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14372720 B: 11564 P: 5947 Total Pages: 52  
04/17/2025 03:17 PM By: EMehanovic Fees: \$46.00  
Rashelle Hobbs, Recorder, Salt Lake County, Utah  
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AMENDED AND RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
LIBERTY WELLS  
(INCLUDING BYLAWS)  
A Planned Unit Development

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This Amended and Restated Declaration of Covenants, Conditions and Restrictions (hereafter "Declaration") is made on the date evidenced below by Liberty Wells Owners Association (hereafter "Association").

## RECITALS

A. The property subject to this Declaration is the Liberty Wells subdivision in Salt Lake County, State of Utah. Exhibit "A" of this Declaration further defines the property subject to this Declaration. All Lots therein are part of the Association, and each Owner of a Lot is a member thereof. The Association is created as a planned unit development and contains certain Common Area and easements for the benefit of the Owners of Lots therein.

B. The Association desires to continue to provide for the preservation and enhancement of the property values and improvements of the Property and for maintenance of the Common Area.

C. This Amended and Restated Declaration of Covenants, Conditions and Restrictions supersedes and replaces all prior declarations, and amendments or supplements thereto, recorded against the subdivision, including the Declaration of Covenants, Conditions, and Restrictions for Liberty Wells Owners Association, Inc., recorded December 4, 2008, as Entry No. 10573041, Book 9662, Pages 9122-9153, records of the Salt Lake County Recorder, state of Utah (the "Original Declaration");

D. Pursuant to Utah Code § 57-8a-104 and Article XVI, Section 16.5 of the Original Declaration, Owner holding at least 67% of the voting interests of the Association have voted affirmatively to adopt this Declaration.

NOW, THEREFORE, the Association declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions restrictions, easements, charges and liens hereinafter set forth:

## ARTICLE I - DEFINITIONS

The following words when used in this Declaration (unless the context otherwise requires) shall have the following meanings:

**1.1 "Act"** means the Utah Community Association Act, Utah Code, Title 57, Chapter 8a, as the same shall be amended from time to time.

**1.2 "Assessment"** means any charge imposed or levied by the Association on or against an Owner or Lot pursuant to the terms of the Governing Documents or applicable law, including (1) annual assessments, (2) special assessments, and (3) individual or reimbursement assessments as set forth below.

**1.3 "Association"** means the Liberty Wells Owners Association, and any successor incorporated or unincorporated association of the Lot Owners acting under the authority of this Declaration, the Bylaws and the Act. The Board acts in all instances on behalf of the Association, except when a Governing Document or the law specifically authorizes other persons to act on behalf of the Association.

**1.4 “Board” or “Board of Directors”** means the governing body of the Association and is the entity, established in accordance with the Bylaws, with primary authority to manage the affairs of the Association.

**1.5 “Bylaws”** means the Bylaws of the Association (attached hereto as **Exhibit B**), as they may be amended from time to time.

**1.6 “City”** means Salt Lake City, Utah, and its appropriate departments, officials and boards.

**1.7 “Common Area”** means (a) the real property and interests in the real property which comprise the Property, excluding all Lots; (b) the common areas designated on the Plat; and (c) in general, all apparatus, installations and facilities included within the Property and existing for the common use and benefit of the Owners.

**1.8 “Common Expenses”** means all sums which are required by the Association to perform or exercise its functions, duties, or rights under the Act or the Governing Documents and which are not properly attributable to one Owner or person or to fewer than all the Owners.

**1.9 “Community”** means the Property.

**1.10 “Dwelling” or “Dwelling Unit”** means a single housing structure built on a Lot for use and occupancy as a residence for a single family. A garage or carport on a Lot and any other Improvement attached to the Dwelling is part of the Dwelling.

**1.11 “Eligible Holder”** means any holder, insurer, or guarantor of a first Mortgage who makes a written request to the Association to receive any of the notices or rights to vote provided to Eligible Holders under this Declaration. The request shall state the name and address of the Eligible Holder and the Lot number to which the Eligible Holder’s mortgage interest applies.

**1.12 “Family”** shall have the same meaning as defined by City code from time to time.

**1.13 “Fine”** means an amount levied by the Association against an individual or entity for a violation of the Governing Documents. A Fines is deemed an assessment and may be collected as such.

**1.14 “Governing Documents”** means a written instrument by which the Association may exercise powers or manage, maintain, or otherwise affect the property under the jurisdiction of the Association, including the Articles of Incorporation, Bylaws, this Declaration, Rules and Regulations, and architectural or design guidelines.

**1.15 “Improvement”** means all Subdivision or Lot structures and appurtenances to a Lot of every type and kind, including but not limited to buildings, out buildings, walkways, sprinkler pipes, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, solar panels, exterior air conditioning and water softener fixtures or equipment. “Improvement” also includes any change to the exterior of a dwelling or yard that is subject to the jurisdiction of the Architectural Control Committee.

**1.16 “Limited Common Area”** means any Common Area designated for the exclusive use of the Owner of a particular Unit, as shown on the Plat or provided herein, and includes the following reserved for the exclusive use of certain Lots to the exclusion of other Lot Owners: a

driveway, carport, porch, patio, patio area, garden area, area enclosed by a fence, storage facility and any other area or Improvement.

**1.17 “Lot”** means a numbered residential lot or parcel of land designated for separate ownership or occupancy shown upon on the recorded Plat.

**1.18 “Manager” or “Managing Agent”** means and refers to a person or entity retained to manage the Property and the Association according to the direction of the Board.

**1.19 “Mortgage”** means any mortgage or deed of trust encumbering any Lot and any other security interest existing by virtue of any other form of security instrument or arrangement, provided that such mortgage, deed of trust or other form of security instrument and/or security arrangement has been recorded among the Recorder's Office.

**1.20 “Mortgagee”** means the person or entity secured by a Mortgage.

**1.21 “Owner”** means the person, persons or other entity owning any Lot as shown in the records of the Recorder's Office but does not include a tenant or holder of a leasehold interest or person holding only a security interest in a Lot. Regardless of the number of parties participating in ownership of each Lot, the group of those parties shall be treated as one “Owner.”

**1.22 “Plat” or “Plat Map” or “Record of Survey Map”** (these terms may be used interchangeably herein) means the record of survey map(s) recorded at the Salt Lake County Recorder's office as the same may be amended or substituted from time to time.

**1.23 “Property” or “Project”** means all of the real property described in the Plat, including all of the real property described in attached **Exhibit A** and all Lots, Common Area, easements and open space.

**1.24 “Rules” or “Rules and Regulations”** means the policies, guidelines, restrictions, procedures, or regulations of the Association that are not set forth in a contract, easement, the Article of Incorporation, Bylaws, or the Declaration, and that govern either the conduct of persons, or the use, quality, type, design, or appearance of real property or personal property. “Rule” does not include the internal business operating procedures of the Board..

**1.25 “Subdivision”** means the residential subdivision indicated on the Plat including all Lots, Common Areas, and other property within the subdivision as shown on the Plat.

## **ARTICLE II - PROPERTY DESCRIPTION & RIGHTS**

**2.1 Property Subject to the Declaration and Bylaws.** The real property which is, and shall be, transferred, held, sold, conveyed, used, occupied and improved subject to the Act, the Governing Documents, including this Declaration, and all agreements, decisions and determinations made by the Board and Association is all of the real property and interests described in the Plat, including any property annexed into the Project, and including the property described on Exhibit A attached hereto, which Declaration and the covenants, conditions and restrictions therein shall run with the land and shall be binding upon each and every party which shall at any time have any right, title or interest in or to the Property or any part thereof, their heirs, successors and assigns, and to any other person who may in any manner use the Property

or any part thereof submitted to the provisions of this Declaration, and shall inure to the benefit of each Owner thereof. To the extent that the Governing Documents are or become inconsistent with the provisions of any future amendments to the Act, the Act, as amended, shall control.

**2.2 Description and Legal Status of Lots.** The Plat shows the Common Areas and Lots, their locations, and dimensions from which their areas may be determined together with the Definitions above.

**2.3 Use and Occupancy.** Except as otherwise provided in the Governing Documents, the Owner of a Lot shall be entitled to the exclusive use and benefits of ownership of the Lot and any improvements made at the time of construction (for example, deck additions or expanded dimensions, and lower-level patios with or without fencing), or as approved by the Association as provided herein. Each Lot, however, shall be bound by, and the Owner shall comply with all provisions of the Governing Documents for the mutual benefit of the Owners.

**2.4 Easements Reserved.** In addition to the easements shown on the Plat or provided for under this Declaration, the Bylaws or law, the following easements are hereby reserved for the benefit of the Owners and the Association:

2.4.1. Right of Entry. The Association and any person authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of performing maintenance referred to herein and determining whether or not the Lot is in compliance with the Governing Documents or whether the use of the Lot is causing damage or harm to the Common Areas. Requests for entry shall be made in advance and at a time convenient to the Owner, except in the case of an emergency, when such right shall be immediate. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot.

2.4.2. Utility Easements. The Association and any public utility provider shall have an easement through all Lots and the Common Areas for the installation, maintenance and development of utilities and drainage facilities, as may be necessary. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may reasonably interfere with or damage utilities or drainage facilities. The easement area within each Lot and all improvements therein shall be maintained continuously by the Owner of the Lot in accordance with the terms herein, except for those improvements for which a public authority or utility provider is responsible. Each Lot Owner shall have an easement in common with all Owners to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities located in any of the other Lots and serving his or her Lot.

2.4.3. Police, Fire and Ambulance. An easement is hereby granted to all police, fire protection, ambulance services and all similar persons to enter upon the streets and Common Areas in the performance of their duties.

2.4.4. Common Areas. All Owners are hereby granted a non-exclusive right and easement of enjoyment to the Common Areas. This easement is appurtenant to and passes with the title to every Lot, subject to the following:

- (1) The right of the Association to limit the number of guests of members using the Common Area.
- (2) The right of the Association to suspend access and use of Common Areas by an Owner: (i) for any period during which any assessment or portion thereof against the member's Lot remains unpaid; and, (ii) for a violation of the Governing Documents for as long as the violation remains unresolved and up to 60 days thereafter.
- (3) The right of the Association to grant easements for public utilities or other public purposes consistent with the intended use of the Common Area by the Association.
- (4) The terms and conditions of the Governing Documents.
- (5) The right of the Association, through its Board, to adopt Rules and Regulations as provided herein.

### **ARTICLE III – RESTRICTIONS ON USE**

**3.1 Single-Family and General Use Restrictions.** All of the Lots are restricted to single-Family Dwellings. All buildings or structures erected on any Lot shall be of new construction and no buildings or structures shall be removed from other locations to the properties. After initial construction of a Dwelling on a Lot, no subsequent building or structure of a temporary character, including but not limited to any trailer, tent, camper, shack, garage, barn or other building shall be placed or used to provide any living quarters on any Lot at any time.

**3.2 Residential Use.** Lots and Dwelling erected thereon shall be used for single-Family, residential purposes in accordance with, and subject to, the other provisions of this Declaration and the Bylaws and rules and regulations adopted pursuant thereto. Except as provided in this subsection, no trade, craft, business, profession, commercial or similar activities that cause additional pedestrian or vehicular traffic, creates a sight or noise nuisance, shall be conducted on any Lot or in any other portion of the Project.

**3.3 Use of Common Area.** Owners shall enjoy rights of ingress and egress to all Common Areas, and may use such areas, including but not limited to parking areas, open space designed for use as parks, gardens or recreational areas, playgrounds (if present at this time or in the future) and the like, for use by family and guests of the Owner when such guests are accompanied by the Owner. Owners may not grant permission to use Common Areas to those who are not visiting or temporarily staying with Owner. Owners are prohibited and restricted from using any of the Common Areas, other than as permitted in this Declaration or as may be allowed by the Board. It is expressly acknowledged and agreed by all parties concerned that this restriction is for the mutual benefit of all Lot Owners in the Property and is necessary for the protection of interests of all said Owners in and to the Common Area.

#### **3.4 Lease Restrictions.**

3.4.1. **Rentals Prohibited.** No Lot or Dwelling may be rented at any time, unless exempted under Sections 3.4.4. and 3.4.5. below.

3.4.2. Definition of Rental. “Rent” and its derivatives mean:

- (1) a Lot owned by an entity or trust, regardless of who occupies the Dwelling, unless:
  - (A) the entity or trust was created for estate planning purposes for the estate of a current resident of the Dwelling or the parent, child, or sibling of the current resident of the Dwelling; or (B) the Dwelling is occupied by an individual who has voting rights under the Owner-entity’s organizing documents, and has a 25% or greater share of ownership, control, and right to profits and losses of the entity; and
- (2) a Dwelling not owned by an entity or trust, that is occupied by someone while no Owner and no Owner’s parent, child or sibling occupies the Dwelling as their primary residence.

3.4.3. Room Rentals Prohibited. A “Room Rental” is the granting of a right to use or occupy less than an entire Dwelling to any person or entity for a specific or indefinite term in exchange for the payment of money, property or other goods or services of value. Room Rentals are prohibited. No Unit may be used, rented or leased for the purpose of providing accommodations to travelers or vacationers.

3.4.4. Required Exemptions. The following Owners and Lots are exempt from the rental prohibition in 3.4.1, but shall comply with Section 3.4.5., including the requirement to apply to the Association, which application shall be granted upon a determination by the Board that the Owner or Lot qualifies as one of the following: (1) an Owner in the military for the period of the Owner’s deployment; (2) an Owner whose employer has relocated the Owner for two years or less; or (3) a Lot transferred to, or administered by, the heirs of a deceased Owner for a period of two years from the death of the Owner. The Board may require an Owner to provide relevant proof that the Owner qualifies under an above exemption.

