping plans that involve the installation or expansion of an irrigation system shall require development review approval. Drip and other low water use, non-spray systems are recommended for irrigated areas on all Lots. 1000 square feet or less of landscape area per Lot requiring spray or other high-use irrigation systems is encouraged.

Each Owner shall still have the responsibility to comply with any applicable provisions of Weber County ordinances and the Governing Documents.

### **3.2. Development Review**

A Development Review Committee (DRC), appointed by the Board, has been delegated the authority to administer the Association's Development Guidelines and to review and act upon all applications for improvements within the Community.

The DRC shall notify the Board of any action to be taken under this Article. The Board shall have the right to veto any proposed action that constitutes a variance from the Development Guidelines, provided, such right to veto must be exercised within 10-days after receiving notice of the DRC's proposed action. In its consideration of a variance, the Board shall act in good faith, without conflict of interest and shall not be arbitrary and capricious. The party submitting plans for approval shall not be notified of the DRC's proposed action until after the Board's right to veto has been exercised or has expired.

In reviewing applications and other materials, the DRC may consider factors it deems relevant, including, without limitation, harmony of the proposed exterior design with other structures in the Community and the natural environment. Each Owner acknowledges that such factors are purely subjective and that opinions may vary. The DRC's final determinations on such factors are not subject to review as long as they are made in good faith and in accordance with the required procedures.

### **3.3. Development Guidelines and Procedures**

Development Guidelines are intended to provide guidance to Owners and the DRC.

The Development Guidelines may be amended in the manner set forth in Utah Code Title 57, Chapter 8a, Section 217, as amended. Amendments to the Development Guidelines shall be subject to the limitations set forth in Utah Code Title 57, Chapter 8a, Section 218, as amended.

The Association shall make the Development Guidelines available to Owners seeking to engage in development and construction within the Community. The Development Guidelines may be Recorded, in which event the Recorded version, as amended, shall control in the event of any dispute regarding the version in effect at any particular time.

Any procedures set forth in the Development Guidelines shall govern the application and review process. No construction or other activities described in Section 3.1 shall begin until a request is submitted to and approved by the DRC, subject to the Board's right to veto pursuant to Section 3.2. The request must be in writing and accompanied by plans and specifications and other information the DRC or the Development Guidelines require.

The DRC shall make a determination on each application after receipt of a completed application and other information it requires. The DRC may allow or require that an application be submitted or considered in stages, in which case, a final decision shall not be required until after the final, required submission stage. The DRC may (i) approve the application, with or without conditions, (ii) approve a portion of the application and disapprove other portions, or (iii) disapprove the application.

DRC approval is not a substitute for any approvals or reviews required by Weber County or any other municipality or governmental agency or entity having jurisdiction over development or construction matters. The DRC shall notify the applicant in writing of the final determination on any application within 45-days after its receipt of a completed application and all required information. If the DRC fails to respond within 45-days, approval shall be deemed given, subject to the Board's right to veto pursuant to Section 3.2. However, no approval, whether expressly given or deemed granted, shall be inconsistent with the Development Guidelines unless a written variance has been granted pursuant to Section 3.5.

Notice shall be deemed given at the time the envelope containing the response is deposited in the U.S. mail. Personal or electronic delivery of such written notice also shall be sufficient and shall be deemed given at the time of delivery to the applicant.

#### **3.4. No Waiver of Future Approvals**

Each Owner acknowledges that the Persons reviewing applications under this Article will change from time to time and that opinions, as well as interpretation and application of the Development Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, at which time, it may be unreasonable to require that any objectionable features be changed. However, the DRC may not approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval of similar applications or plans subsequently or additionally submitted for approval.

#### **3.5. Variances**

Subject to the Board's right to veto pursuant to Section 3.2, the DRC may authorize variances from the Development Guidelines and any procedures when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations require, but only in accordance with applicable laws, regulations and ordinances. No variance granted by the DRC shall be effective unless in writing nor shall any authorized variance prevent the DRC from denying a variance under different circumstances.

