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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

HERITAGE POINTE SUBDIVISION

A residential townhome development located in Santa Clara, Utah

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

HERITAGE POINTE SUBDIVISION

The Lofts at Santa Clara, L.L.C., a Utah limited liability company, hereinafter referred to as the "Developer," is the owner of certain real property, hereinafter referred to as the "Property," located in Santa Clara, Washington County, State of Utah, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference.

Developer hereby includes all of the Property in the "Plat" recorded herewith or hereafter of Heritage Pointe Subdivision Phases 1 and 2, and divides the Property into Lots, Common and Limited Common Area, as shown on the Plat. The easements indicated on the Plat are hereby perpetually reserved for public utilities and for any other uses as designated thereon or set forth herein, and no structures other than for such utility or other indicated purposes are to be erected within the lines of said easements. The Property is not a cooperative.

Developer further declares that all of the Property described herein is held and will be held, conveyed, hypothecated or encumbered, leased, rented, used, occupied, and improved subject to the following limitations, restrictions, covenants and conditions, all of which are declared and agreed to be in furtherance of a plan for the subdivision, improvement, and sale of the Property, and are established and agreed upon for the purposes of enhancing and protecting the value, desirability, and attractiveness of the Property and every Lot, part, or portion thereof. The acceptance of any deed to or conveyance of any Lot, part or portion of the Property by the grantees therein named or by their legal representatives, heirs, executors, administrators, successors or assigns, constitutes their covenant and agreement with the Developer and with each other to accept, hold, improve, use and convey the Property subject to said covenants, conditions, and restrictions. These covenants, conditions, and restrictions run with the Property and are binding upon all parties having any right, title, or interest in any portion of the Property and any other real property annexed into or subjected to this Declaration and are binding upon such parties' heirs, executors, administrators, successors or assigns.

ARTICLE 1
DEFINITIONS AND CONCEPTS

The following definitions and concepts will control in this Declaration. Any undefined terms used in this Declaration will have their plain and ordinary meaning.

1.1 **"Additional Property"** means and refers to any real property that is adjacent or contiguous to, or otherwise within the vicinity of the Property, whether or not so described herein or on the Plat. When Additional Property is annexed to this Declaration, it becomes part of the Property.

1.2 **"Architectural Committee"** means the committee established pursuant to Article 6 of this Declaration.

1.3 **"Articles"** means and refers to the Articles of Incorporation of the Association and any amendments thereto. The purpose of the Articles is to establish the Association as a non-profit corporation under Utah law.

1.4 **"Association"** means Heritage Pointe Townhomes Owners Association, a Utah non-profit corporation, its successors and assigns.

1.5 **"Bylaws"** means and refers to the Bylaws of the Association. The purpose of the Bylaws is to govern the Association's internal affairs, such as (for purposes of example but not limitation) voting, elections, and meetings. A copy of the Bylaws is attached hereto as Exhibit "B".

1.6 **"Common Area"** means and refers to all real property, including the improvements thereto and facilities thereon, which the Association owns, leases, or otherwise holds possessory or use rights in, at any given time, for the common use and enjoyment of the Owners. Common Area may be designated on the Plat or otherwise established as provided for in this Declaration.

1.7 **"Common Expenses"** means the actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of the Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents. Common Expenses do not include any expenses incurred by the Developer during the Developer Control Period for initial development or other original construction costs unless a majority of the Class A Members approve.

1.8 **"Community Association Act"** or **"Act"** means the Utah Community Association Act, Title 57, Chapter 8a of the Utah Code, and any amendments thereto.

1.9 **"Declaration"** means this instrument and any amendments, restatements, supplements, or annexations thereto, which are recorded in the office of the Washington County Recorder.

1.10 **"Developer"** means The Lofts at Santa Clara, L.L.C., a Utah limited liability company and its successors and assigns. The term Developer as used in this Declaration and in the Governing Documents is synonymous with the term **"Declarant"** as used and defined in the Act.

1.11 **"Developer Control Period"** means the period of time during which the Developer has Class B membership status as provided for in Section 3.2(b) below. The Developer Control Period as used and defined herein, is the "period of administrative control" as defined in the Act.

1.12 **"Directors"**, **"Board of Directors"**, or **"Board"** means the governing body of the Association. When any action is contemplated or taken by the Association, it is done through the Board of Directors.

1.13 **"Electronic Transmission"** or **"Electronically Transmitted"** means a process of communication not directly involving the physical transfer of paper that is suitable for the receipt, retention, retrieval, and reproduction of information by the recipient, whether by email, texting, facsimile, or otherwise.

1.14 **"Entire Membership"** means all Members, regardless of class of membership. When a vote of the Entire Membership is referenced it means all potential votes for both Class A and Class B members; provided however, that the term Entire Membership shall exclude the Class B member when it relates to or calls for an assessment or charge to the Entire Membership.

1.15 **"Governing Documents"** means, collectively, this Declaration, the Articles, the Bylaws, the Plat, and any amendments or supplements to those documents, and includes any rules, regulations, and resolutions established pursuant to the authority of the Declaration, Articles, or Bylaws.

1.16 **"Limited Common Area"** means and refers to a portion of the Common Area which has been designated for the primary or exclusive use of a particular Owner or Owners. Generally, Limited Common Area, as a portion of Common Area, is owned by the Association but reserved for the use and enjoyment of the Owner or Owners to whose Lot the Limited Common Area is adjacent or appurtenant. Limited Common Area may be designated on the Plat or otherwise established as provided for in this Declaration.

1.17 **"Lot"** means a separately numbered and individually described plot of land shown on the Plat designated as a Lot for private ownership.

1.18 **"Member"** means and is synonymous with the terms "Owner" and is used herein and in the Bylaws and Articles as a means to identify the Owners as Members of the Association.

1.19 **"Mortgage"** means a mortgage, a deed of trust, a deed to secure a debt, or any other form of security instrument affecting title to any Unit.

1.20 **"Mortgagee"** means and refers to a lender holding a first Mortgage or deed of trust.

1.21 **"Owner"** means the entity, person, or group of persons owning fee simple title to any Lot that is within the Property. Regardless of the number of parties participating in ownership of each Lot, the group of those parties shall be treated as one "Owner." The term "Owner" includes contract purchasers but does not include persons who hold an interest merely as security for the performance of an obligation unless and until title is acquired by foreclosure or similar proceedings. Membership is appurtenant to and may not be separated from Lot ownership.

1.22 **"Plat"** means the subdivision Plat(s) recorded herewith or hereafter prepared and certified by a Utah Registered Land Surveyor and any amendments or replacements thereof, or additions thereto.

1.23 **"Property" or "Community"** means that certain real property hereinbefore described, and such annexations and additions thereto as may hereafter be subjected to this Declaration, and, where the context requires, includes any improvements thereon.

1.24 **"Short-Term Rental"** means a Unit used by any person or entity for hostel, hotel, inn, lodging, motel, resort, or other transient lodging uses where the term of occupancy, possession, or tenancy of the property by the person is for twenty nine (29) consecutive calendar days or less, for direct or indirect remuneration. For purposes hereof, "remuneration" means compensation, money, rent, or other consideration including free gratis, given for occupancy, possession or use of the applicable Unit.