3.4.5. Requirements for an Exempted Lot.

(a) Application Required. In order to qualify to rent a Lot under Section 3.4.4., an Owner must receive approval after applying to the Board in writing. The Board shall review the application and make a determination of whether the rental qualifies for an exemption under Section 3.4.4. The Association shall track the rental of any exempt Lots.

(b) Annual Notice Required. Each Owner of an approved rental, shall submit to the Association on January 1 of each year a “notice of continued rental” stating that the Lot is currently rented, together with the Owner’s name, address, Lot address, and phone number.

(c) The Lease Agreement. Any lease agreement between an Owner and a lessee must be in writing, and must provide, among other things, that the terms of the lease shall in all respects be subject to the provisions of the Declaration, the Articles of Incorporation of the Association, the Bylaws, and the Rules. All lease agreements shall contain as an attachment to the lease agreement a copy of the current Rules of the Association. Within 14 days of a Lot being rented, the Owner must provide the Association with a copy of the signed lease agreement and the names of all occupants of the Dwelling, and the Owner must keep such information updated with the Association within 14 days of any change. Each occupant of a rental Dwelling is required to

abide by the terms of the Governing Documents and each such occupant and the rental Lot Owner are jointly and severally liable for a violation of a provision of the Governing Documents, including for any fines levied and attorney fees, costs and any other expense incurred by the Association as a result of such violation.

**3.5 Animals.** No more than two (2) domestic animals weighing less than 40 pounds each (such as dogs, cats and birds) may be kept in a Dwelling. No animal may be kept, bred, or maintained for any commercial purpose and must be permissible within zoning regulations. The owner of a dog must keep such dog on a leash or in a cage when outside of the Lot and on Common Areas. Permitted animals must not cause any noise or disturbance that would be deemed a nuisance to other Owners or residents within the Community. Any breach of the community's quiet enjoyment shall be the responsibility of the respective Owners, including removal of animal waste. The Association may, by rule, further restrict or regulate the keeping of pets. An Owner may be required to remove a pet that is in violation of the Governing Documents or if the animal is considered dangerous or unsafe to the Owners or their guests. The Board may have such animal removed by the City's animal control officials. Damage or injury to a person or to any property resulting from any animal is the responsibility of the Owner of the Lot where the animal is kept or is visiting, and such Owner shall indemnify and hold the Association harmless from all liability resulting from damage or injury. No fencing shall be allowed without the prior approval of the Architectural Control Committee. No other animals of any nature or kind may be kept on a Lot, including but not limited to horses, cows, cattle, goats, chickens, geese, ducks, or other farm animals.

**3.6 No Noxious, Offensive or Unsightly Conditions or Activities.** No noxious, offensive or unsightly conditions, including, but not limited to, the placement or storage of inoperable machinery, cars, appliances, replacement parts, or related activities shall be permitted on any Lot or other portion of the Common Areas. Nothing may be done in or placed upon any Common Area which interferes with or jeopardizes the quiet enjoyment of Owners or constitutes a public nuisance. The open storage of any building materials (except during the construction of any Dwelling or addition), construction debris or waste, household refuse or garbage are prohibited, except as stored in tight containers in an enclosure such as a garage or storage area. No noise or other nuisance shall be permitted to exist or operate upon any part of the Property so as to be offensive or detrimental to any other part of the Property, or to the occupants thereof. Rules and regulations may be adopted regarding noise control, including but not limited to quiet hours to be observed.

**3.7 Nuisances.** No Owner shall do or permit anything to be done on the Owner's Lot which is or may become a danger, an unreasonable annoyance, or nuisance to other Owners or the Community, as determined in the reasonable judgment of the Board. Without limiting the generality of the foregoing, a nuisance shall be deemed to include, but not be limited to, loud noises or music, noxious odors, storage of hazardous materials, existence of dangerous conditions or engaging in unlawful activities, or the existence of any other condition or activity deemed by the Board to be a nuisance, danger or unreasonable annoyance to other Owners or the Community.

**3.8 Unlawful Activities.** No unlawful use shall be made of the Property or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed.

**3.9 Rubbish and Trash.** No part of the Property may be used or maintained as a dumping ground for rubbish, trash, garbage, or any other waste. No garbage, trash, or other waste may be kept or maintained on any part of the Property except in a sanitary container in an area specified by the Board. All such waste and garbage must be promptly and periodically removed.

**3.10 Parking.** An Owner's vehicle may only be parked in the Owner's driveway or within a garage. A vehicle parked in a driveway must be contained wholly within the driveway and may not extend on to a sidewalk or other area. An inoperable vehicle may be stored only in a covered carport or an enclosed garage and for no more than three consecutive days. However, in no case may an inoperable vehicle be parked or stored to the exclusion of the parking of an operable vehicle.

No parking of an Owner's vehicle is permitted in the Common Area, including on Liberty Wells Place or in community parking areas. Parking for guests of an Owner shall be in the designated guest parking areas for the community. Parking for longer than 48 hours by a guest is prohibited unless the owner reports the vehicle and the duration of the stay to the Board and approval for a parking space is obtained. There shall be no storage or parking of boats, campers, camper shells, mobile homes, RVs, trailers, or similar things in the Common Area or on a Lot if visible from anywhere in the Property outside of the Lot. Parking violations may result in fines and eventual towing of the vehicle.

**3.11 Temporary, Permanent and Other Structures.** No outbuildings of a prefabricated, temporary or permanent nature shall be erected on a Lot unless approved in advance, in writing by the Architectural Control Committee. No trailer, RV, camper, basement house, tent, shack, shed, garage, barn or other outbuildings, shall be used at any time as a residence either temporarily or permanently, nor shall such structures be permitted on a Lot or Common Area at any time, unless prior written permission from the Board is given. No old or secondhand structures shall be moved onto any Lot. All structures erected and maintained on Lots or within the Property shall be new construction of good quality, workmanship and material, as approved by the Architectural Control Committee.

**3.12 External Apparatus.** No Owner shall cause or permit anything (including, without limitation, light fixtures, planters, plantings in Common Areas, awnings, artwork/ornamental items, canopies, or shutters) to hang, be displayed or otherwise affixed to or placed on the Dwellings exterior walls or roof or any part thereof, or on the outside of windows or doors, without the prior written consent of the Architectural Control Committee.

**3.13 Number of Dwellings.** Only one Dwelling may be constructed on any Lot. No other outbuilding or habitable structure may be permitted on any Lot.

**3.14 Underground Utilities.** All gas, electrical, telephone, television, internet and any other utility lines are to be underground, including lines within any Lot which service installations entirely within that Lot. No propane tanks or oil tanks may be installed on any Lot except for temporary heat during construction.

**3.15 Fencing.** No alterations to a fence are permitted without the prior written approval of the Architectural Control Committee.

**3.16 Signs.** No sign of any kind shall be displayed on an Owners lot for public view without the prior approval of the Board, except for traffic control signs placed by the City, signs placed by the Board of Directors for the administration of the Community and signs indicating that a Lot is for sale.

**3.17 Antenna and Dish Policy.** Satellite dishes and antennas are prohibited except as required to be permitted by the FCC and federal law.

**3.18 Solar Panels and Solar Energy Devices.** Solar panels or other solar energy devices may be permitted within the Association upon written request to the Board, accompanied by examples of the solar panels or solar energy devices. No installation is permitted without the prior written approval of the Architectural Control Committee or the Board.

**3.19 Increase in Insurance Cost.** Nothing shall be done or kept within any Lot or on the Common Areas, which will increase the cost of insurance to the Association or to other Owners. No Owner shall permit anything to be done or kept within his or her Lot or Common Areas which will result in cancellation of insurance on any Lot.

**3.20 Hot Tubs.** Outdoor hot tubs are not permitted.

**3.21 Bulk Agreement for TV and Internet.** The Association may provide a basic bulk TV and Internet package to all residents. The Board may extend, abandon, or select a new option for the community. Any service shall not materially impact the aesthetics of the homes or the community as part of the installation. Any costs associated with the installation of a new common service shall be a cost of the Association.

**3.22 Holiday Lights and Decorations.** Holiday lights and decorations are permitted on dwellings. No Owner may install holiday lights or decorations within the Common Areas. Holiday decorations must be removed within three weeks after the holiday.

**3.23 Open Flamed items.** BBQ's, firepits, tiki torches and any other objects that emit open (uncovered) flames are prohibited. Closed cooking devices that operate off of propane or natural gas are permitted.

**3.24 Security Systems, Cameras, Surveillance Doorbells.** Surveillance and security systems are permitted, provided no part is affixed to Common Areas. For items affixed to Dwellings, the item color must blend with the building and must not draw attention.

**3.25 Clothes Lines.** Clothes lines are not permitted.

**3.26 Flowerpots and Yard Art.** Flowerpots affixed to the railings must be of the same color as the railing and must be secured so that they will not fall or otherwise create a hazard to anyone passing below. Temporary, standalone flowerpots may only be placed in a manner that

will not obstruct ingress or egress to a property or services provided. Yard art is not permitted in Common Areas.

**3.27 Yard Sales.** Yard sales are not permitted without prior approval of the Board.

**3.28 Hate Symbols.** No symbol which is deemed a symbol of hate by the Board in its sole discretion from time to time shall be displayed so as to be visible from any part of the Common Area. A symbol of hate is any symbol, image, or object that expresses animus on the basis of race, color, religion, gender identity, sexual orientation, disability or national origin.

**3.29 Rules and Regulations.** In addition to the restrictions and requirements in this Declaration and the Bylaws, the Board from time to time may adopt, modify, or revoke such rules and regulations reasonably governing the conduct of persons and the reasonable operation and use of the Lots and Common Areas as it may deem reasonably necessary in order to assure the peaceful and orderly use and enjoyment of the Property. Reasonable fines may be levied and collected for violations of the Governing Documents in accordance with Article VIII below. A schedule of fines shall be adopted by the Board specifying the amounts of such fines, and any other provisions or procedures related to the levying of such fines.

## ARTICLE IV - ARCHITECTURAL CONTROL

**4.1 Architectural Control Committee.** It is the intention and purpose of these covenants, conditions and restrictions to allow the Architectural Control Committee (“ACC”) to: (1) impose architectural standards on the Improvements to any Lot of a type and nature that result in buildings that are architecturally compatible in terms of Lot coverage, proportion, materials, colors, and general appearance; and (2) to impose construction rules on construction carried out on any Lot. To this end, the Board may appoint individuals to the Architectural Control Committee. In the event the Board does not appoint individuals to the ACC, the Board shall act as the ACC.

**4.2 Approval Required.** No building, fence, wall, Improvement of any kind, including without limitation, any Dwelling, garage, out-building, parking area, driveway, walkway, cemented area, flatwork or other hard surfaced area, outdoor recreational items or facilities, or other structure, extension or expansion of the foregoing, shall be commenced, erected or maintained upon the Property, including any Lot, nor shall any exterior addition to the Property or any Dwelling, or change or alteration thereto, of any sort, whether structural, landscaping, cosmetic or otherwise, be made by an Owner until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the ACC. Such approval shall be solely at the discretion of the ACC as they deem appropriate from time to time. Any such request shall be deemed to have been denied if the relevant Owner, including any subsequent Owner, cannot produce the written approval granted by the ACC upon request, and any changes or alterations made by an Owner, or prior Owner, shall be removed and the property restored to its original condition at the request of the Board. In the event the ACC fails to approve or disapprove a request by an Owner, the request will be deemed to have been denied. In addition to any other requirements adopted by the ACC, approval for Improvements shall be sought in the following manner:

4.2.1. Plans Submitted. Plans for the construction of any Improvements must be submitted to the ACC for review. It is recommended that a preliminary plan be submitted before the expense of final drawings is incurred. The plan must be in sufficient detail to show the location on the Lot of the exterior walls of a Dwelling (where applicable) and all other structures to be built with it; detailed drawings of all elevations of all proposed buildings showing locations of windows, doors, roof pitches, decks and other exterior elements; a list of exterior siding and roofing materials and/or a sample, including color samples; and a landscape plan showing the location of landscaped areas, driveways, walkways, patios, decks and other hard surfaced or irrigation areas and the areas to be disturbed by construction and the means of restoring those areas. In the case of an addition or modification of an existing Dwelling, the ACC may waive any of the foregoing it feels are unnecessary to its review of the remodel or addition.

4.2.2. Review Fee and Construction Deposit. The Owner seeking approval of a plan may be required to pay one or both of a review fee or a construction deposit in an amount to be determined by the ACC from time to time. The Owner may be charged a review fee for the actual cost of reviewing and approving plans for any construction on or improvement of a Lot, including any costs charged to the Association by any other party, but the Association shall not charge a review fee for reviewing and approving plans that exceeds such actual costs.

4.2.3. Review. Within 30 days from receipt of a complete submission, the ACC will review plans and make an initial determination whether or not the plans comply with the conditions imposed by the Declaration and the standards developed by the ACC. If they do not, the plans will be rejected. If they are in compliance the ACC will approve the plans. The ACC may also approve the plans subject to specific modifications or conditions. Owners may desire to submit preliminary plans for review. The ACC will review preliminary plans and make its comments known to the Owner, provided, however, that no preliminary approval is to be considered final approval, and no final approval will be granted on less than a complete submission. Upon approval, the ACC and the Owner will each sign a copy of the plans, which shall be left with the ACC. No construction that is not in strict compliance with the plans as finally approved is permitted.

4.2.4. Written Record. The ACC will maintain a written record of its actions and maintain in its files a copy of all plans approved or rejected for a period of five years. The ACC will also provide evidence of this approval for the City if requested by the Owner.