#### **3.6. Limitation on Liability**

The DRC shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, for ensuring compliance with building codes and other governmental requirements, or for ensuring that every Residence is of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to other Owners.

The Association, its officers, directors and members of the DRC, (the "Released Parties") shall not be held liable for soil conditions, drainage, or other general site work, any defects in plans revised or approved hereunder, any loss or damage arising out of any action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Lot.

#### **3.7. Enforcement**

Any approvals granted under this Article are conditioned upon completion of all elements of the approved work, unless approval to modify any application has been obtained from the DRC.

All acts by any contractor, subcontractor, agent, employee, or invitee of an Owner shall be deemed as an act done by or on behalf of such Owner.

Weber County is solely responsible for enforcing building codes and the requirements of Land Use and Building Permits.

The Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the DRC's decisions. In any such action, the prevailing party shall be entitled to recover all costs, including, without limitation, attorney's fees and court costs, reasonably incurred in such action.

#### **Article IV: Maintenance and Repair**

Each Owner shall maintain their Lot, including the Residence, all vegetation and other improvements comprising the Lot, in a manner consistent with the Governing Documents, Weber County ordinances and any applicable federal and Utah laws.

Each Owner's responsibility for maintenance includes the responsibility for all repairs and replacements.

In the event of damage to or destruction of a structure on a Lot, the Owner shall be responsible for all necessary repairs or reconstruction the in a manner consistent with the original construction or other plans and specifications approved in accordance with Article III. Alternatively, the Owner may elect to clear the Lot and maintain it in accordance with this Article.

#### **Article V. Association Authority and Responsibilities**

##### **5.1. Administration and Management of Association Property**

In accordance with procedures set forth in the Governing Documents, the Association may acquire, hold, lease, operate, and dispose of tangible and intangible personal property and real property.

The Association is responsible for administration, management, operation, maintenance and control of the Common Area, subject to the covenants, easements and restrictions set forth in Exhibit "A" and elsewhere in the Governing Documents. Subject to Section 2.4. the Board may adopt rules regulating the use of the Common Area. Further, the Board may lease, acquire, operate and maintain equipment and facilities used in the Common Area or for the performance of the Association's other duties as described elsewhere in the Governing Documents.

##### **5.2. Maintenance of Common Maintenance Areas**

The Association shall maintain the Common Maintenance Areas in a manner prescribed by federal, state and Weber County laws, ordinances and regulations, and recognized best management practices, including but not limited to those associated with the Wastewater Disposal system and the control of noxious weeds. The Common Maintenance Areas shall include, but are not limited to:

- (a). All portions of the Common Area, including the Wastewater Disposal System, entrance features, perimeter fences, any and all vegetation, amenities and other improvements on the Common Area; and
- (b). All ponds, springs, perennial and intermittent streams, riparian corridors and wetlands located within the Community.

The Association may, but is in no way obligated, to maintain any tangible, personal property or real property that it does not own, including property dedicated to the public.

The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property that it does not own, except to the extent it has been negligent in the performance of its maintenance responsibilities.

The Association shall maintain the facilities, improvements and equipment within the Common Maintenance Areas in continuous operation, except for any periods necessary, as determined by the Board, to perform required maintenance or repairs.

The costs associated with the maintenance, repair and replacement of the Common Maintenance Areas, including but not limited to the Wastewater Disposal System, shall be a Common Expense.

##### **5.3. Insurance**

Subject to the provisions set forth in Utah Code Title 57, Chapter 8a, Sections 401-407, as amended, and this Section, the Association, acting through the Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available:

- (i). Commercial general liability insurance with a limit of at least \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate with respect to bodily injury, personal injury, and property damage;
- (ii). Directors and officers liability coverage; and
- (iii). Fidelity insurance covering all Persons handling Association funds in an amount determined in the Board's business judgment, but not less than an amount equal to one-quarter of the annual Regular Assessments on all Lots plus reserves on hand.