1.25 **"Unit"** means a single family dwelling, with or without walls or roofs in common with other single family dwellings. When the term "Unit" is used it includes fee title to the real property lying directly beneath the single family dwelling, within Lot boundary lines, this, however, is not all the Lot in some instances as there may be Lot boundary outside the Lot walls. Ownership and Lot boundaries are depicted and described on the Plat. Where the context requires, such as provisions on lien rights and enforcement, the term Unit includes the Lot.

ARTICLE 2 **PROPERTY RIGHTS**

2.1. **Owner's Acknowledgment; Notice to Purchasers.** All Owners are given notice that the use of their Lots and the Common Area and Limited Common Area is limited by the covenants, conditions, restrictions, easements, and other provisions in the Governing Documents, as they may be amended, expanded, or modified from time to time. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Lot can be affected by said covenants, conditions, restrictions, easements, and other provisions in the Governing Documents. All purchasers are on notice that the Association may have adopted changes to the Governing Documents that might differ from those that any purchaser might receive from, or that might have been disclosed by, the Owner from whom the purchaser is purchasing the Lot. Copies of current Governing Documents may be obtained from the Association.

2.2. **Lots.**

(a) **Ownership.** Each Lot is owned in fee simple by the Owner, subject to the covenants, conditions, restrictions, and easements in this Declaration and other provisions of the Governing Documents.

(b) **Activities within Units.** No rule may interfere with the activities carried on within the confines of Units, except that the Association may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to the health or safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance, all as may be determined by the Board or any committee designated by the Board or this Declaration to make such determinations, in their sole discretion.

(c) **Household Composition.** No rule may interfere with the freedom of Owners to determine the composition of their households, except that the Association has the power to require that all occupants be members of a single housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

(d) **Exteriors of Units.** The exteriors of Units, including exterior walls and roofs, are hereby designated as Limited Common Area for purposes of architectural control and are therefore subject to the rules, regulations, and approvals of the Architectural Committee and the Association.

2.3. **Common Area.**

(a) **Ownership; Conveyance.** Upon recording of the Plat, the Common Area, including Limited Common Area which is a portion of the Common Area, is deemed conveyed by Developer to the Association, free and clear of all financial encumbrances and liens, but subject to this Declaration, and easements and rights-of-way of record. The Association hereby accepts the conveyance of the Common Area. Common Area may also be conveyed by separate deed, by a supplemental declaration, or as depicted on an amended plat.

(b) Rights of Use and Rules and Regulations Concerning the Common Area. Every Owner has a right and easement of use and enjoyment in and to the Common Area which is appurtenant to and passes with the title to every Lot, subject to the Governing Documents. The Board has the right to establish and enforce rules and regulations governing the use of the Common Area, including but not limited to rights of use, hours of use, delegation of use, and standards of conduct. Additional rights to establish rules and regulations governing the Common Area may be set forth and established elsewhere in the Governing Documents.

(c) Board Authority and Rights in the Common Area. The Board has the right, for and on behalf of the Association, to:

- (i) enter into agreements or leases which provide for use of the Common Area by a similar association in consideration for use of the common areas and facilities of the other association or for cash consideration, or for use by third parties for cash consideration;
- (ii) with the approval of at least 75% of Owners to sell, exchange, hypothecate, alienate, mortgage, encumber, dedicate, release or transfer all or part of the Common Area to any private individual, corporate entity, public agency, authority, or utility;
- (iii) grant easements for public utilities or other public purposes consistent with the intended use of the Common Area;
- (iv) take such steps as are reasonably necessary or desirable to protect the Common Area against foreclosure; and
- (v) take such other actions with respect to the Common Area which are authorized by or otherwise consistent with the Governing Documents.

Notwithstanding any right authorized in subsections (i) through (v) above, in the event Common Area is immediately adjacent to and for all practical purposes constitutes the front or side yard of a particular Lot, the Board will not take the action described in (i) and (ii) with respect to such designated Common Area.

(d) Developer's Right of Use. As part of the overall program of development of the Property into a residential community and to encourage the marketing thereof, the Developer has the right of use of the Common Area, including any community buildings, without charge during the Developer Control Period to aid in its marketing activities.

2.4. Limited Common Area.

(a) Designation. The Developer, during the Developer Control Period, has the right to restrict portions of the Common Area, whether owned by Developer or by the Association, in the nature of an easement for the primary or exclusive use of one or more particular Owners, by designating such portions of the Common Area as Limited Common Area. This designation may be made by: (i) indicating or designating on the Plat the Limited Common Area appertaining to one or more Lots or (ii) designating, depicting, or describing such Limited Common Area in any supplemental declaration or any exhibit thereto. The Developer reserves the right to re-designate Limited Common Area and the maintenance obligations thereof as it deems necessary from time

to time. The Developer further reserves the right to install pergolas, patios, concrete pads, gravel, and other landscaping features in the Limited Common Area at any time.

(b) Rights of Use and Rules and Regulations Concerning the Limited Common Area. Each Owner is hereby granted an irrevocable and exclusive license to use and occupy the Limited Common Area reserved and designated exclusively for the use of his or her Lot, subject to the rights of the Developer and the Board as set forth in the Governing Documents. The right of exclusive use and occupancy does not include the right to repaint, remodel, erect structures upon or attach any apparatus to the Limited Common Area without the express written consent of the Board or the Architectural Committee; provided that each Owner shall have the right to install a portable hot tub or jacuzzi within such Limited Common Area without the prior written consent of the Board or the Architectural Committee.

(c) Board Authority and Rights in Limited Common Area. The Board's right of regulation in the Limited Common Area includes all rights it possesses with respect to the Common Area which are not inconsistent with exclusive use to a particular Lot to which the Limited Common Area is assigned, and includes, but is not limited to, the right to regulate, repair, maintain, and control architectural and aesthetic appearances of the Limited Common Area.

2.5. Delegation of Use. Any Owner may delegate his right of enjoyment of the Common Area to the members of his family, his tenants, guests, licensees and invitees, but only in accordance with the applicable rules and regulations of the Association and other Governing Documents. The Board may, by rule, require Owners to forfeit their right of use in the Common Areas for so long as the Owner has delegated his right of use in the Common Areas to his or her tenant. Damage caused to the Common Area and facilities, including personal property owned by the Association, by a Member, or by a person who has been delegated the right to use and enjoy such Common Area and facilities by a Member, creates a debt to the Association. Such debts owed to the Association as a result of damage to the Common Area and facilities are a specific assessment charged to the Owner.

2.6. Developer's Reasonable Rights to Develop. No rule or action by the Association may unreasonably impede Developer's right to develop the Property.

ARTICLE 3 **ASSOCIATION, MEMBERSHIP AND VOTING RIGHTS**

3.1. Membership. Every Owner of a Lot subject to the Declaration is a Member of the Association. Membership in the Association automatically transfers upon transfer of title by the record Owner to another person or entity.