4.2.5. Failure to Act. If the ACC has not approved or rejected any submission within 30 days after payment of any required deposit and/or review fee and submission of complete plans, the submission is deemed to have been approved, except as to any act or thing prohibited by the Governing Documents.

**4.3 Variances.** Variances to any architectural requirements of the ACC as authorized in this Declaration may be granted by the Board when strict application of such requirements would create an unforeseen or unreasonable hardship to the Owner, or if such requirements are found to be inconsistent in the manner by which they are being applied by the ACC.

4.3.1. Each such variance must be approved by a majority of the Board. The granting of a variance shall not operate to waive or to render unenforceable any of the terms and provisions of this Declaration for any purpose except as to the particular Lot and the provisions and circumstances covered by the variance, nor shall the granting of a variance be deemed to set a precedent with respect to any subsequent requests for variances.

4.3.2. The Board shall not delegate to any single member or group of members or to any other person the power to grant variances pursuant to this section. No variance shall be granted if that variance has the effect of modifying applicable City zoning and building code regulations.

4.3.3. Any request for variance must be in writing and specify the variance requested and the reasons for such variance. A request for variance shall be reviewed by the Board within 30 days after receipt. The Board shall provide written notification of approval or disapproval. Notification shall include a reasonably detailed explanation of the reasons for such disapproval.

4.3.4. In the event that the Board shall fail to act within the thirty (30) day period, the request shall be deemed disapproved.

**4.4 Cost of Professional Review.** The ACC may engage the services of an architect, or civil or structural engineer to assist in its review of any proposed Improvements on a case-by-case basis or may elect to require the review of a design professional for every application. All costs of such additional review will be paid by the Owner, provided, however, that no architect or engineer will be hired without advance notice to the Owner of the intention to hire a review architect or engineer and the estimated cost of that review. The costs of such review must be paid by the Owner prior to the commencement of any review. If the Owner does not withdraw the proposal within five days after such notice, the Owner is deemed to have consented to the ACC retaining such professional assistance. Whenever the ACC retains outside professional services in its review, the reviewing architect or engineer is acting only in an advisory capacity, and all Owners, and the applicant, for itself and its successors and assigns, waive any and all claims against the ACC in the event that advice from, or conditions imposed by, the reviewing professional, prove ineffective, unnecessary, or inappropriate to the circumstances.

**4.5 General Design Review.** The ACC will use its best efforts to provide a consistent pattern of development, and consistent application of the architectural requirements as authorized by this Declaration. These architectural requirements are, of necessity, general in nature, and it is the ACC's responsibility to apply them in a manner that results in a high quality, attractive, and well-designed community.

**4.6 Limitations on Review and Non-Liability of ACC Members.** The ACC's review is limited to those matters expressly granted in this Declaration. The ACC shall have no authority over the enforcement of building codes, zoning ordinances, or other statutes, laws, or ordinances affecting the development or improvement of real property and shall have no liability to any Owner whose plans were approved in a manner that included any such violation. Corrections or changes in plans to bring them into conformity with applicable codes must be approved by the ACC prior to construction. No member of the ACC shall be liable to the Association or any Owner for any loss, damage or injury arising out of or in any way connected with the

performance of the ACC's duties under this Declaration. The ACC's approval of any plan including any construction rules or requirements shall not be held in any way to constitute approval of any plan or design from the standpoint of structural safety or conformance with building or other codes, which shall be governed solely by the City and its building inspection code and inspections carried out by the City's building inspectors.

**4.7 City Approval.** The powers and approvals of the ACC shall be independent of and in addition to applicable ordinances and approvals of the City, except in those cases where the power and approvals of the ACC are specifically superseded by applicable City ordinances or approval procedures.

**4.8 Construction Rules.** The ACC may impose reasonable rules and regulations to minimize the inconvenience to adjoining Owners during the periods of construction. The ACC may impose rules requiring pre-construction conferences and regulations regarding portable offices and trailers, construction debris removal, construction area appearance, sanitary facilities, construction parking and vehicles, construction signs, hours of work, soil conservation and dust, removal of mud, and duration of construction. Owners not in compliance with such rules are in violation of the Association's governing documents and subject to fines or other enforcement remedies.

## **ARTICLE V - MAINTENANCE OBLIGATIONS**

**5.1 Owner's Responsibility.** Maintenance, repair, replacement and upkeep of a Lot (including the Dwellings) is the responsibility of the Lot Owner. Owners shall maintain their Lots, including any Improvement on a Lot, in a neat and orderly state so as not to detract from the appearance of the Community, or adversely affect the value of the Community or the use of any other Lot or Dwelling. Any failure by an Owner to maintain, in the discretion of the Board, a Lot or Dwelling in accordance with the requirements of the Governing Documents, may subject the Owner to a fine. Without limiting the generality of the foregoing, each Owner shall be responsible for:

- (1) **Dwelling Interiors.** All maintenance and repairs relating to all interiors and contents of a Dwelling, and all items attached to the Dwelling.
- (2) **Dwelling Exteriors; The Lot.** Subject to the architectural control requirements as authorized in this Declaration, all maintenance, repair, and replacement to the exterior of each Dwelling and Improvement associated with an Owner's Lot, which maintenance may include, but shall not necessarily be limited to: paint, repair, replacement and care of roofs, gutters, downspouts, foundations, window wells, patio fences, exterior building surfaces, exterior doors and all other Improvements on the Lot.
- (3) **Limited Common Area; Landscaping.** Maintenance, repair and replacement of Limited Common Area appurtenant to the Owner's Lot, including a driveway (except snow removal), porches and porch steps, fencing, shrubbery, trees, flower gardens, potted plants and other landscaping in patio areas and garden areas, all so as not to detract from the appearance of the Community or adversely affect the value or use of

any other Lot. In the event a Lot shares driveway access with another Lot, the Owners of those Lots are responsible for the maintenance, repair and upkeep of the driveway in proportion to their use.

(4) **Utilities.** The Owner shall pay for all utility services furnished and billed to the Lot by a utility company except water and sewer which are an Association expense shared by all Owners. All utilities, fixtures, lines and equipment installed within a Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems are connected at a point that the lines/systems meet with a common lines/systems, shall be maintained, replaced, and kept in repair by the Owner of the Lot.

(5) **Party/Separation Fences.** No fence may be built between Dwelling Units.

**5.2 Maintenance by Association.** The Association shall be responsible for maintenance, repair and replacement of all sidewalks and walkways, including snow removal, and the Association shall be responsible for snow removal from all driveways. The Association shall be responsible for maintenance, repair, and replacement of the Common Area, including:

- (1) Common Area landscaping, including watering, mowing, edging, trimming, sprinkler repair, fertilization, weed control, tree trimming, and weeding of flower and shrub beds during the growing season.
- (2) Snow and ice removal from roads and common walkways.
- (3) Recreational facilities, when applicable.
- (4) The private street.
- (5) Common Area amenities and structures, such as walkways, perimeter fences, streetlights, mailbox, fire hydrant, and drainage system located at the North and West of 1191 Liberty Wells Place.

**5.3 Maintenance of Lots and Access to Lots at Reasonable Hours.** The Association, by and through the Board, may assume an Owner's maintenance responsibility for a Lot if, in the opinion of the Board, the Owner is unwilling or unable to adequately provide such maintenance. Before assuming such maintenance responsibility, the Board shall provide notice to the Owner of its intention to do so, and if such Owner has not commenced and diligently pursued remedial action with fifteen (15) days after mailing of such written notice, then the Association may proceed with such action as it deems necessary to maintain the upkeep of the Lot consistent with requirements in this Declaration. The expenses of such maintenance incurred by the Association shall be an Individual Assessment to be reimbursed to the Association by the Owner and may be collected in the same manner as any other Assessments pursuant to this Declaration. For the purpose solely of performing the maintenance undertaken by the Association for a Lot as provided herein, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any such Lot at reasonable hours in order to perform such maintenance.

**5.4 Clarification and Alteration of Certain Maintenance Duties by Rule.** To the extent not clarified herein and not inconsistent with the provisions of this Declaration, the Association may, by duly adopted Board resolution, identify and assign any further or additional areas of maintenance and responsibility that are either (1) Owner responsibilities; or (2) Association responsibilities. Furthermore, the duty of maintenance for the area of a Lot may be altered by duly adopted Board resolution. Such determinations shall be set forth in a Board resolution distributed to all Owners, included with other rules of the Association, and shall be binding against all Owners.

## ARTICLE VI - ASSESSMENTS

### 6.1 Covenant for Assessments.

6.1.1 Each Owner, by acceptance of a deed hereafter conveying any Lot to such Owner whether or not so expressed in the deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association the following types of Assessments:

- (1) Annual common assessments (“Annual Assessment”) as provided below.
- (2) Special assessments (“Special Assessments”) as provided below.
- (3) Individual/Reimbursement assessments (“Individual Assessments”) as provided below.

6.1.2 No Owner may exempt itself from liability for Assessments by non-use of Common Areas or abandonment of any Lot owned by such Owner.

### 6.2 Annual Budget, Reserve Fund and Annual Assessment.

6.2.1 Annual Budget. The Board shall prepare, or cause the preparation of, and adopt an annual budget for the Association, which shall provide, without limitation, for the maintenance of the Common Areas and for the administration, management and operation of the Association. The Board shall also provide in connection with the annual budget a line-item amount of the Annual Assessment (including any capital reserve fee included in the Annual Assessment for a reserve fund in an amount the Board determines to be prudent based on the reserve analysis (as defined in Section 6.14)). If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect. The Board shall present and report the adopted budget to Owners at an annual meeting of the Owners.

#### 6.2.2 Determination of Annual Assessment.

(a) The Board shall fix the amount of the Annual Assessment against each Lot and Owner as part of the budget that is to be adopted by the Board prior to the beginning of the Association’s new fiscal year (assessment period). The Annual Assessment shall also include an amount designated as a capital reserve fee, which shall be used to fund the reserve fund in accordance with the Association’s reserve analysis, as determined by the Board. Written notice of the Annual Assessment shall be sent to all members of the Association at least thirty (30) days in advance of when payment thereof is due, or thirty (30) days in advance of any

increase in the Annual Assessment, including equitable changes, that is to take effect during any assessment period.

(b) The omission by the Board, before the expiration of any assessment period, to fix the amount of the Annual Assessment for the next period, shall not be deemed a waiver or modification in any respect or a release of any Owner from the obligation to pay the Annual Assessment then in effect, for that the current or any subsequent assessment period. In the event of such omission, the Annual Assessment fixed for the preceding period shall continue until a new Annual Assessment is determined.

(c) Equitable Changes. If the Annual Assessments levied at any time are, or will become, inadequate to meet the expenses incurred by the Association for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board may determine the approximate amount of the inadequacy and adopt a resolution which establishes a supplemental budget and establishes an equitable change in the amount of the Annual Assessment required in the Board's judgment to meet such incurred expenses. Owners shall be given at least thirty (30) days' written notice of any such equitable changes in the amount of an Annual Assessment.

### **6.3 Apportionment of Assessments.** Assessments shall be apportioned as follows:

6.3.1 Annual Assessments. The obligation to pay a Lot's Annual Assessment commences upon the closing of the sale of such Lot. The Annual Assessment due in a given year may be pro-rated according to the number of days the Owner holds title to the Lot during the year for which the Annual Assessment was levied.

6.3.2 Special Assessments. Special Assessments are equal for all Lots, and any obligation to pay a Special Assessment rest with the Owner holding title to the Lot at the time the Special Assessment becomes due.

6.3.3 Individual Assessments. Individual Assessments shall be apportioned exclusively against the Lots to which the expenses are attributable as provided for below.

6.3.4 Payment of Assessments. Installments of Annual Assessments shall be levied and collected on a yearly basis. However, upon resolution of the Board, installments of Annual Assessments or any other Assessment provided under this Declaration may be levied and collected for an Owner on a quarterly, semi-annual or monthly basis when the Board determines circumstances warrant such to avoid undue hardship to an Owner. Any member may prepay one or more installments, if any, of any such Assessment levied by the Association, without premium or penalty.

**6.4 Purpose of Assessments.** The Assessments levied by the Association shall be used for payment of Common Expenses and any other expense incurred by the Association, including, but not limited to: (a) the improvement and maintenance, operation, care, and services related to the Common Areas; (b) the payment of insurance premiums; (c) the costs of utilities and other services which may be provided by the Association for the Community; (d) the cost of labor, equipment, insurance, materials, management, legal and administrative fees incurred or

expended in performing the duties under this Declaration or the Bylaws; (e) for promoting the recreation, health, safety, and welfare of the residents of the Property; (f) the cost of funding all reserves established by the Association, including a general operating excess and a reserve for replacements as provided below; and/or (g) to reimburse the Association for any damage incurred by the Association to Common Property or any amenities or structures thereon caused by an Owner or a guest of the Owner.

**6.5 Annual Assessment.** Annual Assessments shall be used to satisfy Common Expenses of the Association, including a capital reserve fee for accumulating a reasonable reserve fund. The Annual Assessment may be increased by the Board each year in an amount that does not exceed twenty-five percent (25%) of the prior year's Annual Assessment, exclusive of any capital reserve fee. The Board may increase the capital reserve fee as deemed prudent to meet expected capital replacement costs in accordance with the capital reserve study (aka "reserve analysis") then in effect.

**6.6 Special Assessments.** In addition to the Annual Assessments authorized in this article, the Association may levy a Special Assessment for the purpose of defraying, in whole or in part, the costs incurred or to be incurred by the Association which cannot be paid for through other types of Assessments. The Board may authorize a Special Assessment for capital improvements or any other lawful purpose provided, however, that any Special Assessment greater than twice the amount of the Annual assessment then in effect may only be levied if it is first voted upon by the Owners and: (1) a quorum of members representing at least 51% of the total Association voting rights cast a vote, and (2) the votes cast favoring the action exceed the votes cast opposing the action.

