

**FIFTH AMENDMENT TO THE DECLARATION OF
PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS FOR WAVERLY
STATION**

In Salt Lake County, Utah

This Fifth Amendment to the Declaration of Protective Covenants, Conditions, Restrictions for Waverly Station (hereinafter "Fifth Amendment"), hereby amends that certain Declaration of Protective Covenants, Conditions and Restrictions for Waverly Station recorded October 2, 2006, as Entry No. 986259, as amended ("Declaration") and is adopted by the Board of Directors ("Board") for Waverly Station Homeowners Association, Inc. ("Association"), for and on behalf of its members, and made effective as of the date recorded in the Salt Lake County Recorder's Office.

RECITALS:

(A) This Fifth Amendment affects and concerns the real property located in Salt Lake County, Utah, and more particularly described in the attached **Exhibit "A"** ("Property").

(B) On or about October 2, 2006, the Declaration of Protective Covenants, Conditions and Restrictions for Waverly Station was recorded in the Salt Lake County Recorder's Office as Entry No. 986259.

(C) On or about October 2, 2006, the Bylaws for Waverly Station Homeowners Association, Inc. were recorded in the Salt Lake County Recorder's Office as Entry No. 9863034.

(D) On or about April 17, 2007, a First Amendment to Declaration of Covenants, Conditions and Restrictions was recorded in the Salt Lake County Recorder's Office as Entry No. 10068717.

(E) On or about November 5, 2007, a Second Amendment to Declaration of Covenants, Conditions and Restrictions was recorded in the Salt Lake County Recorder's Office as Entry No. 10267399.

(F) On or about September 15, 2011, a Third Amendment to Declaration of Covenants, Conditions and Restrictions was recorded in the Salt Lake County Recorder's Office as Entry No. 11244006.

(G) On or about December 21, 2012, a Fourth Amendment to Declaration of Covenants, Conditions and Restrictions was recorded in the Salt Lake County Recorder's Office as Entry No. 11541374.

(H) Article 4.17 of the Declaration, allows the Association to take over certain maintenance obligations in the community. The Association desires to confirm certain maintenance responsibilities by adoption of this Fifth Amendment.

(I) The purpose and intent of this Fifth Amendment is to clarify and modify where necessary the corresponding maintenance responsibilities between the Owners and the Association for the Units.

CERTIFICATION

By signing below, the Board hereby certifies that pursuant to Article VI, of the Declaration, the Association has obtained the approval or written consent of at least fifty-one percent (51%) of the total members.

NOW, THEREFORE, pursuant to the foregoing, the Board of Directors (“Board”) hereby makes and executes this Fifth Amendment, which shall be effective as of its recording date.

COVENANTS, CONDITIONS AND RESTRICTIONS

1. Recitals. The above Recitals are incorporated herein by reference and made a part hereof.

2. No Other Changes. Except as otherwise expressly provided in this Fifth Amendment, the Declaration remains in full force and effect without modification.

3. Conflicts. In the case of any conflict between the provisions of this Fifth Amendment and the provisions of the Declaration, the provisions of this Fifth Amendment shall in all respects govern and control. In the case of any existing provision with the Declaration that could be interpreted as prohibiting the modifications set forth in this Fifth Amendment, such provision is hereby modified in order to accomplish the purpose and intent of this Fifth Amendment.

AMENDMENTS

The Articles identified below are hereby modified as follows: (these amendments shall control over any conflicting provision in the Declaration, as amended, with respect to the maintenance responsibilities for Units in the Project):

4. Article 1.10 “Unit” in the Declaration is hereby supplemented to also include the following:

Unit shall also include all mechanical equipment and appurtenances located within any Unit or located without said Unit but designated and designed to serve only that Unit, such as appliances, electrical receptacles and outlets, electrical panels, air conditioning apparatus, furnaces, stoves, fixtures and similar equipment shall be considered part of the Unit.

5. Article 4.14 in the Declaration is hereby deleted in its entirety and replaced with the following provision.

4.14 Maintenance of Units. Any items of maintenance, repair and replacement with respect to Units (both interior and exterior) that is not specifically assigned

to the Association in this Article remains the sole responsibility of the individual Unit Owner and shall maintain the Unit in good order and repair. Each Unit Owner shall keep their Unit in a clean, uncluttered, safe, sanitary and functional condition, so as not to detract from the health, safety or uniform appearance or design of the Project.