In the exercise of its business judgment, the Board may obtain additional insurance, such as blanket property insurance, umbrella coverage, and higher limits.

Premiums for all insurance coverage shall be a Common Expense.

In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage.

In the event of damage to or destruction of an insured improvement the Association shall take action in the manner set forth in Utah Code Title 57, Chapter 8a, Section 407, as amended.

##### **5.4. Enforcement**

- (a). The compliance monitoring and enforcement of all federal, Utah and Weber County laws, ordinances and regulations is the sole responsibility of the government agencies with that authority.

(b). On behalf of the Association, the Board may enforce provisions of the Governing Documents that are not the responsibility of a government agency in the manner listed below. The following actions require prior notice and an opportunity for a hearing in accordance with Utah Code Title 57, Chapter 8a, as amended and the Governing Documents.

- (i). Suspending an Owner's right to vote, except that suspension shall be automatic if the Owner is more than 90-days delinquent in paying any assessment or other charge owed to the Association;
- (ii). Suspending an Owner's right to use the Common Area, except that suspension shall be automatic if the Owner is more than 90-days delinquent in paying any assessment or other charge owed to the Association;
- (iii). Suspending any services, excluding wastewater disposal, provided by the Association, except that suspension shall be automatic if the Owner is more than 30-days delinquent in paying any assessment or other charge owed to the Association; and

All enforcement actions and remedies set forth in the Governing Documents shall be in addition to any remedies available at law or in equity. The prevailing party in any action to enforce the Governing Documents shall be entitled to recover all costs incurred in the action, including without limitation, court fees and reasonable attorney's fees.

(c). The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except the Board shall not be arbitrary, capricious or against public policy in taking enforcement action. Without limiting the generality of the foregoing sentences., the Board may determine that under the circumstances of a particular case:

- (i). The Association's position is not strong enough to justify taking any further action;
- (ii). The provision of the Governing document being enforced is, or is likely to be construed as, inconsistent with applicable law;
- (iii). Although a violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or
- (iv). That it is not in the Association's best interests, based upon hardship, expense or other reasonable criteria, to pursue enforcement action.

A decision not to enforce a particular provision of the Governing Documents at any given time shall not prevent the Association from enforcing the same provision at a later time or prevent the enforcement of any other provision of the Governing Documents.

#### **5.5. Rights and Board Authority**

The Association may exercise any right or privilege given to it by Utah Code Title 16, Chapter 16a, as amended, and Title 57, Chapter 8a, as amended, and the Governing Documents, and may take the action reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in Utah laws referenced above and the Governing Documents, the Board, without a vote of the Members, may exercise all of the Association's rights and powers.

The Board may institute, defend, settle, or intervene on the Association's behalf in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Common Maintenance Areas, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or the Members.

In exercising the Association's rights, making decisions on the Association's behalf, and conducting the Association's affairs, Board members are subject to, and their actions shall be judged in accordance with, the standards set forth in the Revised By-Laws.

#### **5.6. Indemnification of Directors, Officers and Others**

Subject to the provisions of Utah Code Title 16, Chapter 6a, as amended, the Association shall indemnify every director, officer and committee member.

The right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled.

The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is available at a reasonable cost.

#### **5.7. Safety and Security**

Owners and occupants of Lots, and their respective guests and invitees, are responsible for their own personal safety and the security of their property in the Community. The Association may, but is not obligated to, support Community activities, such as a neighborhood watch program, which are designed to enhance the level of safety or security which each Person provides for himself and his property. However, the Association shall not in any way be considered insurers or guarantors of safety and security within the Community, nor

shall it be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

Each Owner acknowledges, understands, and shall be responsible for informing its guests, invitees, contractors and all other Persons visiting the Owner's Lot that the Association, its officers, Board and committee members are not insurers or guarantors of security or safety and that each Person with the Community assumes all risks of personal injury and loss or property damage, including Lots, and the contents of Residences and other structures, resulting from the acts of third parties.