**6.7 Individual Assessments.** Any expenses which are not common expenses, and which are attributable to fewer than all of the Lots and Owners, may be assessed exclusively against such Lots and Owners. Individual Assessments shall include, but are not limited to: (1) Assessments levied against any Lot to reimburse the Association for costs incurred in bringing the Lot or its Owner into compliance with the provisions of the Governing Documents and for fines or other charges (including attorney fees) imposed pursuant to this Declaration for violations of the Governing Documents of the Association; (2) Expenses, other than Common Expenses, relating to the cost of maintenance, repair or replacement of any Common Area or any structure thereon due damage caused by the Owner or any guest of the Owner.

**6.8 Nonpayment of Assessments.** Annual Assessments shall be due and payable on the first calendar day at the beginning of each fiscal year of the Association, unless otherwise provided by the Board, and shall be delinquent if not paid within thirty (30) days thereafter, or within such other period established by the Board from time to time. The due date of any other Assessment, such as a Special Assessment or Individual Assessment, shall be fixed by the Board.

6.8.1 Interest. Delinquent payments shall bear interest at a rate established by the Board, not to exceed the maximum rate allowed under applicable law.

6.8.2 Late Charge. Delinquent payments shall be subject to a late charge as determined by the Board from time to time, not to exceed the maximum allowed under applicable law.

**6.8.3 Acceleration.** If any Assessment is permitted by the Board to be paid in installments, the installments may, in the discretion of the Board, be accelerated (including interest as provided for above) and the entire balance declared due and payable upon not less than ten (10) days written notice to the Owner. If, however, the Assessment is accelerated and an Owner subsequently files bankruptcy or the Board otherwise decides acceleration is not in its best interest, the Board, at its option and in its sole discretion, may elect to forego such accelerated payment. Any such election will not constitute a waiver of any unpaid amounts owing under such installments, and the Association shall retain all rights under this Declaration and under applicable laws to recover such amounts owing.

**6.8.4 Remedies, Including Suspension of Membership Rights and Services.** All membership rights, including the right of a member to vote, shall be automatically suspended if any amount is delinquent more than 30 days, unless otherwise determined by the Board. A Board member shall become immediately ineligible to serve on the Board and automatically dismissed from such position if delinquent more than 60 days in the payment of any amount. Any rights or privileges, including access to Common Areas and amenities, and any service provided by the Association to the Owners, as permitted by Utah Code Ann. §57-8a-309, shall also be terminated as to the delinquent Owner at the discretion of the Board. The Association shall have each and every remedy for collection of unpaid Assessments, including collecting rent directly from a tenant residing in a Lot when the Lot Owner is delinquent in payment of any amount to the Association, provided in the Utah Community Association Act, Utah Code Title 57, Chapter 8a, as amended from time to time, and the provisions of the Act shall be deemed to be fully set forth herein when required by such Act in order to exercise any such remedy.

**6.9 Lien.** Any Assessment (including fines, late fees and interest) together with any damages, costs of collection, and attorney fees (collectively, “related charges”) provided for in this Declaration (whether or not a legal proceeding is initiated) or by law or awarded by a court for enforcement of the Governing Documents shall be a continuing lien upon each of the Lots against which the unpaid and delinquent Assessment and related charge is made and shall be construed as a real covenant running with the land. If an assessment is payable in installments, the lien is for the amount of each installment as such becomes due and this provision shall be deemed a notice of Assessment. In a voluntary conveyance, the grantee of a Lot shall be jointly and severally liable with the grantor for all unpaid Assessments and related charges against the latter for the grantee’s share of the unpaid assessments up to the time of the grant or conveyance, without prejudice to the grantee’s rights to recover from the grantor the amounts paid by the grantee.

**6.10 Subordination of Lien to Mortgages.** Any lien instituted against a Lot under the terms of this Declaration shall be subordinate to the lien of any first mortgagees or deeds of trust now or hereafter placed upon such Lot, except as follows: the sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure shall extinguish the lien as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve the Lot from liability or any subsequent lien for any Assessments and related charges thereafter becoming due.

**6.11 Enforcement of Lien.** Any lien for nonpayment of Assessments and related charges may be foreclosed by the Board judicially or non-judicially consistent with the laws of the state of Utah for the non-judicial foreclosure of deeds of trusts. The Association, through duly authorized

agents, shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value of such Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental value without regard to the value of the security.

**6.12 Personal Obligation and Costs of Collection.** Assessments and related charges imposed under this Declaration shall also be a personal obligation of the Owner holding title to any Lot as of the time the Assessment became due.

**6.13 Appointment of Trustee.** By acceptance of a deed for a Lot, each Owner as Trustor conveys and warrants to Trustee in trust for the Association, as Beneficiary, with power of sale, the Owner's Lot and all improvements thereon for the purpose of securing payment of all Assessments owing for such Lot, including any related charges. For purposes of this Section 6.13 and Utah Code Ann. §§57-1-19, et seq., as amended from time to time, the Trustee shall mean the attorney for the Association, and the Association may provide notice and disclosure of the Trustee by recording an "Appointment of Trustee" on the records of the local County Recorder. Each Owner hereby also grants to the Association and Trustee all powers and rights of non-judicial trust deed foreclosure provided for in Utah Code Ann. §§57-1-19, et seq.

#### **6.14 Reserve Analysis and Reserve Funds.**

**6.14.1 Reserve Analysis Required.** The Board shall cause a reserve analysis to be conducted no less frequently than every six years, and shall review and, if necessary, update a previously conducted reserve analysis no less frequently than every three years. However, the Board may decrease the frequency of conducting and updating a reserve analysis in a formal resolution of the Board delivered to all Owners. The Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the reserve analysis.

**6.14.2 Reserve Analysis Defined.** "Reserve analysis" means an analysis to determine the need for a reserve fund to accumulate reserve funds, and the appropriate amount of any reserve fund. A reserve analysis shall include:

- (1) a list of the components identified in the reserve analysis that will reasonably require reserve funds, including components for which the Association is responsible that have a useful life of three years or more and a remaining useful life of less than 30 years, if the cost cannot reasonably be funded from the general budget or other funds of the Association;
- (2) a statement of the probable remaining useful life, as of the date of the reserve analysis, of each component identified in the reserve analysis;
- (3) an estimate of the cost to repair, replace, or restore each component identified in the reserve analysis;

(4) an estimate of the total annual contribution to a reserve fund (the “capital reserve fee”) necessary:

(i) to meet the cost to repair, replace, or restore each component identified in the reserve analysis during the component’s useful life and at the end of the component’s useful life; and

(ii) to prepare for a shortfall in the general budget, if: (A) the shortfall occurs while a state of emergency declared by the state of Utah and extending to all of Utah is in effect; and (B) at the time the money is spent, more than 10% of Owners that are not Board members are delinquent in the payment of assessments as a result of events giving rise to the state of emergency; and

(5) a reserve funding plan that recommends how the Association may fund the capital reserve fee.

## **6.15 Use of Reserve Funds.**

6.15.1 The Association shall establish and maintain a reserve fund. The purpose for which the reserve fund is established is: (1) maintenance, repair, replacement or restoration of the Common Areas and any other area or items for which the Association is responsible, (2) any emergency, unforeseen, unusual, unanticipated or irregularly occurring expenditure or shortfall, and (3) for any other purpose determined from time to time by the Board. The Reserve Fund may be deposited with any banking institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested pursuant to an investment policy (see 6.16 below) adopted by the Board. The Reserve Funds shall be maintained separately from other Association funds.

6.15.2 The Association may establish such other reserves for other such purposes as the Board may from time to time consider necessary or appropriate.

6.15.3 The Board’s reasonable, good faith determination with respect to the amount of the Reserve Fund required to reasonably meet the cost of the components set forth in the Reserve Analysis contribution shall be conclusively deemed appropriate and individual Board members shall not be held liable for any potential or alleged under funding of the Reserve Fund.

6.15.4 The Association may not use money in a reserve fund for daily maintenance expenses unless (1) a majority of the total votes of the Association approves the use of reserve fund money for that purpose, or (2) there exists in the general budget a shortfall that the Association may use reserve funds to cover. Daily means performed or occurring more often than monthly.

**6.16 Investment of the Reserve Fund.** The Association, through its Board of Directors, may establish an investment policy by a separate resolution of the Board to help achieve the financial goals of the Association’s Reserve Analysis. The only investments permitted are those in fully guaranteed as to principal by the United States of America. No stock market, mutual fund or risk related investments permitted.

**6.17 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 the each Owner.

**6.18 Statement of Unpaid Assessment & Payoff Information.** The Association shall, upon written request at any time, furnish to any Owner liable for any Assessment written notice by or on behalf of an officer of the Association setting forth whether any Assessments are unpaid.

**6.19 Reinvestment Fee Due on Transfer.** Upon the transfer of title to a Lot from one person or entity to another, a reinvestment fee, in an amount to be determined by the Board (but not to exceed 0.5% of the sales price of the Lot), may be charged and payable to the Association, in addition to any other required amounts owing for unpaid Assessments, two months of prepaid dues and related charges. The parties to the transaction are responsible to negotiate who pays this fee. The following are not subject to the above referenced reinvestment fee: (1) an involuntary transfer to another owner (foreclosure, for example); (2) a transfer that results from a court order; (3) a bona fide transfer to a family member or members of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity, or to a legal entity, such as a trust, in which the owner or the owner's spouse, son, daughter, father or mother hold a beneficial interest of at least fifty percent (50%) for estate planning purposes (included in this exemption); (4) a transfer or change of interest due to death, whether provided in by will, trust, or decree of distribution; or (5) the transfer of burdened property by a financial institution, except to the extent that the reinvestment fee covenant requires the payment of the Association's costs directly related to the transfer of the burdened property, not to exceed three hundred dollars.

## ARTICLE VII - THE ASSOCIATION

### 7.1 Organization.

7.1.1 The Association has been organized as a nonprofit corporation under the nonprofit corporation laws of the state of Utah (Utah Code Annotated Titled 16 Chapter 6a, as may be amended from time to time).

7.1.2 In the event the Association is at any time administratively dissolved by the Division of Corporations and Commercial Code, the Board may re-incorporate the Association without a vote of the Owners.

7.1.3 The affairs of the Association shall be governed by a Board of Directors as provided herein and in the Bylaws.

**7.2 Membership.** Each Owner during the entire period of Owner's ownership of one or more Lots within the Community shall be a member of the Association. The membership shall

commence, exist and continue by simple virtue of the ownership, shall expire automatically upon termination of ownership and need not be confirmed or evidenced by any certificate or acceptance of membership.

**7.3 Voting Rights.** The method of voting shall be as provided in the Bylaws. Each Owner shall have one (1) vote in matters of the Association for each Lot owned as set forth in the Bylaws.

**7.4 Powers, Duties and Obligations.** The Association shall have such powers and duties as may be granted to it or imposed by this Declaration, the Articles of Incorporation, the Bylaws and any applicable statute, as such statute may be amended to expand the scope of association powers, including without limitation:

7.4.1 Duties of the Association. Without limiting any other duties which may be granted to the Association by its Governing Documents, the Association shall have the right to: (1) to the extent not assessed to or paid by the Owners directly, pay real property taxes and assessments levied upon any portion of the Property, provided that the Association shall have the right to contest or compromise any such taxes or assessments; (2) employ a responsible corporation, partnership, firm, person or other entity as the Managing Agent to manage the Community, subject at all times to direction by the Board, with such administrative functions and powers as shall be delegated to the Managing Agent by the Board.

7.4.2 Powers and Authority of the Association. The Association shall have all the powers set forth in its Articles of Incorporation and Bylaws, together with its general powers as a corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

- (1) The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter into any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon if for any reason the Owner fails to maintain and repair such Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of this Declaration.
- (2) The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner who consents thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Governing Documents, or to enforce by mandatory injunction or otherwise all of the provisions of the Governing Documents.
- (3) In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Community or in exercising any of its rights to construct, maintain and repair the Common Areas, the Association shall have the power and authority to pay and discharge any and all liens

placed upon any Lot on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration and to obtain, contract and pay for, or to otherwise provide for: (1) utility services, including (without limitation) water, sewer, trash removal, snow removal, electrical, telephone and gas services, as the Board may from time to time deem necessary or desirable; and (2) the services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board may deem necessary or desirable.

- (4) The Board may delegate by resolution or contract to the Managing Agent any of its powers under this Declaration; provided, however, that the Board cannot delegate to such Managing Agent the power to enter into, agree to or execute any contract binding on the Association for a sum in excess of Five Thousand Dollars (\$5,000.00).

## **ARTICLE VIII – RULES, ENFORCEMENT, APPEAL**

**8.1 Rules and Regulations.** The Board may adopt Rules and Regulations as it deems necessary or desirable from time to time, and may amend, modify, cancel, limit, create exceptions to, expand, or enforce the Rules and Regulations, subject to limitations and requirements of the law, including the right of the Owners to disapprove a Rule pursuant to law or as provided in this Declaration, and subject to the Board's duty to exercise business judgment on behalf of the Association and the Owners.

**10.1.1. Requirements.** Before adopting, amending, modifying, canceling, limiting, creating exceptions to, or expanding the Rules, the Board shall:

- (1) at least 15 days before the Board will meet to consider a change to the Rules, deliver notice to the Owners that the Board is considering a change to the Rules;
- (2) provide an open forum at the Board meeting giving Owners an opportunity to be heard at the Board meeting; and
- (3) deliver to the Owners a copy of the change in the Rules approved by the Board within 15 days after the date of the Board meeting.