3.2. Voting Rights. The Association has two classes of voting membership, Class A and Class B.

(a) Class A. Every Owner is a Class A Member with the exception of the Developer, until Developer's membership converts to Class A membership as provided for herein. Class A Members are entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, the group of such persons shall be a Member. The vote for such Lot will be exercised as they among themselves determine, but in no event will more than one vote be cast with respect to any Lot. A vote cast at an Association meeting by any of such co-Owners, whether in person or

by proxy, is conclusively presumed to be the vote attributable to the Lot concerned unless written objection is made prior to that meeting, or verbal objection is made at that meeting, by another co-Owner of the same Lot. In the event an objection is made, the vote involved will not be counted for any purpose except to determine whether a quorum exists.

(b) Class B. The Class B member is the Developer. Developer's Class B membership status is not dependent or contingent upon Developer's ownership of any Lot within the Property. The Class B member is entitled to five votes per Lot. Class B membership will cease and be converted to Class A membership, and the Developer Control Period will end, on the happening of one of the following events, whichever occurs earlier: (i) the expiration of 20 years from the date of recording of this Declaration; or (ii) by Developer's express surrender of Class B membership status, which surrender must be in a written instrument signed by Developer and recorded in the office of the Washington County Recorder. Unless the instrument specifies a different date, the date of surrender of Class B membership shall be the date of recording of the instrument.

3.3. Developer's Voting Rights in Expansion Area. In the case of expansion (as provided under this Declaration), Developer will have Class B Membership and receive the equivalent of five votes per Lot constructed in the Additional Property.

3.4. Change of Corporate Status. The Association has been set up and established as a non-profit corporation under Utah law. However, as provided in the Section 221 of the Act, the continuing existence and viability of the Association is not vested in its corporate status. During any period in which the Association is not incorporated or otherwise has a change of corporate status (e.g., involuntary dissolution under the Utah Nonprofit Corporation Act for failure to file for corporate renewal), the Governing Documents will nevertheless continue to be effective as the Governing Documents of the Association, and the Association, the Board, and all officers and committees operating under the authority of the Governing Documents will have all rights, power, and authority granted therein, and no Owner may escape or avoid any assessment, charge, lien, rule or other matter contained in the Governing Documents by virtue of such change of corporate status. In the case of non-incorporation, the Board is authorized, to the extent it deems necessary, and without approval of the Members, to re-incorporate under a same or similar name and such corporation shall be deemed the successor to the Association. In the event the Board does not reincorporate, the Association will continue to operate and function under the Governing Documents as an unincorporated association.

3.5. Validity of Votes and Consents. Any consent or vote given by an Owner on any matter in the Governing Documents will be valid for a period of 90 days, and will be binding on any subsequent Owner who takes title of the Lot during that period of time.

3.6. Indemnification. The Board, and each member thereof, will be indemnified by the Association against any loss, damage, claims or liability, including reasonable attorney fees, suffered or incurred by reason of such position, except to the extent such damage, claim, loss or liability is covered by any type of insurance; provided, however, that no such person will be indemnified against, or be reimbursed for any expense incurred in connection with, any claim or liability arising out of that person's own willful misconduct or gross negligence.

3.7. Rulemaking Authority. The Board may, from time to time, subject to the provisions of the Governing Documents and Utah law, adopt, amend and repeal rules and regulations governing, among other things, Short-term Rentals, use of any Limited Common Area and Common Area, parking

restrictions and limitations, limitations upon vehicular travel within the Property, and restrictions on other activities or improvements on the Property which, in the opinion of the Board, create a hazard, nuisance, unsightly appearance, excessive noise, or offensive smell.

3.8. **Notice; Promulgation of Rules.** A copy of the rules and regulations, as they may from time to time be adopted, amended or repealed, will be provided to each Owner within 15 days after the date of the Board meeting where the changes were made and may, but need not be, recorded. Upon Electronic Transmission or other delivery, said rules and regulations have the same force and effect as if they were set forth in and were a part of this Declaration. In addition to or in lieu of providing notice by mail, the Board may provide notice by Electronic Transmission to Owners. In addition to keeping the Board informed as to their current mailing address, Owners must maintain a current e-mail address with the Board for such purpose.

3.9. **Management Agreement; Property Manager.** The Board may engage for the Association the services of a property manager to perform such duties and services as the Board authorizes. The Board may delegate to and otherwise authorize the property manager to perform those services to which the Board itself may perform under the Governing Documents or the Act, and those services to which the Act otherwise authorizes a manager to perform. Any contract or agreement for services entered into by the Board for and on behalf of the Association and the property manager may not exceed a term of one year. Fees, costs, and other charges of the property manager will be a Common Expense. Subject to the requirements of Section 10.2 pertaining to Short-Term Rentals, the property manager may also provide services to individual Owners, such as leasing individual Units as may be determined between the property manager and the Owner; *provided however*, that services performed for individual Owners that are not performed for all the Association will not be Common Expenses but will be charged to such Owners as the Owners and the property manager may determine.

ARTICLE 4 **FINANCES AND ASSESSMENTS**

4.1. **Assessments; Authority.** The Association is authorized to levy and collect assessments against the Owners as provided for herein. The following are the types of assessments that may be levied and collected by the Association, which are more particularly described below: (a) annual assessments or charges; (b) special assessments; (c) specific assessments; (d) emergency assessments; (e) any other amount of assessment levied or charged by the Board pursuant to this Declaration; and (f) interest, costs of collection and reasonable attorney fees, as hereinafter provided.

4.2. **Creation of Lien and Personal Obligation of Assessments.** Excepting Developer, each Owner of any Lot by acceptance of a deed therefor, whether or not it is expressed in any such deed or other conveyance, covenants and agrees to pay to the Association all assessments and charges, however denominated, which are authorized in the Governing Documents. All such amounts are a charge on the Lot and will be a continuing lien upon the Lot against which each such assessment or amount is charged, which lien arises when an Owner fails or refuses to pay an assessment when due. Such assessments and other amounts are also the personal obligation of the person who was the Owner of such Lot at the time the assessment became due. No Owner is exempt from liability for assessments by non-use of Common Area, abandonment of his Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off may be claimed or allowed for any alleged failure of the Association, the Board, or Developer to take some

action or perform some function required of it, or for inconvenience or discomfort arising from the making or repairs or improvements, or from any other action it takes.

4.3. Purpose of Assessments. The assessments levied by the Association will be used to advance the purposes for which the Association is formed, as set forth and articulated in the Governing Documents. The assessments may provide for, but are not limited to, the payment of taxes on Association property and insurance maintained by the Association; the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the Common Area and Limited Common Area; the payment of the cost of repairing, replacing, and maintaining any roadways; payment of fees and charges for recreational facilities, amenities, and utilities and similar services (including without limitation, internet and cable service) that the Association contracts for on behalf of the Owners; the payment of administrative expenses of the Association; the payment of insurance deductible amounts to the extent not otherwise recoverable from a third party; the establishment of capital and operational reserve accounts; the payment of any professional services deemed necessary and desirable by the Board; and other amounts required by this Declaration or that the Board determines to be necessary to meet the primary purposes of the Association. The assessments may provide, at the discretion of the Board, for the payment of other charges including (without limitation) maintenance, management, and utility charges.