#### **5.8. Provision of Services**

The Association may provide, or provide for, services and facilities for all or any of the Members and their Lots, and may enter into and terminate contracts or agreements with other entities to provide such services and facilities. If such a service and facility is not provided to all Members, the Board may levy a Benefitted Assessment in accordance with Section 6.4. By way of example, such services and facilities may include Lot vegetation maintenance and cluster mailboxes.

Nothing in this Section shall be construed as a representation by the Association as to what, if any, services and facilities shall be provided. Unless a contractual agreement, law, ordinance, permit, regulation or the Governing Documents require the services or facilities to be provided by the Association, the Association shall have the right to discontinue providing such services and facilities.

#### **5.9. View Impairment**

The Association does not guarantee or represent that any view over and across the Lots or any Common Area within the Community will be preserved without impairment by structures or vegetation and shall not be obligated to relocate, prune or thin trees or other vegetation. Any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

#### **5.10. Relationship with Governmental Organizations**

The Association shall have the right to enter into agreements or contracts with, or grant exclusive and/or non-exclusive easements over the Common Area to, state or local governments and public utility providers for the benefit of the Community, the Association and the Members.

#### **5.11. Use of Technology**

Unless specifically prohibited by Utah Code Title 16, Chapter 6a, as amended or Title 57, Chapter 8a, as amended, the Association may send required notices by electronic means, hold Board or Association meetings and permit attendance and voting by electronic means, send and collect assessment invoices electronically, create and maintain a Community Internet website. The cost for such services shall be a Common Expense.

### **Article VI. Association Finances**

#### **6.1. Budgeting and Allocating Common Expenses**

In accordance with Utah Code Title 57, Chapter 8a, Section 201, as amended, the Association is authorized to levy Regular Assessments equally against all Lots to fund Common Expenses.

At least 60-days before the beginning of each calendar year and in a manner set forth in Utah Code Title 57, Chapter 8a, Section 215, as amended, and any additional requirements contained in this Section, the Board shall prepare, adopt and a budget of estimated Common Expenses for the coming year, including any proposed contribution to a reserve fund pursuant to Section 6.2. The budget shall reflect the sources and a detailed, line item estimate of funds required for such expenses, including any prior years' surplus, any non-assessment income, and anticipated assessment income.

The Board shall provide a copy of the adopted budget and notice of the amount of the Regular Assessment to each Owner at least 15-days before the calendar year begins. The budget shall automatically become effective unless vote of disapproved by at least 51% of the total eligible votes in the Association.

If a budget is disapproved, the budget most recently adopted that was not disapproved by the Members continues as the budget until and unless the Board presents another budget that budget is not disapproved.

The Board shall manage expenditures in a manner that prevents unforeseen and unplanned expenses associated with a line item reflected in the approved budget from exceeding 10% of total amount of an approved budget. Any unforeseen or unplanned expenditure that may be required for a line item that is not specifically reflected in an approved budget that is expected to exceed 10% of the total approved budget shall be approved by 67% of the eligible voting Members of the Association before any such expenditure is made. The only unforeseen and unplanned expenditures that are excluded from these requirements are expenses required to maintain the Wastewater Disposal System and expenses required to comply government laws, regulations and permit conditions.

#### **6.2. Reserve Analysis and Reserve Fund**

In a manner set forth in Utah Code Title 57, Chapter 8a, Section 211, as amended and this Section, the Board, or a reliable Person selected by the Board, shall conduct a reserve analysis to determine the need for a reserve fund to accumulate money to cover the cost

of repairing, replacing and restoring Common Areas, including without limitation, the Wastewater Disposal System, that have a useful life of 3-years or more, but excluding any cost that can be reasonably funded from the Association's budget.