**10.1.2. Imminent Risk of Harm.** The Board may adopt a Rule without first giving notice to the Owners if there is an imminent risk of harm to the Common Area, an Owner, an occupant of a Lot, a Lot, or a Dwelling. The Board shall provide notice to the Owners of such a Rule within 15 days of adoption by the Board.

**8.2 Compliance.** Each Owner and user of the Property shall comply with the provisions of the Governing Documents and any applicable statute. Failure to comply therewith shall be grounds for levying of a fine and an action or suit maintainable by the Association.

**8.3 Remedies.** Violation by an Owner of any provisions of the Governing Documents, or of any decision of the Association's Board made pursuant to such documents, shall give the Board

the right, but not the obligation, in addition to any other rights set forth in this Declaration or the Bylaws, or under law, to do any or all of the following after giving notice:

- (1) Subject to the provisions of this Declaration, to enter the Lot as to which such violation exists and to summarily abate and remove, at the expense of such Owner, any structure, thing, or condition that may exist contrary to the intent and meaning of such provisions, and the Board of Directors shall not thereby be deemed guilty of any manner of trespass, provided, however, that judicial proceedings shall be instituted before any items of construction may be altered or demolished;
- (2) Enjoin, abate, or remedy such thing or condition by appropriate legal proceeding;
- (3) Levy fines according to Section 8.4 below;
- (4) Suspend the right to receive, access or use any services or facilities provided by or through the Association until the violation is corrected, and to suspend the voting rights of an Owner, but not for longer than 60 days unless the violation is ongoing;
- (5) Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration, the Bylaws and any rules or regulations adopted pursuant thereto. The Association shall be entitled to an award of its attorneys 'fees and costs in any action taken for the purpose of enforcing or otherwise implementing the terms of the Governing Documents, or for any action taken pursuant to the Governing Documents, if it prevails in such action, regardless of who instituted the action; or
- (6) Record in the records of the county recorder against a Lot as to which a violation exists, a notice of noncompliance setting forth the thing, condition or violation that exists and thereby providing notice to prospective purchasers and all others of the violation and of the requirement that the violation be remedied.

**8.4 Fines.** The Board may assess a fine against an Owner for a violation of the Governing Documents in accordance with the following provisions.

10.4.1. Warning. If a violation occurs, a written warning ("Warning") shall be sent to the Owner of the Lot before a fine may be levied. The Warning shall:

- (1) describe the violation;
- (2) state the rule or provision of the Governing Documents that the Owner has violated;
- (3) state that the Board may, in accordance with the provisions of the law, assess fines against the Owner and suspend membership rights if a continuing violation is not cured or if the Owner commits similar violations within one year after the day on which the Board gives the Owner the Warning or assesses a fine against the Owner;

- (4) if the violation is an ongoing, continuous violation, state a time by which the Owner must cure the violation (which time must be at least 48 hours after the day the Owner is given the Warning); and
- (5) state the amount of the fine that will be assessed if an ongoing, continuous violation is not cured within 48 hours or if the Owner commits similar violations within one year after the day on which the Board gives the Owner the Warning.

10.4.2. Initial Fine. The Board may assess a fine against an Owner if: (1) within one year after the day on which the Board gives the Owner a Warning, the Owner commits another violation of the same rule or provision identified in the Warning; or (2) for an ongoing, continuous violation, the Owner does not cure the violation within 48 hours after the day the Owner is given the Warning.

10.4.3. Subsequent Fines for Same Violation. After a fine is assessed against an Owner, the Board may, without further warning, assess an additional fine against the Owner each time the Owner: (1) commits a violation of the same rule or provision within one year after the day on which the Board assesses a fine for a violation of the same rule or provision; or (2) allows a violation to continue for 10 days or longer after the day on which the Board assesses the fine.

10.4.4. Notice of Fine. Each time a fine is assessed, notice of the fine shall be sent to the Owner describing the violation, stating the rule or provision of the Governing Documents that the Owner has violated, and stating that the Owner may request an informal hearing before the Board to dispute the fine within 30 days after the date of the notice.

10.4.5. Fine Amounts. A violation of any express rule, regulation, covenant, restriction or provision of any of the Governing Documents shall be subject to a fine in the amount set forth in a schedule of fines adopted by Rule from time to time, or in the absence of such a schedule, \$50 for a first offense and \$100 for subsequent offenses of the same violation or \$75 per ten days for a continuous violation.

**8.5      Appeal by Owner.** Any Owner who is assessed a fine or other penalty or who has rights suspended may request an informal hearing before the Board to dispute the fine, penalty or suspension within 30 days after the date of the notice stating that the fine or penalty is assessed or that rights have been suspended. The hearing requested shall be conducted in accordance with procedures promulgated by resolution of the Board from time to time, or if none, in accordance with the standards determined by the Board at the hearing.

**8.6      Action by an Owner.** Each Owner and every user of the Property shall comply with the Governing Documents. Failure to comply therewith shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by an aggrieved Owner. The prevailing party in an action for the interpretation of, the enforcement of, or to obtain redress for violation of any provisions of the Governing Documents shall be entitled to an award of its attorney fees and costs.

**8.7 Injunctive Relief.** Nothing in this section shall prevent an Owner, the Association, or other interested party from resorting to a court of competent jurisdiction in those instances where injunctive relief may be appropriate. In such an action, the violation of any covenants or restrictions in the Governing Documents shall be presumed to cause irreparable harm to the Association and its members.

**8.8 Purchase Subject to Violations.** Buyers shall take ownership of Lots subject to any violations of the Governing Documents which may exist concerning the Lot, whether or not such violations were disclosed by the seller of the Lot and whether or not the Association knew of the violations at the time of sale. Such buyers shall be liable for correcting such violations upon demand by the Board.

## ARTICLE IX - INSURANCE

### 9.1 Types of Insurance Maintained by the Association.

(a) The Board shall at all times purchase, maintain in force, and pay the premiums for, (as well as such other insurance as it deems reasonable) if reasonably available, and consistent with that of similarly situated first-class subdivisions in the county and with the Act:

- (1) property insurance for the Common Area, if required by law or deemed necessary by the Board; and
- (2) liability insurance with adequate limits of liability for bodily injury and property damage, but in no event less than one million dollars (\$1,000,000) per occurrence; and
- (3) Directors and officers (D & O) liability insurance coverage.

(b) The Board may purchase and maintain in force, if and as it deems reasonable, the following types of insurance:

(1) Fidelity. Fidelity insurance or bond covering all Board members, officers, employees and other persons handling or responsible for the funds of, or administered by, the Association. Where a Managing Agent has the responsibility for handling or administering funds of the Association, fidelity coverage shall include coverage for its officers, employees, and agents handling or responsible for funds of, or administered on behalf of, the Association. Such fidelity bond or insurance shall name the Association as an insured and shall not be less than a sum equal to three (3) months 'aggregate assessments on all Lots plus Reserve Funds. The bonds or policies shall contain waivers by the issuers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees," or similar terms or expressions. The bonds or policies shall provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premium) without at least 10 days 'prior written notice to the Association or insurance trustee.

(2) Other. Any other policy as determined by the Board.

(c) Miscellaneous Items. The following provisions shall apply to all insurance coverage of the Association:

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

(2) Deductible. The Association shall pay for the deductible on any claim made against the Association's property insurance policy, except where the claim is made because of the negligence or willful acts of an Owner or occupant, including a guest, invitee, or visitor of such Owner, as determined by the Board. In such cases, the corresponding Owner shall pay the deductible amount.

(3) 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 or Association may deem necessary or appropriate from time to time.

**9.2 Owner's Insurance.** Each Owner and resident shall be responsible to purchase and maintain adequate liability and property insurance on their Lot and Dwelling subject to the following:

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

(b) Prompt Repair. Each Owner further covenants and agrees that in the event of any partial loss, damage or destruction of its Lot or Dwelling, the Owner shall promptly proceed to repair or to reconstruct the damaged structure in a manner consistent with the original construction, subject to applicable architectural requirements of the ACC;

(c) Failure to Repair. If the Board determines that any Owner has failed to properly discharge its 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.

## **ARTICLE X - AMENDMENT AND DURATION**

**10.1 Amendments.**

10.1.1. How Proposed. The Board shall present amendments to the Declaration to the Owners for approval after either: (1) a majority of the Board requests, or (2) receiving a written request signed by Owners holding thirty percent (30%) or more of the voting rights of Owners in Good Standing. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for approval of the amendment.

10.1.2. **Approval Required.** This Declaration and the Plat may be amended, and any provision, covenant, condition or restriction whatsoever may thereby be added, modified or deleted, if the amendment is approved by Owners holding at least sixty-six percent (66%) of the voting rights of Owners in Good Standing.

10.1.3. **Execution and Recordation.** An amendment shall not be effective until the amendment is certified by the president of the Association as being adopted in accordance with this Declaration, is acknowledged, and is recorded in the appropriate county recorder's office.

10.1.4. **Consistency with Law.** Certain provisions in Sections 1.24, 6.14, 6.15, 8.1.1, 8.1.2, 8.4.1, and 8.4.2 of this Declaration reflect requirements or limitations imposed by law at the time of adoption of this Declaration and are included for that reason. If such a restriction or limitation is changed or removed in the law after recording of this Declaration, the Board may change the applicable section to reflect then current law by adopting and recording an amendment to this Declaration and subsections 10.1.1 and 10.1.2 shall not apply.

10.1.5. **Duration.** The provisions, covenants, conditions and restrictions contained in this Declaration shall continue in full force and effect until amended, added to or deleted, in whole or in part from time to time as provided above.

## **ARTICLE XI - MISCELLANEOUS PROVISIONS**

**11.1 Priority of Governing Documents.** In the event of any conflict between or among this Declaration and any other Governing Document, the document in the highest priority beginning with the first document listed hereinafter shall prevail (as to any such conflict) over any later listed document: this Declaration, the Articles of Incorporation, Bylaws, Rules and Regulations.

**11.2 Recovery of Costs and Attorney Fees.** The Association shall be entitled to recover its costs and attorney's fees incurred for enforcement of this Declaration regardless of whether any lawsuit or other action is commenced. Such costs and attorney's fees shall automatically be and constitute an assessment against the Owner and the Lot. Additionally, the prevailing party shall be entitled to its attorney fees and costs in any dispute concerning any Governing Document, including an action dealing with the declaration of rights and obligations thereunder with or without a defaulting party, whether such costs and expenses are incurred with or without suit; before or after judgment; in any appeal; in any bankruptcy or receivership proceeding; or in connection with any alternative dispute resolution proceeding.

**11.3 Invalidity; Number; Captions.** The invalidity of any part of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the balance of this Declaration. As used herein, the singular shall include the plural and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of this Declaration.

**11.4 Joint Owners.** In any case in which two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more

of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Board of Directors, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter in accordance with the Bylaws.

**11.5 Lessees and Other Invitees.** No damage to, or waste of the Common Areas or any part thereof shall be committed by any Owner or any Lot occupant, guest, invitee, lessee of any Owner, and each Owner shall indemnify and hold the Board and the other Owners harmless against all loss resulting from any such damage or waste caused by any such person. Lessees, invitees, guests, Lot occupants, contractors, family members and other persons entering the Property under rights derived from an Owner shall comply with all of the provisions of the Governing Documents restricting or regulating the Owner's use, improvement or enjoyment of such Owner's Lot and other areas within the Property. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner.

**11.6 Waiver, Precedent and Estoppel.** No restriction, condition, obligation or provision contained in this Declaration or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Association, the Board or any Owner by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Association, Board or Owner as to any similar matter.

**11.7 Interpretation.** All questions of interpretation or construction of any of the covenants or restrictions in this Declaration shall be resolved by the Board, and its decision shall be final, binding and conclusive on all parties affected for all purposes. The covenants, restriction and terms of this Declaration are to be interpreted broadly to give effect to the Association's role as the governing body of the Community and to grant all the powers necessary for management of the common property, administration of the servitude regime, carrying out other functions set forth herein, and furthering the purposes of the Association. The enumeration of specific items, acts, rights, or powers in this instrument does not limit or restrict and is not to be construed or interpreted as limiting or restricting, the general powers granted to the Association or Board except where powers are expressly restricted.

**11.8 Indemnification and Liability.** The Association and the Board is and shall remain wholly free and clear of any and all liability to, or claims by, all Owners and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect of the use and operation of, the Common Area or any of its improvements, fixtures, and facilities and an Owner shall defend, indemnify and hold harmless the Association and Board against such claim, loss or liability asserted by such Owner or his or her guest, invitee, licensee, tenant, or visitor. In this respect, it shall be the affirmative duty and responsibility of each Owner and user of the Common Area facilities to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the Common Area and its improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril.

**11.9 Notice of Sale, Mortgage, Rental, or Lease.** Immediately upon the sale, mortgage, of any Lot, the Owner shall promptly inform the secretary, the president, or their manager/agent of the Association of the name and address of said grantee, vendee, or mortgagee. Upon sale of a home, the new owner is requested to submit a recorded warranty deed and other documents as deemed necessary by the Association in compliance with the rules of the community.

**IN WITNESS WHEREOF**, Liberty Wells Owners Association has executed this Declaration this 21 day of February, 2025.

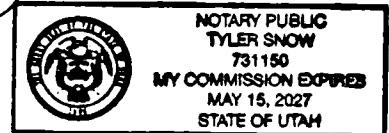
**LIBERTY WELLS OWNERS ASSOCIATION**  
a Utah nonprofit corporation

Sign: Marion Johnson  
Print: Marion Johnson  
Title: Liberty Wells HOA Board President

STATE OF UTAH )  
 ) ss:  
County of Salt Lake )

The foregoing instrument was acknowledged before me on this 21<sup>st</sup> day of February,  
2025,

  
\_\_\_\_\_  
Notary Public



## **EXHIBIT A**

### **(LEGAL DESCRIPTION)**

LOTS 1 – 7 and 9 - 13, and Common Area, LIBERTY WELLS PUD according to the official plat thereof recorded with the office of the Salt Lake County Recorder, state of Utah.