4.4. Initial Annual Assessments. The Developer will initially establish the amount of the annual assessments. Thereafter, the establishment of annual assessments will be according to the procedures and requirements of Section 4.5.

4.5. Annual Assessments; Budgeting.

(a) **Adoption of Budget.** At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for that fiscal year, for the purpose of calculating and establishing the annual assessments for that fiscal year. Annual assessments for Common Expenses will be based upon the estimated net cash flow requirements of the Association to cover items including, without limitation, the cost of routine maintenance and operation of the Common Area and Limited Common Area; premiums for insurance coverage as deemed desirable or necessary by the Association; landscaping, care of grounds, and common lighting within the Common Area; routine renovations within the Common Area; wages; common water and utility charges for the Common Area; legal and accounting fees; management fees and expenses; expenses and liabilities from a previous assessment period; and the supplementing of the reserve fund for general, routine maintenance, repairs, and replacement of the Common and Limited Common Area as required by Section 211 of the Act.

(b) **Notice of Budget and Assessment.** The Board will send a copy of the final budget, together with notice of the amount of the annual assessment to be levied pursuant to such budget, to each Owner at least 30 days prior to the effective date of such budget. The budget will automatically become effective unless disapproved in writing by Members representing at least 51% of all eligible votes in the Association. Any such petition must be presented to the Board within 10 days after notice of the budget and assessment. There is no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings pursuant to the Bylaws. Unless the budget for the assessment is disapproved by the Members as set forth above, the Board is thereafter authorized to levy the assessment as provided for herein. During the Developer Control Period, the Owners may not disapprove any budget.

(c) Failure or Delay in Adopting Budget. The failure or delay of the Board to prepare or adopt a budget for any fiscal year does not constitute a waiver or release in any manner of an Owner's obligation to pay his allocable share of the Common Expenses and in the event of such failure or delay, all Owners must continue to pay assessments on the same basis as during the last year for which an assessment was made until notified of the amount of the new annual assessment which is due on the first day of the next payment period which begins more than 30 days after such new annual or adjusted budget is adopted and the Owners receive notice as provided herein.

(d) Automatic Budget Approval. Notwithstanding the foregoing, if the budget proposed by the Board will increase the annual assessment no greater than five percent more than the previous annual assessment, then such budget and corresponding annual assessment will be automatically approved and effective upon a 30-day notice.

(e) Adjustment of Budget and Assessment. The Board may revise the budget and adjust the annual assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth in this Section 4.5(b), *provided, however,* that such an adjustment is exempt from the requirements of Section 4.5(b) if the adjustment would either decrease the annual assessment or increase the annual assessment by no greater than 3.25%.

4.6. Special Assessments. In addition to the annual assessments, the Board may levy in any assessment year a special assessment, applicable to that year only to cover unbudgeted expenses or expenses in excess of those budgeted, including but not limited to defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of Common Area or Limited Common Area and any structures, fixtures and personal property related thereto, or to purchase, acquire, or otherwise add additional Common Area. Any such special assessment may be levied against the Entire Membership (excluding Developer) if such special assessment is for Common Expenses. Except as otherwise provided in this Declaration, any special assessment requires the affirmative vote or written consent of a majority of the Entire Membership, if a Common Expense. Special assessments will be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal years in which the special assessment is approved.

4.7. Specific Assessments. The Association has the power to levy specific assessments against a particular Lot to cover costs incurred in bringing any Lot into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board must give the Owner prior written notice and an opportunity for a hearing, in accordance with the Bylaws, before levying any specific assessment under this subsection.

4.8. Emergency Assessments. Notwithstanding anything contained in this Declaration, the Board, without Member approval, may levy emergency assessments in response to an emergency situation. Prior to the imposition or collection of any assessment due to an emergency situation, the Board must pass a resolution containing the written findings as to the necessity of such expenditure and why the expenditure was not or could not have been reasonably foreseen or accurately predicted in the budgeting process and the resolution shall be distributed to the Members with the notice of the emergency assessment. If such expenditure was created by an unbudgeted utility maintenance or similar expense or increase, the assessment created thereby will be discontinued by the Board by a similar resolution, if such expense is subsequently reduced, or to the extent the next succeeding annual budget incorporates said

increase into the annual assessment. An emergency situation is one in which the Board finds: (a) an expenditure necessary, in its discretion, or required by an order of a court, to defend the Association in litigation, or to settle litigation; (b) an expenditure necessary to repair or maintain the Property or any part of it for which the Association is responsible where a threat to personal safety on the Property is discovered; (c) an expenditure necessary to repair, maintain, or cover actual Association expenses for the Property or any part of it that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget (for example: increases in utility rates, landscape or maintenance contract services, attorney fees incurred in the defense of litigation, etc.); or (d) such other situations in which the Board finds that immediate action is necessary and in the best interests of the Association.

4.9. Uniform Rate of Assessment. Unless otherwise provided for in this Declaration or elsewhere in the Governing Documents, assessments must be fixed at a uniform rate for all Lots. No assessments will accrue against Lots owned by Developer during the Developer Control Period.

4.10. Developer's Option to Fund Budget Deficits. During the Developer Control Period, Developer may, but is not obligated to, fund any budget deficit of the Association, including, without limitation, funding any initial capital or operational reserve fund. In the event Developer funds any budget deficit, it does not establish any obligation by Developer to continue to fund any future deficits. To the extent not prohibited by law, the Developer may be reimbursed for funding any budget deficit.

4.11. Date of Commencement of Annual Assessments; Due Dates.

(a) The assessments provided for herein commence to accrue on the first day of the month following conveyance of a Lot to a purchaser. The first assessment will be adjusted according to the number of months remaining in the calendar year. In the absence of a determination by the Directors as to the amount of said assessment, the assessment will be an amount equal to 90% of the maximum assessment provided above.

(b) At least 30 days prior to the commencement of each new assessment period, the Directors will send or cause to be sent a written notice of the annual assessment to each Owner subject thereto. This notice is not a pre-requisite to validity of the assessment.

(c) The assessment due dates will be established by the Directors.

(d) The Directors will prepare a roster of the properties and the assessments applicable thereto at the same time that it fixes the amount of the assessment. The roster will be kept by the Treasurer of the Association, who will record payments of assessments and will allow inspection of the roster by any member at reasonable times.

4.12. Effect of Non-Payment of Assessment; Remedies of the Association. Any assessment or installment thereof not paid within 10 days after the due date therefor is deemed delinquent and will bear interest from the due date at the rate of 18% per annum (or such lesser rate as the Board determines appropriate) until paid. In addition, the Board may assess a late fee for any unpaid balance after the 10-day grace period from the due date. The amount of the late fee will be set forth in a schedule of fines that the Board adopts and publishes from time to time.