No less frequently than every 2-years the Board shall review and, if necessary, update a previously conducted reserve analysis.

Annually, the Board shall present the results of the reserve analysis and, any updates thereto, including proposed funding, to the Owners. Proposed funding shall be deemed approved as part of the Association's annual budget unless specifically disapproved in the manner described in Section 8.1.

The Board shall maintain reserve funds in an interest bearing, insured account, separate from other Association funds. Unless specifically approved by 67% of the eligible votes in the Association, reserve fund monies shall not be used for any purpose other than the purpose for which the reserve fund was established.

### **6.3. Special Assessments**

In addition to other authorized assessments, the Board shall have the authority to levy Special Assessments against all Members of the Association to cover any unbudgeted expense required by law, permit and/or regulation for the operation, maintenance and repair of the Wastewater Disposal System if such expense cannot be funded with reserve funds accumulated specifically for that purpose or other sources. A Special Assessment levied for this purpose shall be due and payable in the manner determined by the Board.

Any Special Assessment proposed for any other purposes, including the manner and timing of payments, shall be approved by 67% of the eligible votes in the Association.

### **6.4. Benefitted Assessments**

The Association may levy Benefitted Assessments against a particular Lot as follows:

- (a). To cover the costs of providing a service and/or facility to an Owner and their Lot(s) at the request of the Owner. Benefitted Assessments for requested services and facilities may be levied in advance of providing the requested service; and
- (b). To cover costs incurred by the Association to repair tangible damages to the Common Area caused by the negligence or wrongful act of an Owner or occupant of their Lot, their agents, contractors, employees, licensees, invitees, or guests, provided the Board shall give the Lot Owner prior written notice and an opportunity for a hearing, in accordance with the Revised By-Laws,

### **6.5. Time of Assessment Payment**

Owners shall pay assessments in the manner and on the dates the Board establishes. The Board may impose special requirements for Owners with a history of delinquent payment. Unless the Board provides otherwise, the Regular Assessment shall be due and payable in advance on the first day of each calendar year. If any owner is delinquent in paying any assessments or other charges levied on his or her Lot, the Board may require that the outstanding balance on all assessments be paid immediately.

### **6.6. Obligation for Assessments**

Each Owner, by accepting a deed or entering into a Recorded contract of sale for any Lot, covenants and agrees to pay all assessments authorized in the Governing Documents. All assessments, together with interest at a rate and late charges determined by Board resolution, costs and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Lot until paid in full. Upon transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

Subject to Weber County ordinances, two adjacent Lots may be perpetually joined into a single Lot. The Board may, but is in no way obligated to consider the combined Lots as a single Lot for the purposes of assessments. A Member's voting interest for perpetually joined Lots shall be determined in accordance with the Revised By-Laws.

The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Regular Assessments on the same basis as during the last fiscal year for which an assessment is made until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner is exempt from liability for assessments by non-use of Common Area, including the Wastewater Disposal System, abandonment of his or her Lot, or by any other means. The obligation to pay assessments is a separate and independent covenant by each Owner. No lessening or reduction of assessments or counter-claim shall be allowed for any alleged failure of the Association or Board to take some action or perform some required function, or for inconvenience or discomfort arising from repairs or improvements, or for any reason.

Upon written request, the Association shall furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. The certificate shall be conclusive evidence of payment. In accordance with Utah law, the Association may require the advance payment of a processing fee for the issuance of such certificate.



**6.7. Lien for Assessments**

As set forth in Utah Code Title 57, Chapter 8a, Section 301, as amended, the Association shall have a lien against each Lot for assessments and costs of collection.

The Association's lien may be enforced in the manner prescribed in Utah Code Title 57, Chapter 8a, Sections 302-307, as amended.

Sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure by the first Mortgagee extinguishes the lien relating to any amounts due prior to the Mortgagee's foreclosure. The purchaser of a foreclosed Lot shall not be personally liable for assessments on such Lot due prior to the foreclosure sale. At the sole discretion of the Board, such unpaid assessments may be designated as a Common Expense collectible from Owners of all Lots, including such purchaser, its successors and assigns.

**6.8. Capitalization of the Association**

Upon acquisition of Record title to a Lot by the first Owner thereof other than the Developer, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in the amount of two hundred dollars (\$200.00). The amount shall be in addition to, not in lieu of, the Lot's annual Regular Assessment and shall not be considered an advance payment of such assessment. This amount shall be deposited into the purchase and sales escrow and then distributed to the Association for use in covering expenses incurred by the Association pursuant to the Governing Documents.

**Article VII. Easements and Perpetual Open Space Rights****7.1. Easements in Common Area**

Each Owner shall have a right and easement of use, access and enjoyment in and to the Common Area, subject to the Governing Documents and any other applicable covenants.

**7.2. Easements for Cross-Drainage**

All Lots and the Common Area shall be burdened with easements for natural drainage of stormwater runoff from other portions of the Community; provided, no Person shall alter the natural drainage on any Lot to materially increase the drainage of stormwater onto adjacent portions of the Community without consent of the Owners of affected Lots and the Board.

**7.3. Easements for Public Access**

Easements across the Common Area for access to federal public lands by the general public have been granted and Recorded by the Developer of the Community. Such easements are shown on the Recorded Plats for Durfee Creek Estates. No Owner shall have the right to restrict public access over and along such easements.

**7.4. Perpetual Open Space Rights**

The Common Area shown on the Recorded Plats for Durfee Creek Estates is dedicated to Weber County, Utah as perpetual open space and shall remain forever open and undeveloped. With the exception of the Wastewater Disposal System, no improvements shall be placed on the Common Area without the written approval of all Owners and Weber County.

**Article VIII. Arbitration and Limitation on Litigation****8.1. Arbitration**

(a). The Association, its Members, officers, directors, committee members, and any Person not otherwise subject to this Amended Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree to attempt to resolve disputes involving the Community without the costs of litigation. Accordingly, each Bound Party agrees not to file a law suit for a claim described in Subsection (b), without first submitting the Claim to arbitration conducted in the manner set forth in Utah Code Title 78, Chapter 11, as amended.

(b). As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to:

- (i). The interpretation, application or enforcement of the Governing Documents;
- (ii). The rights, obligations and duties of any Bound Party under the Governing Documents; and
- (iii). The design or construction of improvements within the Community, other than matters of judgment and opinion under Article IV, which shall not be subject to review.

(c). The following shall not be considered Claims unless all parties to the matter otherwise agree to submit the matter to arbitration.

- (i). Any Association action to collect assessments or other amounts due from any Owner;

(ii). Any Association action necessary to obtain a temporary restraining order, or emergency equitable relief, and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce of Article III and Article IV of this Amended Declaration; and

(iii). Any suit between Owners, which does not include the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents.

## **8.2. Litigation Initiated by the Association**

The Association shall not initiate any judicial or administrative proceeding unless first approved by Members entitled to cast at least 75% of the total votes in the Association. No such approval shall be required for actions or proceedings:

- (a). Initiated to enforce the provisions of this Amended Declaration, including collection of assessments and enforcement of liens; and
- (b). Initiated to challenge ad valorem taxation or condemnation proceedings.

## **Article IX. Mortgage Provisions**

The Association's communication with an institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association, stating the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its Mortgage relates shall be governed by Utah Code Title 57, Chapter 8a, as amended, and any other applicable Utah law.

## **Article X. Changes in the Community**

### **10.1. Changes in Lot Ownership**

Any Owner desiring to sell or otherwise transfer title to his or her Lot shall give the Board at least 14-days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Lot Owner, including assessment obligations, until the date such notice is received by the Board, notwithstanding the transfer of title.