Parcel No's: 16-07-451-024-0000  
16-07-451-023-0000  
16-07-451-022-0000  
16-07-451-021-0000  
16-07-451-020-0000  
16-07-451-014-0000  
16-07-451-015-0000  
16-07-451-017-0000  
16-07-451-025-0000  
16-07-451-019-0000  
16-07-451-018-0000  
16-07-451-026-0000  
16-07-451-027-0000

**EXHIBIT B**  
**BYLAWS**  
**OF**  
**LIBERTY WELLS OWNERS ASSOCIATION**

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## 1. DEFINITIONS

The definitions adopted by the Declaration are applicable to these Bylaws. In addition, a “Member,” when capitalized, means an Owner. “Director” means a member of the Board.

## 2. NOTICE, ELECTRONIC MEANS, HOA REGISTRY

### 2.1 Notice.

2.1.1. To Association. All notices to the Association or the Board shall be sent care of the managing agent or, if there is no managing agent, to the principal office of the Association or to such other address as the Board may designate from time to time.

#### 2.1.2. To Owners.

(a) Notice by Electronic Means. In any circumstance where notice or any other document is required to be provided to the Owners or an Owner, the Association may provide the notice or document by electronic means, including text message, email, or an Association website, if the Board deems the notice to be fair and reasonable. An Owner may require the Association, by written demand, to provide notice to the Owner by mail. The Board may promulgate Rules and procedures facilitating the implementation of this section from time to time, including a requirement that Owners furnish the Association with a current email address.

(b) Sufficient Notice. Any written notice provided by the Association to an Owner shall be deemed effective and received by the Owner when it is sent. “Sent” means mailed, emailed, or hand delivered. “Mailed” means deposited in the US mail, properly addressed, first-class postage prepaid, whether delivery is proved or not. Notice must be properly addressed to such physical or electronic address as given in writing by the Owner to the Board or if no address has been so given, then to the Owner’s Lot or to an email address from which the Association has received email correspondence from the Owner. If a Lot is jointly owned, a notice or other document sent to only one of the foregoing physical or electronic addresses is sufficient. If three successive written notices given to an Owner have been returned as undeliverable, further notices to that Owner are not necessary but are deemed effective and received in any event until another address of the Owner is made known to the Association.

2.2 **Conducting Business, Electronic Means.** Any transaction or action involving the business or affairs of the Association, including but not limited to voting and providing notice or records, may be conducted by electronic means. The Association may accept a vote, consent, written ballot, waiver, proxy appointment, or proxy appointment revocation as the act of the Owner if the Board does so in good faith and has no reason to believe it is not the act of the Owner. A writing may be delivered in an electronic medium or by electronic transmission, and may be signed by photographic, electronic, or other means. An electronic record or electronic signature is attributable to a person if it was the act of the person. An electronic signature may consist of a mark, symbol, character, letter, or number or any combination thereof attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record and the same shall be

considered the signature of that person. A writing includes any document, record, vote, ballot, proxy, or instrument required or permitted to be transmitted by an Owner or by the Association.

**2.3 Utah HOA Registry.** The Association shall register with the Utah Department of Commerce's Homeowner Associations Registry (currently at <https://secure.utah.gov/hoa>) and provide (1) the name and address of the Association, (2) the name, address, telephone number, and, if applicable, email address of the chair of the Board, (3) contact information for the manager, if any, and (4) the name, address, telephone number, and, if the contact person wishes to use email or facsimile transmission for communicating payoff information, the email address or facsimile number, as applicable, of a primary contact person who has Association payoff information that a closing agent needs in connection with the closing of a Lot Owner's financing, refinancing, or sale of the Owner's Lot. The Association shall update the information stated in this Section with the Utah HOA Registry within 90 days after a change in any of the information.

### **3. ASSOCIATION: MEETINGS, VOTING, QUORUM**

**3.1 Annual Meetings.** The Association shall hold an annual meeting of Members each year on the day and at a time and place within the state of Utah stated in the notice of such meeting.

**3.2 Special Meetings.** The Association, by and through the Board, shall notice, hold and conduct a special meeting of its Members: (1) on call of the president or any two members of the Board, or (2) if the Association receives one or more written demands for the meeting that state the purpose for which the meeting is to be held and are signed and dated by Owners in Good Standing holding at least 10% of the voting rights of the Association. When a special meeting is requested by the Owners, the Board shall set the time and date for the meeting so that the meeting occurs within 65 days of receipt of the request and if notice of the meeting is not given by the Board within 30 days after the date the written request is received by a Board member or the Manager, a person signing the request may set the time and place of the meeting and give notice pursuant to the requirements herein. Business transacted at a special meeting shall be confined to the purposes stated in the notice of the meeting.

**3.3 Meetings by Electronic Communication.** As determined by the Board, any meeting of the Association may be conducted by means of electronic communication that allows all Owners participating to be able to view or hear the proceedings in real time, including by online, virtual meeting.

**3.4 Notice of Meetings.** Written notice of each meeting of the Association Members shall be given by the Association in a fair and reasonable manner and shall be given to each Owner in Good Standing, in accordance with the notice requirements specified in these Bylaws, and sufficiently in advance to provide fair and reasonable notice of the meeting, as determined by the Board. Notice is fair and reasonable if given 10 days before the meeting, but shorter notice may also be fair and reasonable when all the circumstances are considered. The notice shall specify the place, day and hour of the meeting, and must include a description of any matter that must be approved by the Owners and, in the case of a special meeting, the purpose of the meeting. An Owner may waive any

notice required to be given under the Governing Documents or by statute or otherwise. The presence of an Owner in person at any meeting of the Owners shall be deemed such a waiver.

**3.5 Member List.** The Association shall have no obligation under Utah Code Section 16-6a-710 to prepare or make available a list of the names of its Members in connection with a meeting or action by written ballot.

**3.6 Voting.** Each Lot is allocated one vote.

**3.7 Proxies and Absentee Ballots.** At a meeting, an Owner may cast a vote in person or by proxy or, if permitted by the Board, by absentee ballot. All proxy appointments shall be in writing, dated and signed by the Owner and shall be filed with the secretary in accordance with any procedures adopted by the Board. A proxy given for a specific meeting shall be valid for any adjournment of that meeting, unless otherwise stated in the appointment of proxy. An appointment of a proxy is valid for 11 months unless a different period is stated in the appointment form. An appointment of a proxy is revoked by the person appointing the proxy: (1) attending any meeting and voting in person, (2) giving written notice to the Board that the appointment of the proxy is revoked, or (3) giving a subsequent appointment form to the Board.

**3.8 Quorum of Owners.**

3.8.1. Definition. “Quorum” means the minimum number of Owners necessary to make proceedings or an action valid. Once a quorum is established at a meeting it is not broken by the subsequent withdrawal of an Owner.

3.8.2. Quorum at Annual Meeting. At any annual meeting of the Association membership, a quorum is those Owners that are present or represented for any purpose, and at least one Board member present in person.

3.8.3. Quorum at Special Meetings, Action without Meeting. At any special meeting of the Association membership, and for any action taken without a meeting, Owners holding fifty percent (50%) of the Association voting rights, represented in person or by proxy or who have cast a written ballot or given a written consent, and, if at a special meeting, at least one Board member present in person, shall constitute a quorum. If any meeting or action of the Owners cannot be organized because of a lack of quorum, the Board may adjourn the meeting or action to a time at least 48 hours from the time of the meeting or action at which a quorum was not present and Owners holding twenty five percent (25%) of the voting rights, represented in person, by proxy, by written ballot or written consent, and, if at a meeting, at least one Board member present in person, shall constitute a quorum at that adjourned meeting or vote, except for matters for which the Declaration requires a different quorum.

**3.9 Binding Vote.** Action on a matter other than the election of Board members is approved and shall be binding for all purposes if a quorum exists and the votes cast favoring the action exceed the votes cast opposing the action, unless a greater number of affirmative votes is required by law or the Governing Documents.

**3.10 Order of Business.** The order of business at annual meetings of the Association shall be according to the order established by the president, and by way of example, may include the following: (a) calling of the roll and certifying of proxies; (b) proof of notice of meeting or waiver of notice; (c) reading of minutes of the preceding meeting; (d) reports of officers; (e) reports of committees, if any; (f) election of Board members; (g) unfinished business; (h) new business; and (i) adjournment.

**3.11 Meeting Procedure.** Rules of order may be adopted by resolution of the Board, otherwise, the president shall conduct meetings and determine any procedures to be followed and shall have authority to fix the period of time allowed for the registration of Owners and the filing of proxies, to determine the order of business to be conducted at the meeting and to establish reasonable rules for expediting the business of the meeting (including any informal, comment, or question and answer portions). A decision of the Association may not be challenged on the basis that appropriate rules of order were not used.

**3.12 Minutes of Owner Meetings.** The secretary or other person the Board delegates shall take minutes of all meetings of the Owners. The minutes shall include, at a minimum, (1) the identification of the Owners present in person or by proxy, (2) the meeting date, (3) the identification of any issue that is voted on or otherwise decided in the meeting, (4) the number of votes cast for and against an issue, and (5) the exact wording of any item approved at the meeting. Failure to comply with this section does not invalidate any action taken at a meeting. Minutes are permanent records of the Association and shall be kept and made available in accordance with Section 8 below.

**3.13 Action by Written Ballot without a Meeting.** Any action that may be taken at any annual, regular, or special meeting of Owners may be taken without a meeting if the Association causes to be delivered a written ballot to every Owner entitled to vote on the matter not less than 15 days prior to the date on which the ballots must be received by the Association in order to be counted. A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. The ballot or a writing accompanying the ballot shall: (1) state the number of responses needed to meet quorum requirements; (2) state the percentage of approvals necessary to approve each matter; (3) specify the time by which a ballot must be received by the Association in order to be counted; and (4) be accompanied by written information sufficient to permit each person casting a ballot to reach an informed decision on the matter. In the event the action is for election of Board members, there shall be space on the ballot to write in nominations. Action taken under this section has the same effect as action taken at a meeting.

**3.14 Action without Notice and a Meeting.** Any action required to be taken or which may be taken at a meeting of Owners may be taken without a meeting and without prior notice if one or more written consents, setting forth the action so taken, are signed by Owners having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all Owners entitled to vote on the action were present and voted. All such writings must be received by the Association within a sixty-day period. Any such writing may be received by the Association electronically. Action taken pursuant to this section shall be effective when the last writing necessary to effect the action is received by the Association, unless the writings describing and consenting to the action set forth a different effective date. Any change in ownership of a Lot

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.

**3.15 Voting by Joint Owners and Fiduciaries.** Whenever any Lot is owned by two or more persons jointly, the vote of the Lot may be exercised or written consent given by any one of the Owners in the absence of protest by a co-Owner prior to the tallying of votes, so long as only one vote for that Lot is cast. In the event of a protest prior to the vote tally or if two or more conflicting votes are cast, the vote of the Lot shall be disregarded completely, except the vote shall count toward any quorum requirement. An executor, administrator, guardian, or trustee may vote with respect to any Lot owned or held in such capacity, whether or not the Lot has been transferred to the person's name; provided, that the secretary is satisfied that the person is the executor, administrator, guardian, or trustee holding the Lot in such capacity.

**3.16 Record Date – Determining Owners Entitled to Notice and Vote.** Unless a different date is set by the Board, the Owners entitled to notice of a meeting are the Owners reflected in the Association's records at the close of business on the business day before the day notice is given. The Owners entitled to vote at an Association meeting are the Owners: (1) reflected in the Association's records on the date and time of the start of the meeting, and (2) who are otherwise eligible to vote. The Owners entitled to vote in an action under Sections 3.13 or 3.14 are the Owners: (1) on the date the first written consent or ballot is solicited or sent, and (2) who are otherwise eligible to vote.

**3.17 Resolution of Voting Disputes.** In the event of any dispute as to the entitlement of any Owner to vote, the required procedures and process for a vote of the Owners, or as to the result of any vote of Owners, the Board shall act as arbitrator and the decision of a majority of the disinterested and independent directors present at a meeting of the Board (including the decision of a single disinterested and independent director, if only one), whether or not those independent directors constitute a quorum, shall, when rendered in writing, be final and binding as an arbitration award and may be acted upon as such in accordance with Utah law.

## **4. BOARD: SELECTION, ELECTION, TERM OF OFFICE**

### **4.1 Number, Term and Qualifications.**

4.1.1. Number. The affairs of the Association shall be governed by a Board of Directors composed of either three or five Board members, as such number is determined from time to time by: (1) the Board, except that no decrease in number shall have the effect of shortening the term of any incumbent Board member without that Board member's consent, and any vacancies caused by an increase shall only be filled by a vote of the Owners, or (2) the Owners, except that no decrease in number shall have the effect of shortening the term of any incumbent Board member without that Board member's consent unless the decrease is approved by a majority of the total votes of the Association.

4.1.2. **Term.** The term of a Board member is three years. Elections shall be staggered so all Board members are never elected in the same year. Despite the expiration of a Board member's term, a Board member continues to serve until the Board member's successor is elected.

4.1.3. **Qualifications.** A Board member must be an Owner or the spouse of an Owner. If a Lot is owned by an entity, a representative of the entity, and only one such representative, may serve on the Board, such that a shareholder of a corporation, a member of an LLC, a partner of a partnership, a trustee or beneficiary of a trust, or a personal representative of an estate, may serve on the Board if the corporation, LLC, partnership, trust or estate owns a Lot as an Owner. An Owner is ineligible to serve on the Board and is automatically dismissed from a position on the Board if delinquent more than 60 days in the payment of any amount due to the Association.