(a) **Remedies.** To enforce this Article, the Board may, in the name of the Association:

- (i) bring an action at law against the Owner personally obligated to pay any such delinquent assessment without waiving Association's lien for the assessment;
- (ii) after giving notice by certified mail as required by Section 303 of the Act, foreclose the lien against the Lot in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law, to the same extent as though the Association lien was a trust deed;
- (iii) restrict, limit, or totally terminate any or all services performed by the Association on behalf of the delinquent Owner;
- (iv) terminate, in accordance with Section 309 of the Act, the Owner's right to receive utility services paid as a Common Expense and/or terminate the Owner's right of access and use of any recreational facilities;
- (v) pay delinquent utilities on behalf of an Owner of a Unit and, when appropriate, enter and winterize the Lot, as provided in Section 225 of the Act;
- (vi) if the Owner is leasing or renting the Lot, the Board may, in accordance with Section 310 of the Act, demand that the Owner's tenant pay to the Association all future lease payments due to the Owner, beginning with the next monthly or other periodic payment, until the amount due to the Association is paid;
- (vii) exercise any other rights authorized by the Act for non-payment of assessments and other charges;
- (viii) suspend the voting rights of the Owner for any period during which any assessment or portion thereof against the Owner's Lot remains unpaid;
- (ix) accelerate all assessment installments that will become due within the subsequent 12 months so that all such assessments for that period become due and payable at once. This acceleration provision may only be invoked against an Owner who has been delinquent in paying any assessment or installment two or more times within a 12 month period; and/or
- (x) Record a lien against the Lot on any installment payment more than 60 days past due with the cost of such being added to the Owner's account.

(b) Attorney Fees and Costs. There will be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and reasonable attorney fees incurred by the Association, together with, where applicable, an account for the reasonable rental for the Lot from time to time of commencement of the foreclosure. The Association is entitled to the appointment of a receiver to collect the rental income or the reasonable rental without regard to the value of the other security.

(c) Power of Sale. A power of sale is hereby conferred upon the Association which it may exercise. Under the power of sale the Lot of an Owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were beneficiary under a deed of

trust. Prior to such sale, the Association will designate a person or entity qualified by law to serve as trustee for purposes of power of sale foreclosure. The Developer will convey and warrant pursuant to Utah Code Sections 57-1-20 and 57-8a-302 to said qualified trustee that is named in any supplemental recording with power of sale, the Lot(s) and all improvements to the Lot(s) for the purpose of securing payments of assessments under the terms of this Declaration.

4.13. Exempt Property. The following property subject to this Declaration is exempt from the assessments created herein: (a) all property dedicated to and accepted by any local public authority; (b) all Common Area; (c) all Lots or other real property owned by Developer; and (d) any other property declared exempt as set forth in this Declaration or within any Plat.

4.14. Subordination of Lien to Mortgages. The lien of the assessments provided for herein is subordinate to: (a) a lien or encumbrance recorded before the Declaration is recorded; (b) a first or second security interest secured by a Mortgage or trust deed that is recorded prior to any notice of lien filed by or on behalf of the Association; and (c) a lien for real estate taxes or other governmental assessments or charges against the Lot.

4.15. Termination of Lien. Sale or transfer of any Lot will not affect the assessment lien. However, the sale or transfer of a Lot pursuant to foreclosure of a first Mortgage or any proceeding in lieu thereof, extinguishes the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer, however, relieves an Owner from personal liability for assessments coming due after taking title or from the lien of such later assessments.

4.17. Books, Records, and Audit.

(a) The Association will maintain current copies of the Governing Documents and other similar documents, as well as its own books, records and financial statements which will all be available for inspection pursuant to Section 227 of the Act by Owners and insurers as well as by holders, insurers and guarantors of first mortgages, during normal business hours upon reasonable notice. Charges will be made for copying, researching or extracting from such documents. An Owner or holder, insurer, or guarantor of a first Mortgage may obtain an audit of Association records at its own expense so long as the results of the audit are provided to the Association.

(b) The Association will prepare a roster of Owners in the Property and the assessments applicable thereto at the same time that it fixes the amount of the annual assessment. The roster will be kept by the Treasurer of the Association, who will record payments of assessments and allow inspection of the roster by any Member at reasonable times.

(c) The Association will, upon written request, and for a reasonable charge not to exceed the amounts provided in the Act, furnish a written statement signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid. Such written statement, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

ARTICLE 5
INSURANCE

5.1. Casualty Insurance on Insurable Common Area.

(a) The Board will keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association deems desirable. The Association may also insure any other property whether real or personal, owned by the Association, against loss or damage by fire and such other hazards as the Association deems desirable, with the Association as the Owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area will be written in the name of, and the proceeds thereof will be payable to, the Association. Insurance proceeds will be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses which will be included in the regular annual assessments made by the Association.

(b) In addition to casualty insurance on the Common Area, the Board may elect to obtain and continue in effect, on behalf of all Owners, adequate blanket casualty and fire insurance in such form as the Board deem appropriate in an amount equal to the full replacement value, without deduction for depreciation or coinsurance, of all of the Units including the structural portions and fixtures thereof. Insurance premiums from any such blanket insurance coverage, and any other insurance premiums paid by the Association will be a common expense of the Association to be included in the regular annual assessments levied by the Association. The insurance coverage with respect to the Units will be written in the name of, and the proceeds thereof will be payable to the Association as trustee for the Owners. If the Association becomes aware that such insurance is not available, the Association will, within seven calendar days after becoming aware of that fact, give all Owners notice as provided in Section 214 of the Act.

(c) The Association policies may contain a reasonable deductible and the amount thereof will not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements herein. In the event of an insured loss, the deductible will be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and opportunity to be heard, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or tenants, then the Board may assess the full amount of such deductible against such Owner and the Owner's Lot, to be collected as an assessment against the Owner's Lot.

5.2. Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area improvements, the Association will repair or replace the same from the insurance proceeds available, unless this Declaration is terminated and the Association dissolved, the repair would be illegal or at least 75% of the allocated voting interests vote not to rebuild. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a reconstruction assessment against all Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other common assessments made against the Owners. The Association will maintain blanket casualty and fire insurance on the Units and will repair or replace the same to the extent of the insurance proceeds available. In the event of damage or destruction by fire or other casualty to any portion of the Property covered by

insurance written in the name of the Association, the Board is empowered to, and will, represent the Members in any proceedings, negotiations, settlements or agreements. The Association is appointed attorney-in-fact of each Owner for this purpose.

5.3. Liability Insurance. The Board will obtain a comprehensive policy of public liability insurance covering all of the Common Area for at least \$2,000,000.00 per occurrence for personal or bodily injury and property damage that results from the operation, maintenance or use of the Common Areas. Liability insurance policies obtained by the Association shall contain a "severability of interest" clause or endorsement, which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

5.4. Fidelity Insurance. The Board may elect to obtain fidelity coverage against dishonest acts on the part of managers, Directors, officers, employees, volunteers, management agents or others responsible for handling funds held and collected for the benefit of the Owners or Members. In procuring fidelity insurance the Board will seek a policy which: (a) names the Association as obligee or beneficiary; (b) is written in an amount not less than the sum of (i) three months' operating expenses and (ii) the maximum reserves of the Association which may be on deposit at any time; and (c) contains waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee."