### **10.2. Condemnation of the Common Area**

If any part of the Common Area is taken or conveyed under threat of condemnation by any authority having the power of eminent domain, the Board shall notify each Lot Owner.

The Board shall have the authority to convey any part of the Common Area taken under threat of condemnation. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

- (a). If the taking involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent practicable; and
- (b). If the taking does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine in accordance with the Governing Documents.

### **10.3. Partition**

The Common Area shall remain undivided, and no Person shall bring any action for partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Association and the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property that may or may not be subject to this Declaration as long as such acquisition and disposal actions are conducted in accordance with this Declaration.

## **Article XI. Amendments**

### **11.1. By Members**

Unless otherwise specified in Utah Code Title 57, Chapter 8a, Section, as amended, this Amended Declaration may be further amended only by affirmative vote or written consent of 67% of the eligible voting interests in the Community. Eligible voting interests shall be calculated in the manner specified by the Governing Documents.

### **11.2. Validity and Effective Date**

If any Owner consents to any further amendment to this Amended Declaration or the Revised By-Laws, it will be conclusively presumed that the Owner has the ability to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

An amendment shall become effective upon Recording, unless a later effective date is specified in the amendment. Any challenge to the procedural manner used in adopting an amendment must be made within 45-days of its Recordation or such amendment shall be

presumed to have been validly adopted. In no event shall a change in conditions or circumstances operate to amend any provisions of this Declaration.

11.3. Exhibits

Exhibit "A" attached to this Amended Declaration is incorporated by this reference. Any amendment to Exhibit "A" shall be governed by Weber County, Utah.

**CERTIFICATION**

I, the undersigned, being Secretary-Treasurer of Durfee Creek Association Inc., a Utah non-profit corporation (the "Association"), do hereby certify the foregoing to be the Amended Declaration for Durfee Creek Estates Subdivision as approved by a vote of 67% of the eligible Members of the Association.

*Barry S. Swartz*  
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Acknowledgement

State of Utah  
County of Weber

Subscribed and sworn to before me on this 5<sup>th</sup> day of November 2012 by Barry S. Swartz

*Melissa Cohen*  
\_\_\_\_\_  
Notary Name Signature

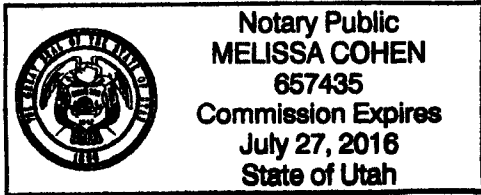


EXHIBIT A

Durfee Creek Estates Subdivision Parcel Numbers		
17-092-0027	17-137-0017	17-226-0001
17-135-0001	17-138-0001	17-292-0001
17-135-0002	17-138-0002	17-292-0002
17-136-0001	17-138-0003	17-292-0005
17-136-0002	17-138-0004	17-297-0001
17-136-0003	17-138-0005	17-297-0002
17-136-0004	17-138-0006	17-297-0003
17-136-0005	17-138-0007	17-297-0004
17-136-0006	17-138-0008	17-297-0005
17-137-0001	17-138-0009	17-297-0006
17-137-0002	17-139-0001	17-297-0007
17-137-0003	17-139-0002	17-297-0008
17-137-0004	17-139-0003	17-297-0009
17-137-0005	17-139-0004	17-297-0010
17-137-0006	17-225-0001	17-297-0011
17-137-0007	17-225-0002	17-297-0012
17-137-0008	17-225-0008	17-307-0001
17-137-0009	17-225-0009	17-307-0002
17-137-0010	17-225-0010	17-307-0003
17-137-0011	17-225-0011	17-307-0004
17-137-0012	17-225-0012	17-307-0005
17-137-0013	17-225-0013	17-307-0006
17-137-0014	17-225-0014	17-307-0007
17-137-0015	17-225-0015	
17-137-0016	17-225-0016	