4.1.4. If Board member terms are not staggered as required in Section 4.1.2 above, then at its first regular meeting following the adoption of this Declaration, the Board may, by Board vote, determine among its members the term of office for each such member so that terms will be appropriately staggered as required.

**4.2 Nomination.** Nomination for election to the Board shall be made in the manner determined by the Board, which may include a nominating committee, nominations from the floor at a meeting, or the requirement that nominations (including self-nominations) be made by petition filed with the Association a specified number of days prior to the annual meeting, which petition shall be signed by the nominee named therein indicating the nominee's willingness to serve as a member of the Board, if elected. The Board may, but is not obligated to, inquire of the Owners to identify those having an interest in serving on the Board. The Board or, if established, the nominating committee, shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies. Self-nomination of candidates who qualify for election shall be permitted, provided they comply with any procedures for self-nomination stated herein or determined by the Board.

**4.3 Election.** At the election, the Owners or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. Voting in an election shall be by written ballot. The persons receiving the largest number of votes shall be elected. If only one candidate has been nominated for a position and there is no possibility for another candidate to be nominated under the procedures determined by the Board, the president may declare the nominee elected without a formal vote. Cumulative voting is not permitted. In the event of a tie between two or more candidates, the Board shall determine whether to hold another vote or to settle the tie by drawing lots where slips of paper with the names of the candidates are placed in a bowl and a person selected by the president draws a name from the bowl. The Board, or the Owners by vote under Section 3.9 above, may choose to conduct a vote by a secrecy procedure where either: (1) an electronic method is used that ensures the secrecy of the process while allowing ballots to be tracked to ensure the integrity of the vote, or (2) a printed ballot is accompanied by: (i) a secrecy envelope, (ii) a return identification envelope to be signed by the Owner, and (iii) instructions for marking and returning the ballot. Printed ballots that are returned in secrecy envelopes may not be examined or counted before the deadline for returning ballots has passed and shall be handled and counted in a manner that ensures the secrecy of the process.

**4.4 Vacancies.** Vacancies on the Board, unless caused by the removal of a Board member by a vote of the Owners under Section 4.6 or by an increase in the number of Board members under 4.1.1, shall be filled for the balance of the term by vote of a majority of the remaining Board members even if they constitute less than a quorum. Each person so elected shall be a Board member until a successor is elected upon expiration of the term the person was elected by the other Board members to serve.

**4.5 Compensation.** No Board member shall receive compensation for service as a Board member, except that, if all of the Board members unanimously agree or if voted on and approved by the Owners, each Board member may be compensated in an amount, per year, equal to the Annual Assessment applicable to that Board member's Lot. Additionally, any Board member may be reimbursed for actual expenses incurred in the performance of the Board member's duties. Nothing herein shall preclude a Board member from receiving compensation for any other service performed for the Association other than as a Board member.

#### **4.6 Removal of Board Members.**

4.6.1. At any annual or special meeting, any one or more of the Board members may be removed, with or without cause, by Owners holding a majority of the total votes of the Association. A successor may be elected at that meeting to fill the vacancy thus created. The notice of the meeting must state that the removal is to be considered and any Board member whose removal has been proposed by the Owners may be given an opportunity to be heard at the meeting.

4.6.2. A Board member who is absent from three consecutive regular meetings of the Board or from more than 25% of the regular Board meetings held in any 12 month period shall be deemed to have tendered the Board member's resignation, and upon acceptance by the Board the position shall be vacant. Such a vacancy, and a vacancy created by automatic dismissal under Section 4.1.3 for failure to pay an Assessment, shall be filled as provided in Section 4.4 above.

### **5. BOARD MEETINGS**

**5.1 Meeting Definition.** "Meeting," when capitalized in this Section, means a gathering of the Board, whether in person or by means of electronic communication in real time under Section 5.5, at which the Board can take binding action.

#### **5.2 Notice.**

##### **5.2.1. Notice to Board Members.**

(a) Regular Meetings. Regular Meetings of the Board shall be held at the place and hour fixed from time to time by the Board. If so fixed in a schedule previously provided to Board members, no further notice need be given to Board members, otherwise, the Association shall give written notice via email to each Board member at least 48 hours before the Meeting.

(b) Special Meetings. Special Meetings of the Board shall be held when called by the president or by any two Board members, after not less than 48 hours' notice to each Board

member by mail, email, text or telephone (or other method agreed upon in advance by all Board members) unless waived pursuant to 5.7 below or unless the Meeting is called to address an emergency, in which case notice shall be provided to each Board member that is fair and reasonable under the circumstances. The notice of special Meeting provided to Board members must state the time, place and purpose of the Meeting.

**5.2.2. Notice to Owners.** At least 48 hours before a Board Meeting, the Association shall give written notice of the Meeting via email to each Owner who requests notice of a Board Meeting (“Meeting Notice”), unless notice of the Meeting is included in a Meeting schedule that was previously provided to the Owner or the Meeting is to address an emergency and each Board member receives notice of the Meeting less than 48 hours before the Meeting. A Meeting Notice shall: (1) be delivered to the Owner by email, to the email address that the Owner provides to the Association; (2) state the time and date of the Meeting; (3) state the location of the Meeting; and (4) if a Board member may participate by means of electronic communication under Section 5.5 below, provide the information necessary to allow the Owner to participate by the available means of electronic communication so that the Owner may view or hear the proceedings in real time.

**5.3 Meeting Procedure.** Formal rules of order shall only apply to any Board Meeting or Association meeting inasmuch as one or more such rules of order are adopted by the Board for such use. Meetings of the Board shall be conducted by the president. Failure to comply with Section 5.4 or with appropriate rules of order does not invalidate any action taken at a meeting.

#### **5.4 Open Board Meetings; Executive Sessions.**

**5.4.1. Open Board Meetings.** Except as provided in subsection 5.4.2, all Meetings of the Board shall be open to Owners. At each Meeting, the Board shall provide each Owner a reasonable opportunity to offer comments. The Board may limit the comments to one specific time period during the Meeting and may limit the time allotted to each Owner so long as the time allotted is determined by a majority of the Board members present. Beyond such comment period, no Owner shall have a right to participate in the Board Meeting unless the Owner is also a member of the Board. The president or Board shall have the authority to exclude an Owner who disrupts the proceedings at a Board Meeting. The Board may adopt policies governing Meetings from time to time, including policies to reflect current Utah law (which Utah law may change more frequently than these Bylaws). If such Utah law supersedes any provision of these Bylaws, the policy adopted by the Board shall also supersede these Bylaws to the extent the policy restates then current Utah law.

**5.4.2. Executive Sessions.** In the discretion of the Board, the Board may close a Board Meeting and adjourn to executive session to: (1) consult with an attorney for the purpose of obtaining legal advice; (2) discuss ongoing or potential litigation, mediation, arbitration, or administrative proceedings; (3) discuss a personnel matter; (4) discuss a matter relating to contract negotiations, including review of a bid or proposal; (5) discuss a matter that involves an individual if the discussion is likely to cause the individual undue embarrassment or violate the individual's reasonable expectation of privacy; or (6) discuss a delinquent assessment or fine.

**5.4.3. Executive Session Procedure.** Except in the case of an emergency, the Board shall vote in an open Meeting whether to meet in executive session. If the Board votes to meet in executive session, the president or other presiding officer shall state the general nature of the action to be considered and, as precisely as possible, when and under what circumstances the deliberations can be disclosed to Owners. The statement, motion or decision to meet in executive session must be included in the minutes of the Meeting.

**5.5 Meetings by Electronic Communication in Real Time.** As determined by the Board, Meetings may be conducted by means of electronic communication that allows all members of the Board participating to be able to communicate orally in real time.

**5.6 Minutes of Board Meetings.** The secretary (or other person as the Board may delegate) shall take minutes of all Board meetings. The minutes shall include, at a minimum, (1) the identification of the Board members present, (2) the meeting date, (3) the identification of any issue that is voted on or decided in the meeting, (4) the number of votes cast for and against any issue decided upon, and (5) the exact wording of any item approved at the meeting. Failure to comply with this section does not invalidate any action taken at a meeting. Minutes are permanent records of the Association and shall be kept and made available in accordance with Section 8.

**5.7 Waiver of Notice.** A Board member may, at any time, waive notice of a Meeting in writing, and the waiver shall be deemed equivalent to the giving of the notice. Attendance by a Board member at a Meeting shall constitute a waiver of notice, except where the Board member attends for the express purpose of objecting to the transaction of any business because the Meeting is not lawfully called or convened. If all Board members are present at any Meeting, no notice to Board members is required and any business may be transacted at the Meeting.

**5.8 Quorum and Acts; Board Proxies.** At all Meetings of the Board, a majority of the existing Board members shall constitute a quorum for the transaction of business and the acts of the majority of the Board members represented shall be the acts of the Board. If, at any Meeting of the Board, there is less than a quorum present, the majority of those present may adjourn the Meeting to another time without further notice, and at any such adjourned Meeting any business which might have been transacted at the Meeting as originally called may be transacted.

For purposes of determining a quorum with respect to a particular proposal, and for purposes of casting a vote for or against a particular proposal, a Board member may be considered to be present at a Meeting and so vote if the Board member has granted a signed written proxy: (1) to another Board member, or other person, who is present at the Meeting; and (2) authorizing the other Board member or person to cast the vote that is directed to be cast by the written proxy with respect to the particular proposal that is described with reasonable specificity in the proxy (a directed proxy).

**5.9 Action by Board without a Meeting.**

**5.9.1. Notice, Response.** Subject to subsection 5.9.3, the Board may take any action (e.g., vote on any matter) in the absence of a Meeting which it could take at a Meeting if either:

- (1) all Board members vote in favor of the action in writing, or
- (2) if notice of the vote is sent to each Board member and no Board member demands that action not be taken without a meeting. The action must receive the number of votes that would be necessary to take such action at a meeting at which all of the Board members then in office were present and voted.

5.9.2. Content of Notice. The notice required by subsection 5.9.1(2) (the “Notice”) shall include: (1) the action to be taken; (2) the time by which a Board member must respond to the Notice; (3) that failure to respond by the time stated in the Notice will have the same effect as abstaining in writing by the time stated in the Notice, and failing to demand in writing by the time stated in the Notice that action not be taken without a Meeting.

5.9.3. Meeting Required to Adopt Rules. The Board may not adopt, amend, modify, cancel, limit, create exceptions to, or expand the Rules without a Meeting.

5.9.4. Waiver of Meeting. A Board member’s right to demand that action not be taken without a Meeting is waived unless the Association receives such demand from the Board member in writing by the time stated in the Notice.

5.9.5. Revocation. A Board member may revoke in writing a vote, abstention, or demand that action not be taken without a Meeting at any time before the time stated in the Notice.

5.9.6. Electronic Transmission. Any communication, including under this Section, may be delivered by an electronic transmission. An electronic transmission communicating a vote, abstention, demand, or revocation is considered to be written, signed, and dated for purposes of this Section if the transmission is delivered with information from which the Association can determine that the transmission is transmitted by the person (e.g., from a sender’s known email account), and the date on which the electronic transmission is sent. The date sent is considered the date signed. For purposes of this Section 5, communications to the Association are not effective until received.

5.9.7. Record of Action. A record of an action taken by the Board without a Meeting shall be kept as a permanent record in accordance with Section 8 below and the law.

## **6. POWERS, RIGHTS, AND DUTIES OF THE BOARD**

**6.1 General Powers and Duties.** The Board shall have the powers and duties necessary for the administration of the affairs of the Association. All corporate powers shall be exercised by or under the authority of, and the business and affairs of the Association managed under the direction of, the Board.

**6.2 Best Interest of Association.** A Board member or officer shall discharge the Board member or officer’s duties (1) in good faith, (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and (3) in a manner the Board member or officer reasonably believes to be in the best interests of the Association. The Board members shall, at all times, keep themselves reasonably informed and take such steps and necessary actions as a

reasonable, prudent person would do to serve the best interest of the Association. No Board member shall engage in the unauthorized practice of law as to, for, or on behalf of the Association or request or allow a Manager to do so, or rely on the product of any unauthorized practice of law by another Board member or Manager.

**6.3 Reliance on Information.** In discharging duties, a Board member or officer is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by: (1) one or more officers or employees of the Association whom the Board member or officer reasonably believes to be reliable and competent in the matters presented, (2) legal counsel, a public accountant, or another person as to matters the Board member or officer reasonably believes are within the person's professional or expert competence, or (3) in the case of a Board member, a committee of the Association or Board of which the Board member is not a member if the Board member reasonably believes the committee merits confidence.

#### **6.4 Conflicts of Interest.**

6.4.1. A conflict of interest or conflicting interest transaction includes a contract, transaction, or other financial relationship between the Association and (1) a Board member, (2) a party related to a Board member, or (3) an entity in which a Board member is a director or officer or has a financial interest.

6.4.2. A Board member shall avoid conflicts of interest or conflicting interest transactions, unless: (1) the material facts as to the Board member's relationship or interest and as to the conflicting interest transaction are disclosed or are known to the Board, (2) the Board in good faith authorizes, approves, or ratifies the conflicting interest transaction by the affirmative vote of a majority of the disinterested Board members (even if the disinterested Board members are less than a quorum), and (3) the conflicting interest transaction is fair as to the Association.

### **7. OFFICERS AND THEIR DUTIES**

#### **7.1 Designation and Qualification.**

7.1.1. Designation. The principal officers of the Association shall be a president, a vice-president, a secretary and a treasurer. The Board may designate the office of assistant treasurer and assistant secretary. Officers shall have such authority and perform such duties as set forth in these Bylaws and as the Board may prescribe from time to time. The Board may decide the period of time an officer shall hold office, if the officer is elected by the Board members, and if no such determination is made, an officer shall hold office for one year.