5.5. Annual Review of Policies. The Board will review all insurance policies at least annually in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacements of the property, which may be damaged or destroyed, and to ensure that insurance coverage complies with currently existing legal requirements. The Board may, to the extent it deems necessary to more fully protect and insure the Association and its property, or to otherwise comply with evolving laws and insurance standards, modify the coverage standards set forth in this Article 5 without the necessity of amending this Declaration.

ARTICLE 6 **ARCHITECTURAL CONTROLS AND STANDARDS**

6.1. Architectural Committee. An Architectural Committee is hereby established to perform the functions set forth in this Declaration. The Architectural Committee has sole and exclusive authority with respect to all approvals and decisions required for any architectural change. Prior to the commencement of any excavation, construction or remodeling of any structure or of any addition to any structure, or modification of the natural topography of any Lot, or installation of fences or landscaping elements, approval of the Architectural Committee is required.

6.2. Appointment and Membership. After the Developer Control Period terminates, the Architectural Committee will be composed of a minimum of three persons appointed by the Board. If the Board does not establish or appoint the Architectural Committee, the Board itself will carry out the functions and responsibilities of the Architectural Committee. Notwithstanding the above, during the Developer Control Period, the Developer is entitled to carry out the functions and responsibilities of the Architectural Committee or may otherwise appoint all members of the Architectural Committee.

6.3. Architectural Committee Approval. No Owner or other person may attach, erect, install, or place anything on the exterior of Units or other buildings and structures in the Property without first obtaining approval from the Architectural Committee. In this regard, no structure, building, fence, wall,

or thing (including without limitation any television, radio, wireless, or other electronic antenna, satellite dish or other device of any type) may be placed, erected, or installed upon any Lot or Unit and no improvements or other work (including exterior alterations of existing improvements, or planting or removal of landscaping) may take place within the Property until the plans and specifications showing, without limitation, the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and received prior approval in writing by the Architectural Committee in accordance with the provisions this Declaration and any rules and regulations adopted by the Architectural Committee. Architectural Committee approval is required regardless of whether the structure, building, fence, wall, or thing to be constructed, placed, erected, or installed is new, or an addition, extension or expansion, change or alteration, or re-construction, replacement, re-erection, or re-installation of any of the foregoing.

6.4. **Rules, Regulations, Guidelines and Procedures.** The Architectural Committee will adopt reasonable rules and regulations to carry out its duties, including standards for guidance in approving or disapproving plans and specifications pursuant to this Article. The Architectural Committee may establish rules, regulations, guidelines and procedures to govern the Property, including Architectural Guidelines.

6.5. **Rights of Approval.** The Architectural Committee has the right to refuse or approve any plans and specifications and has the right, in so doing, to take into consideration the suitability of the proposed building, the materials of which it is to be built, the site upon which it is proposed to be erected, the harmony thereof with the surroundings, and the effect of said building, or other structure so planned, on the outlook from adjacent or neighboring property. In the event the Architectural Committee fails to approve or disapprove in writing any such plans within 60 days after the submission thereof to the Architectural Committee, then approval shall be deemed to have been given.

6.6. **Non-Liability.** The Architectural Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article. Any errors or omissions in the design of any building, other improvement or landscaping and any violation of any governmental ordinance are the sole responsibility of the Owner and the Owner's designer, architect, or contractor. The Architectural Committee's review of plans will in no way be concerned with structural or mechanical integrity or soundness.

6.7. **Waiver.** The approval of the Architectural Committee of any plans and specifications for any work done or proposed shall not constitute a waiver of any right of the Architectural Committee to disapprove any similar plans and specifications subsequently submitted.

6.8. **Developer Exemption.** Developer shall be exempt from the provisions, restrictions, and requirements of this Article, as the same exists or as it may be amended, supplemented, or replaced in accordance with other provisions of the Declaration.

ARTICLE 7 **PARTY WALLS**

7.1. **General Rules of Law to Apply.** Each wall, including any floor or ceiling, that is built as a part of the original construction upon the Property which serves and/or separates any two adjoining Units constitutes a party wall. To the extent not inconsistent with the provisions of this Article, the general

rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions apply thereto.

7.2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall will be shared equally by the Owners who make use of the wall.

7.3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, then, to the extent said destruction or damage is not covered by insurance and repaired out of the proceeds of the same, any Owners who share the wall will restore it and contribute to the cost of restoration thereof in proportion to their use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

7.4. Exposure to Elements. Notwithstanding any other provision of this Article, an Owner who by negligent or willful actions causes a party wall to be exposed to the elements will bear the whole cost of furnishing the necessary protection against such elements to the extent that said protection is not covered by insurance and paid for out of the proceeds of the same.

7.5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article is appurtenant to the land and passes to such Owner's successors-in-title.

7.6. Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Article, each party may choose one arbitrator, and such arbitrators will choose one additional arbitrator within 10 days of their selection, and the decision will be by a majority of all the arbitrators. Should any party refuse to appoint an arbitrator within 10 days after written request to do so, the Board may select an arbitrator for the refusing party.

ARTICLE 8 MAINTENANCE

8.1. Association's Responsibility. Except as otherwise set forth herein, the Association is responsible for maintenance of the Common Area, including Limited Common Area. The cost of such maintenance is a Common Expense. This maintenance includes but is not limited to upkeep of all landscaping, upkeep and maintenance of all roadways, street lights, sidewalks, and parking areas, and upkeep and maintenance of all buildings and facilities that constitute part of the Common Area and any applicable Limited Common Area.

8.2. Owner's Responsibility. Each Owner is responsible for maintenance and repair of his or her Unit and any Limited Common Area designated for the exclusive use and occupancy of such Owner in a manner consistent with all applicable provisions of the Governing Documents, unless the Association expressly elects to assume such maintenance responsibility by resolution adopted by the Board. Notwithstanding the foregoing, if an Owner fails to perform maintenance which is the Owner's responsibility, the Board may, after 10 days written notice (which notice shall not be required in the event of emergency or threat to life, health, property or safety), provide maintenance upon the affected Unit or Limited Common Area and charge the Owner the costs of such maintenance as a specific assessment. The exercise of such right by the Board shall not create any ongoing obligation on the part of the Board or the Association to maintain any Unit or Limited Common Area for which any Owner has maintenance responsibility. Each Owner shall indemnify the Association from any claims, damages, or causes of action

that arise from or otherwise relate to such Owner's failure to properly maintain his or her Unit or any appurtenant Limited Common Area. This indemnification includes any attorney fees, costs, and expenses incurred by the Association.

8.3. Access at Reasonable Hours. For the sole purpose of performing the maintenance required or otherwise authorized by this Article, the Association, through its duly authorized agents or employees, have the right, after reasonable notice to the Owner, to enter upon any Lot or Limited Common Area at reasonable hours. This provision does not authorize entry into the interior of any Unit.

8.4. Other Services Provided by Association. To the extent determined to be necessary or desirable by the Board, the Association may provide additional services to the Owners as a Common Expense or specific assessment, as appropriate.

8.5. Alteration of Certain Maintenance Duties by Rule. The duty of maintenance for the area of a Unit outside the walls of the Units, and the Limited Common Area adjacent and appurtenant thereto may be altered by rule of the Association.