- (a) Unit Owners will continue to be required to submit a written application to the Design Review Committee/ Architectural Control Committee to perform any exterior modifications of a Unit. Interior modification that require modification of any interior party wall or structural/bearing wall will also require an application;
- (b) Unit Owners remain responsible for all utility costs for the Unit including but not limited to electrical, gas, telephone, sewer service, and other utility services or similar charges related to the use and occupation of the Unit.
- (c) Common interior maintenance and repairs can include such items as: paint, floor coverings, fireplaces and flues, furnaces, water heaters and other mechanical equipment and appliances, all drywall, ceilings, interior doors, glass replacement on exterior windows, garage floor flatwork, garage door operations, automatic garage door openers and damage to garage doors, and any other equipment, devices, or appliances installed by Owners.
- (d) Association Maintenance of the Units. The Association, or its duly designated agent, shall maintain the following Unit components:
 - i. Exterior stucco surfaces (specifically excluding structural repairs);
 - ii. Exterior brick surfaces (specifically excluding structural repairs);
 - iii. Roofs, including shingles, underlayment (felt and plywood) but specifically excluding any structural repairs;
 - iv. Gutters and downspouts, including gutter cleaning as determined by the Association;
 - v. Decking treads on balconies;
 - vi. Concrete patios (including painting of concrete surface);
 - vii. Railings on Unit balconies and patios (including painting of railings);
 - viii. Brick pillars;
 - ix. Exterior, front door painting; and
 - x. Exterior dryer vent (cleaning only), which may require coordination at times with Owners in the event interior access is required.
- (e) Unit Owners remain responsible for all exterior structural maintenance and repairs of the Unit. The items identified above are considered surface maintenance items. Further, the Board may utilize its discretion on when

repairs and maintenance on the above items are necessary and may develop reasonable schedules in setting budgets and balancing necessary repairs.

- (f) Limitations. These changes set forth in this Fifth Amendment are intended to balance the burden and costs of ongoing maintenance in order to be consistent with general expectations within a condo community moving forward. Increased Association maintenance responsibilities will necessary require additional assessments and reserves from Unit Owners.
- a. These changes apply to any qualified maintenance performed by an Owner in the year 2020 and moving forward. In the event, an Owner performed maintenance in the year 2020 that will now be covered by the Association moving forward, such Owner can apply for reimbursement with the Association. The Board may utilize its discretion in reviewing a claim for reimbursement that falls outside of 2020 or includes other factors meriting consideration.
 - b. The Association may reasonably balance the necessary maintenance requirements and prioritize certain repairs in conjunction with budgets, assessments, special assessments, reserves and similar concerns.
 - c. The Association is not responsible for necessary structural repairs discovered upon performing exterior maintenance.
 - d. The Association is not responsible for maintenance or repairs required resulting from alterations or damage from Unit Owners and their residents/guests including, but not limited to, penetrations into outdoor surfaces from items such as: nails, screws, bolts, vent installation, satellite dishes etc.
 - e. The Association is not responsible to repair or maintain exterior surfaces if such work is resulting from other maintenance or repairs required that are the responsibility of the Unit Owner.
 - f. The Design Review Committee may request additional information from Unit Owners with regard to requested repairs including, but not limited to professional inspections and/or opinion when necessary.

6. Articles 4.9 and 4.10 in the Declaration are hereby deleted in their entirety and replaced with the following.

4.9 Assessments. Assessments will be made to meet the anticipated and recurring costs and expenses of the Association. The Association has the power to levy assessments against each Unit, as necessary to carry out its functions. Assessments shall be levied against all Units in the Property, whether vacant or improved in accordance with a Unit's voting right, as set forth in Article 4.5., together with late payment fees, interest and costs of collection (including reasonable attorney fees), if and when applicable.

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

required repairs. Absent emergency circumstances, if the Special Assessment is in excess of ten percent (10%) of the annual budget, it shall first be approved by a simple majority of Owners present at a special meeting, a quorum being present.

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

(c) The Association may levy a reserve fund assessment to provide for ongoing maintenance, repair and replacement responsibilities of the Association.

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

4.10 **Budget.** The Board is authorized and required to adopt a budget annually, which shall be presented to the Owners.

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

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

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

(d) The Association shall not borrow money without the approval of at least 51% of the voting interest.

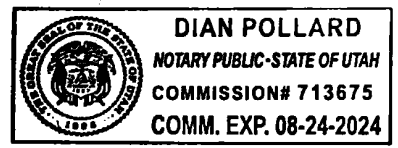
WAVERLY STATION HOMEOWNERS ASSOCIATION, INC.

[Signature]
By: Scott Woolsey
Its: President

STATE OF UTAH)
COUNTY OF Salt Lake :ss

On this 15 day of October, 2020, personally appeared before me Dian Pollard, who being by me duly sworn, did say that he/she is the President of Waverly Station Homeowners Association, Inc. a Utah non-profit corporation and that the within and foregoing instrument was signed on behalf of said corporation by authority and said individual duly acknowledged to me that said corporation approved the same.

[Signature]
Notary Public



**Exhibit A
Legal Description**

<u>15362790020000</u>	LOT 36, WAVERLY STATION PH 1. 9239-0001 9507-1660
<u>15362790030000</u>	LOT 37, WAVERLY STATION PH 1. .
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<u>15362790050000</u>	LOT 39, WAVERLY STATION PH 1. 9239-1 9490-5997 9490-6012
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