7.1.2. Qualifications. The principal officers must be Board members (and shall cease to be an officer upon ceasing to be on the Board). Any Board member may be an officer of the Association.

7.1.3. Multiple Offices. A person may simultaneously hold more than one office.

7.1.4. **Special Appointments.** The Board may appoint such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may determine from time to time.

**7.2 Election and Vacancies.** The members of the Board shall elect the principal officers of the Association at a Meeting or by action without a Meeting. An officer serves until the sooner of: (1) the expiration of the officer's term as a Board member, or (2) the election of the officer's successor. If any office becomes vacant for any reason, the Board shall elect a successor to fill the unexpired term.

**7.3 Resignation.** Any officer may resign at any time by giving written notice to a Board member. The resignation shall take effect on the date of receipt of the notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of the resignation shall not be necessary to make it effective.

**7.4 Removal of Officers.** Officers shall hold office at the pleasure of the Board. Upon an affirmative vote of a majority of the members of the Board any officer may be removed, either with or without cause.

**7.5 Compensation of Officers.** No officer who is a member of the Board may receive any compensation from the Association for acting as an officer, unless the compensation is approved by a vote of the Owners. The Board may fix any compensation to be paid to an officer who is not a Board member. An officer may be reimbursed for actual expenses incurred in the performance of the officer's duties.

**7.6 Duties of Officers.** Officers shall have such duties prescribed with respect to the office by the Declaration, Bylaws, and the Board. The Board may prescribe, expand or limit the authority and duties of officers, despite anything to the contrary in this Section 7.6. The Board may delegate any powers or duties of officers to other persons or agents as the Board deems necessary or appropriate from time to time. Any principal officer may execute, certify, and record amendments to the Declaration on behalf of the Association in accordance with the amendment provisions of the Declaration. Subject to any expansion or limitation of the authority and duties of an officer by the Board, the general duties of the principal officers are as follows.

7.6.1. **President.** The president shall be the chief executive officer of the Association and shall exercise general supervision over its property and affairs. The president shall preside at all meetings of the Association and of the Board. The president shall have all of the general powers and duties which are usually vested in the office of president of an association. The president shall have the authority to sign all leases, mortgages, deeds and other written instruments, including amendments to the Governing Documents.

7.6.2. **Vice-president.** The vice-president shall act in the place and stead of the president in the event of the president's absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board. The vice-president shall likewise have the authority to sign all leases, mortgages, deeds and other written instruments.

7.6.3. Secretary. The secretary shall prepare and maintain the minutes of all Meetings of the Board and the minutes of all meetings of the Association. The secretary shall keep and make available records in the manner required by Section 8.2.4. The secretary is responsible for the preparation, maintenance and preservation of the records and information required to be kept by the Association under Section 8 of these Bylaws, by the Act, and by Section 16-6a-1601 of the Utah Revised Nonprofit Corporation Act, and has charge of such books, papers and records as the Board may direct. The secretary is responsible for authenticating records of the Association, and in general, shall perform all the duties incident to the office of secretary. The Board may delegate to another person, including a Manager, any of the duties of the secretary.

7.6.4. Treasurer. The treasurer shall have responsibility for the Association's funds and securities not otherwise held by a Manager, and shall be responsible for causing full and accurate accounts of all receipts and disbursements to be kept in records belonging to the Association and for cooperating with the secretary to ensure financial records are kept and made available in accordance with Section 8 of these Bylaws and the law. The treasurer is responsible for causing the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may, from time to time, be designated by the Board and disbursing funds as directed by the Board.

## 8. RECORDS AND AUDITS

**8.1 Records Kept.** The Association shall maintain within the state of Utah all documents, information and other records of the Association in accordance with the Governing Documents, the Community Association Act and the Utah Revised Nonprofit Corporation Act.

**8.2 General Records.**

8.2.1. Permanent Records. The Association shall keep (or cause to be kept) as permanent records: (1) the Declaration, Bylaws and Articles of Incorporation, (2) minutes of all meetings of the Association and of the Board, (3) a record of all actions taken without a meeting by the Association or the Board, (4) a record of all actions taken by a committee of the Board in place of the Board on behalf of the Association, and (5) a record of all waivers of notices of meetings of Members and of the Board or any committee of the Board.

8.2.2. Resolutions and Rules. The Association shall maintain (1) a record of the Rules and policies adopted by the Association, (2) appropriate accounting records, and (3) a record of its Members in a form that permits preparation of a list of the name and address of all Members in alphabetical order and showing the number of votes each Member is entitled to vote.

8.2.3. Assessment Roll. There shall be an account for each Lot in the assessment roll. The account shall designate the Lot number, the name and address of the Owner or Owners, the amount of each Assessment against the Owners, the dates and amounts in which the Assessment comes due, the amounts paid upon the account, and the balance due on the Assessments.

#### **8.2.4. Certain Records.**

(a) The Association shall keep and make available to Owners without charge, through the Association website, or, if the Association does not have an active website, then physical copies of the documents shall be made available to Owners during regular business hours at the Association's address registered with the Department of Commerce's Utah HOA Registry, a copy of the Association's: (1) Governing Documents, (2) most recent approved minutes, and (3) most recent budget and financial statement.

(b) In addition, the Association shall keep a copy of each of the following records at its principal office (copies of such records kept electronically by an Association officer or manager shall satisfy this requirement regardless of where located as long as such electronic records are capable of being transmitted to, or viewed by, others, such as via email from an electronic storage medium or via website): (1) all Governing Documents; (2) the most recent reserve analysis; (3) the certificate of insurance for each insurance policy the Association holds; (4) the minutes of all Association meetings for a period of three years; (5) records of all action taken by Owners without a meeting, for a period of three years; (6) all written communications to Owners generally as Owners for a period of three years; (7) a list of the names and business or home addresses of the current Board members and officers; (8) a copy of its most recent annual report (annual renewal) delivered to the Division of Corporations under Utah Code § 16-6a-1607; and (9) all financial statements prepared for periods ending during the last three years, if any, that show in reasonable detail the assets and liabilities and results of the operations of the Association.

**8.2.5. Form of Records.** The Association shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time. "Written form" does not mean exclusively paper form. The Association may maintain any of its records by retaining an electronic record of the information in the record that: (1) accurately reflects the information set forth in the record after it was first generated in its final form as an electronic record or otherwise, and (2) remains accessible for later reference.

**8.3 Financial Reports and Audits.** Upon written request by an Owner, an annual report of the receipts and expenditures of the Association and a balance sheet showing assets and liabilities shall be rendered by the Board to the person making the request within ninety days after the end of each fiscal year. From time to time, the Board, at the expense of the Association, may obtain an audit by a certified public accountant or other financial review of the books and records pertaining to the Association.

**8.4 Availability of Records to Owners.** An Owner is entitled to inspect, copy or receive records of the Association in accordance with Section 8.2.4(a) above and this Section 8.4.

**8.4.1. Owner May Elect Method.** An Owner may elect whether to: (1) view and copy records in person, (2) receive hard copies of records, or (3) receive the records electronically.

(a) **In Person.** If an Owner elects to view and copy records in person, the Owner must bring imaging equipment to the inspection which shall be at a reasonable place, and during

such hours, specified by the Association and the Association shall provide the necessary space, light, and power for the imaging equipment.

(b) Receive Hard or Electronic Copies. If an Owner elects to receive hard copies of records or to receive records electronically, the Owner may request a recognized third party duplicating service to make the copies and any necessary electronic scans of documents, in which case, the Association shall arrange for the delivery and pick up of the original documents, and the Owner shall pay the duplicating service directly. If the Association makes the copies or electronic scans, the Owner shall pay the Association the reasonable cost of the copies or of any necessary electronic scans of documents, which may not exceed: (1) the actual cost that the Association paid to a recognized third party duplicating service to make the copies or electronic scans; or (2) if an agent of the Association makes the copies or any electronic scans, 10 cents per page and \$15 per hour for the person's time making the copies or electronic scans.

8.4.2. Availability of Records Kept at Principal Office. An Owner shall give the Association written request at least 5 business days before the date on which the Owner wishes to inspect, copy or receive any of the records in subsection 8.2.4(b) above.

8.4.3. Availability of Other Records - Proper Purpose Required. An Owner must make written request to the Association at least 5 business days before the date on which the Owner wishes to inspect, copy or receive either the Membership list or accounting records other than the most recent budget or a financial statement prepared for periods ending during the last three years, and: (1) the request must be made in good faith and for a proper purpose; (2) the Owner must describe with reasonable particularity both the purpose and the records the Owner desires to inspect; and (3) the records must be directly connected with the described purpose.

8.4.4. Redaction; Records Not Subject to Inspection. The Association may redact a Social Security number, a bank account number, and any communication subject to attorney-client privilege from any document the Association produces for inspection or copying. The Board may withhold from inspection or copying any records: (1) considered by the Board in executive session and the minutes of any executive session, or (2) that in its reasonable business judgment would constitute an unwarranted invasion of privacy (including, if so determined by the Board, a list of phone numbers or email addresses of Owners) or involve pending or anticipated litigation or contract negotiations.

## **9. LIABILITY; INDEMNIFICATION OF DIRECTORS**

### **9.1 No Volunteer Liability.**

9.1.1. No volunteer providing services for the Association, including a volunteer Board member or officer, incurs any of the following if (a) the individual was acting in good faith and reasonably believed the individual was acting within the scope of the individual's official functions and duties with the Association, and (b) the damage or injury was not caused by an intentional or knowing act by the volunteer which constitutes illegal, willful, or wanton misconduct: (1) legal liability for any act or omission of the volunteer while providing services for the Association, and (2) personal financial liability for any (i) contract claim under any agreement, instrument or

transaction entered into by such person on behalf of the Association, (ii) tort claim or other action seeking damage for an injury (including physical, nonphysical, economic, and noneconomic damage) arising from any act or omission of the volunteer while providing services for the Association, or (iii) any claim arising out of the use, misuse or condition of any part of the Property that might in any way be assessed against or imputed to the volunteer as a result of or by virtue of their capacity as a volunteer, director, officer or committee member, including by any victim of a crime occurring at the Property.

9.1.2. "Volunteer" means any individual performing services for the Association who does not receive anything of value from the Association for those services except reimbursements for expenses actually incurred and annual compensation equal to no more than the annual assessment amount per Lot.

9.1.3. The protection against volunteer liability provided by this Section does not apply (1) to injuries resulting from a volunteer's operation of a motor vehicle, or (2) when a suit is brought by an authorized officer of a state or local government to enforce a federal, state, or local law.

**9.2 Indemnification.** Each officer and Board member shall be indemnified by the Association to the fullest extent permitted by law, including the Utah Revised Nonprofit Corporation Act (regardless of the Association's corporate status or lack thereof) against expenses and liabilities incurred by such person in connection with the defense of any actual or threatened action, suit or proceeding, civil or criminal, to which the person is or may be a party by reason of being or having been a Board member or officer of the Association, and upon submitting notice to the Association of any such action, suit or proceeding, the Association shall undertake all costs of defense and advancement of loss to the fullest extent permitted by law, until and unless it is proven that the alleged damage or injury was caused by an intentional or knowing act by the person which constitutes illegal, willful, or wanton misconduct. Upon such proof, the Association is not liable for such cost of defense or loss, and may recover amounts already expended from the officer or Board member who so acted. The right to indemnification provided by this section shall not be exclusive of any other rights to which the Board member or officer may be entitled by law or agreement or otherwise. Punitive damages may not be recovered against the Association.

## 10. AMENDMENTS

Approval of a majority of the voting rights of all Owners is required to amend these Bylaws, except that certain provisions in Sections 2.3, 5.4, 5.9 and Article 8 of these Bylaws reflect requirements or limitations imposed by law at the time of adoption of these Bylaws and are included for that reason. If such a restriction or limitation is changed or removed in the law after recording of these Bylaws, the Board may change the applicable section to restate or reflect then current law by adopting and recording an amendment to these Bylaws and no approval of the Owners is required. An amendment shall not be effective until certified by the president of the Association as being adopted in accordance with these Bylaws, acknowledged, and recorded against the Lots in the records of the county recorder.

## 11. MISCELLANEOUS

**11.1 Waiver, Precedent and Estoppel.** No restriction, condition, obligation, or provision contained in these Bylaws or rules adopted pursuant hereto shall be deemed to have been abrogated or waived by the Association by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Association as to any similar matter.

**11.2 Invalidity, Number and Captions.** The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability, or effect of the balance of these Bylaws. As used herein, the singular shall include the plural and the plural the singular. The masculine and neuter shall each include the masculine, feminine, and neuter, as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions of these Bylaws.

**11.3 Fiscal Year.** The fiscal year of the Association shall be determined by the Board.

**11.4 Conflict.** In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

IN WITNESS WHEREOF, the Association has caused these Bylaws to be executed by its duly authorized officer on this 21 day of February, 2025.

LIBERTY WELLS OWNERS ASSOCIATION  
a Utah nonprofit corporation

Sign: Marion Johnson  
Print Name: Marion Johnson  
Title: Liberty Wells HOA Board President

State of Utah  
County of Salt Lake  
On this 21 day of February, in the year 2025, before me,  
(date) (month) (year)  
Ty Snow a notary public, personally appeared  
(name of notary)  
Marion Johnson, proved on the basis of satisfactory  
(name of document signer)  
evidence to be the person(s) whose name(s) is/are) subscribed  
to this instrument, and acknowledged (he/she/they) executed  
the same. Witness my hand and official seal.