ARTICLE 9 CONDEMNATION; PARTITION

9.1. Condemnation. Whenever all or any part of the Common Area is taken (or conveyed in lieu of and under threat of condemnation by the Board and, if it is within the Developer Control Period, by the Developer) by any authority having the power of condemnation or eminent domain, each Owner is entitled to notice thereof. The award made for such taking will be payable to the Association as trustee for all Owners to be disbursed as follows:

(a) If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within 60 days after such taking the Developer, during the Developer Control Period, and Members representing at least 75% of the Entire Membership otherwise agree, the Association will restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board. If such improvements are to be repaired or restored, the above provisions in Section 5.2 regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired will apply.

(b) If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds will be disbursed to the Association and used for such purposes as the Board determines.

9.2. No Partition. Except as otherwise permitted in this Declaration, the Common Area will remain undivided and no person or entity may bring any action for the partition of any portion of the Common Area without the written consent of all Owners and Mortgagees. This section may not be

construed to prohibit the Board from acquiring and disposing of title to real property which may or may not be subject to this Declaration. Owners may not partition any Lot.

ARTICLE 10 **USE AND CONDUCT RESTRICTIONS AND REQUIREMENTS**

The following use and other restrictions apply to the Property:

10.1. **General Use Restrictions.** All of the Property that is subject to this Declaration is hereby restricted to residential dwellings and buildings in connection therewith, including but not limited to community buildings on the Common Area, if any. All buildings or structures erected on the Property must be of new construction and no buildings or structures may be removed from other locations to the Property. After the initial construction of a Unit, no subsequent building or structure dissimilar to that initial construction may be built on that Lot. No building or structure of a temporary character, trailer, basement, tent, camper, shack, garage, barn or other outbuilding may be placed or used on any portion of a Lot at any time.

10.2. **Use of Units as Short-term Rentals.** Notwithstanding the limitations and restrictions contained in Article 11, Owners may rent their Units as Short-term Rentals. An Owner will at all times the Unit is rented assure compliance with the Governing Documents and any rules and regulations for the Property. In addition, Owners opting to rent their Units as Short-term Rentals shall comply with all state laws and local ordinances governing Short-term Rentals, including without limitation, Sections 17.20.260, 17.68.060 and/or 17.74.035 of the Santa Clara Municipal Code (and any successor ordinances) to the extent applicable. To that end, the Association may, from time to time, in its discretion, establish reasonable rules and regulations with respect to Short-term Rentals for the purpose of preserving the character and property values of the Property, promoting peace and safety within the Property, and ensuring compliance with applicable laws and ordinances. Notwithstanding anything to the contrary set forth herein, all Short-term Rentals within the Property must be managed by a property management company approved by the Board pursuant to a written property management agreement.

10.3. **Timeshares Prohibited.** No Owner may offer or sell any interest in his Lot under a "timesharing" or "interval ownership" plan. This prohibition does not preclude any Owners from using their Units as Short-term Rentals, as provided for in this Declaration.

10.4. Parking.

(a) No motor vehicle which is inoperable is allowed within the Property. Any motor vehicle in violation of this restriction is subject to removal by the Association, at the vehicle owner's expense. Any vehicle that at any time inhibits the flow of traffic on the streets in the Property is subject to removal by the Association, at the vehicle owner's expense. Upon demand, the owner of the vehicle will pay any expense incurred by the Association in connection with the removal of that owner's vehicle. If the vehicle is owned by an Owner, any amounts payable to the Association will be secured by the Owner's Lot and the Association may enforce collection of said amounts in the same manner provided for in this Declaration for the collection of assessments.

(b) If parking spaces are designated on the Plat with numbers corresponding to Lot numbers, each such space is for the exclusive use of the Owner with the corresponding number. If parking areas are not designated on the Plat with Lot numbers, the Board may assign vehicle

parking space for each Lot, if applicable. Parking spaces within the Property shall be used for parking of motor vehicles actually used by the Owner or the Owner's immediate family or guests for personal use, and not for commercial use.

(c) Recreational vehicles, boats, travel trailers and similar personal property may not be parked within the Property unless there is a designated RV parking area, or as permitted by rule of the Association. The Board may charge a fee for use of any RV parking area, which fee will take into account the reasonable costs of maintenance and repair associated with the parking area. Parking in any RV parking area shall be limited to a maximum of seven (7) consecutive days; provided that the Board shall have the right to grant an extension of such maximum parking period, subject to the payment of an appropriate parking extension fee of up to \$10.00 per day, as determined by the Board. The fees charged for such parking constitute liens upon the Lot of the Owner using said parking and may be collected by the Association in the manner provided for collection of any assessment herein.

10.5. Commercial Activity. No commercial activities of any kind whatever may be conducted on any portion of the Property, including any in-home business as defined by local ordinances. The foregoing restrictions do not apply to the commercial activities, signs and billboards, if any, of the Developer or its agents during the construction and sales period or by the Association in furtherance of its powers and purposes set forth in the Governing Documents, as the same may be amended from time to time or to any on-site property manager under contract to perform services for the Association. The foregoing restriction do not apply to resale activity of Lots, subject to any sign restrictions or other applicable restrictions or standards.

10.6. Smoking. The Board is authorized, by rule or resolution, to prohibit tobacco smoking within or around the Common Areas and any other portion of the Property, including outside Units or on around Limited Common Area (including patios), when it is determined that the smoke or the smell from the smoking might filter or drift into other Units or interfere with the use and enjoyment of the Property by other Owners. In addition, the Board is authorized to enforce and otherwise bring an action for nuisance under the provisions of Title 78B, Chapter 6 of the Utah Code for and on behalf of any Owner against any other Owner or occupant whose smoking creates or constitutes a nuisance under said provision of the Utah Code.

10.7. Storage of Waste and Recycling Containers. Each Owner shall be required to keep all waste and recycling containers issued to such Owner's Unit within either the enclosed garage for such Unit or, if applicable, those portions of the Common Area specifically designated by the Association for storage of such Owner's waste and recycling containers (each, an "Approved Storage Location") at all times other than when such containers are placed at curbside for emptying by the applicable waste/recycling removal service. Each Owner shall be responsible for placing such Owner's waste/recycling containers at curbside for waste/recycling pickup on the days designated for removal and for returning such containers to an Approved Storage Location once the containers have been emptied.

10.8. Pets and Animals.

(a) Restrictions. To the fullest extent permitted by applicable law, the Board has the right to regulate and restrict, by rule, the keeping and harboring of pets and animals within the Property, including the keeping and harboring of pets and animals within Units or on any Lot. To the extent permitted by applicable law, this right includes the right to restrict the type, breed, or

species of animal, the number of animals which may be kept, the areas in which the animals may be kept or taken, and to completely eliminate the keeping and harboring of pets. Except as otherwise required by applicable law, and until such time as the Board adopts a resolution approving different rules in accordance with the terms hereof, the following rules shall apply to the keeping and harboring of pets and animals within the Property:

- (i) No more than two (2) pets shall be kept on any Lot at any time.
- (ii) Pets weighing over 25 lbs. shall not be permitted on the Property.
- (iii) Owners shall keep pets under control at all times.
- (iv) Owners shall keep pets leashed and in compliance with local ordinances pertaining to animals.
- (v) Owners shall not leave pets unattended for any unreasonable periods.
- (vi) The following dog breeds shall be prohibited: Pit bulls (including American Pit Bull Terrier, American Staffordshire Terrier, Staffordshire Terrier, and American Bulldog), German Shepherds, Akitas, Rottweilers, Boxers, Doberman Pinschers, Mastiff Breed, Malamutes, Cane Corso, Husky, Chow Chow, Any Wolf Hybrid, and Great Danes.
- (vii) Commercial breeding of pets and animals is prohibited within the Property and may not be allowed or authorized by Association rule or resolution.

For purposes hereof, "pets" are defined as dogs, cats, or any caged animal. Pets that live in an aquarium on a permanent basis are not subject to the provisions of this Section 10.8.

(b) Procedural Rules and Regulations. The Board may also establish procedural rules and regulations to implement its rules, which should include provisions for notice and hearing, and the right to charge an impact fee in accordance with a schedule of fees adopted and published by the Board from time to time.

(c) Owner Responsibility. The provisions of this Section 10.8 shall apply to each Owner as well as any tenant, permittee, or other occupant of such Owner's Lot, and each Owner shall be responsible for any violation of this Section 10.8 by any such tenant, permittee, or other occupant. Owners must take due care to ensure that their pets and animals do not make excessive noises, cause any offensive smell, or create any physical threat to the safety of any other Owner or person within the Property, or the safety of any guests, tenants, or invitees, particularly among children. Owners are responsible for any property damage, injury, or disturbance that their pet may cause or inflict anywhere within the Property. To the extent the Association is subjected or otherwise exposed to any liability, claims, damages, costs, losses, or expense as a result of the actions of an animal, the Association has the right to make a claim against the Owner. Owners shall indemnify the Association from any claims, damages, or causes of action that arise from or otherwise relate to the conduct of their pets. This indemnification includes any attorney fees, costs, and expenses incurred by the Association.

(d) **Violations.** In addition to any other remedies set forth herein for violations of this Declaration, the Board may levy a fine against an Owner of up to \$50.00 per day for each day such Owner (or any tenant, permittee, or other occupant of such Owner's Unit) is in violation of this Section 10.8.

ARTICLE 11 **LEASES AND LEASING**

11.1. **Purpose and Intent of Lease Restrictions.** The purpose of this Article is to further Developer's intent to protect the value and desirability of the Property as a harmonious and attractive community by regulating the leasing of Units within the Property. This Article 11 shall not apply to Short-term Rentals.

11.2. **Notification of Board.** An Owner who enters into a lease or rental agreement must first notify the Board in writing. A copy of any such lease or rental agreement must be submitted to the Board within 15 days after execution. Failure to provide notice and a copy of the lease to the Board may result in a fine of \$250.00. An Owner must comply with the foregoing notice provision for each tenant with which it enters into a lease or rental agreement and for each renewal of any existing lease or rental agreement.

11.3. **Leasing Restrictions.** Subject to the provisions of Section 209 of the Act, any lease or rental agreement must be in writing and provide that the terms of the lease are subject in all respects to the provisions of this Declaration and the other Governing Documents and that any failure by tenant to comply with the terms of such documents is a default under the lease. Units may be leased only in their entirety. There shall be no subleasing of Units or assignment of leases without prior written approval of the Board. Any lease or rental agreement, whether an initial agreement or any renewal thereof, must provide for a minimum lease term of not less than six months; *provided however* that the Board has the power to allow leases for a term of less than six months upon a showing by the Owner that such a lease is required to avoid undue hardship, and may issue exemptions for certain Owners as required by law.

11.4. **Enforcement Against Owner.** Notwithstanding any other rights of enforcement under this Declaration and other Governing Documents, or by applicable law, the Association may impose a fine, not to exceed 50% of the amount of the maximum annual assessment, on the Owner, which will constitute a lien upon such Owner's Lot, for each violation by Owner's tenant of this Declaration or other Governing Documents. Such fine will be imposed after a 10-day notice is given to the Owner of such violation. The Association may impose an additional fine on the Owner for each day such violation continues after the 10-day notice period provided herein, which additional fines will constitute a lien upon such Owner's Lot. The Association need not provide any additional notice prior to fining an Owner for a continuing violation. There will be added to any such fine reasonable attorney fees and costs incurred by the Association in enforcing this Article. Any fine levied pursuant to this Article is recoverable by the Association in the same manner as an assessment under Article 4, and creates a lien in favor of the Association against the Owner's Lot in the same manner as an assessment.

11.5. **Cumulative Nature of Remedies.** The remedies provided in this Article are cumulative and in addition to any remedies provided in this Declaration or at law or in equity.

ARTICLE 12 **EASEMENTS**

These easements are in addition to those which may be set forth elsewhere in the Governing Documents.

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

12.2. **Maintenance by Association.** An easement is hereby granted to the Association, its officers, agents, employees and to any maintenance company selected by the Association to enter in or to cross over the Common Area and Limited Common Area, if any, and any Lot to perform the duties of maintenance and repair.

12.3. **Owners' Easements of Enjoyment.** Every Owner has a right and easement of use and enjoyment in and to the Common Area and Limited Common Area, if any, which is designated by the Developer for the exclusive use of an Owner's Lot. This easement is appurtenant to and passes with the title to every Unit, subject to the provisions of the Governing Documents and such rules and regulations adopted by the Board.

12.4. **Easement for Developer.** The Developer has a transferable easement over and on the Common Areas and facilities and utilities for the purpose of making improvements on the Property or on any additional land under the Declaration, or any development, related or unrelated, on land described herein or adjacent to the Property and for the purpose of doing all things reasonably necessary and proper in connection with the same.

12.5. **Reservation of Easements by Developer.** The Developer hereby reserves to itself during the Developer Control Period the right to reserve easements over, beneath, and through the Property, including over the Common Area and Limited Common Area and related facilities, for the purpose of making improvements to and developing the Property or on any additional land submitted under the Declaration, including but not limited to construction, marketing, installation and upkeep of landscaping features, entrance features, project signage, street lights, paths, trails or sidewalks or other facilities or things benefiting the Property. The Developer reserves to itself during the Developer Control Period the right to make any dedications and to reserve, grant, vacate, or terminate any easements, rights-of-ways and licenses as may be reasonably required by any governmental authority or to carry out the intent and design of the Developer's plan for development of the Property, without compensation therefor.

12.6. **Easements of Record.** The easements provided for in this Article will in no way affect any other recorded easement.

12.7. **Limitations on Easements.** In no event will any easement granted or reserved herein be construed to or have the effect of permitting entry into the interior portion of any Unit.

ARTICLE 13 **SPECIAL DEVELOPMENT RIGHTS**

13.1. **Intent and Purpose of Special Development Rights.** In addition to any other rights granted or reserved to the Developer in this Declaration and the other Governing Documents, and notwithstanding any covenants, conditions, restrictions, or other provisions of limitation within this

Declaration, the Developer, as the developer of the Property, is granted special development rights. These combinations of rights maximize the flexibility of the Developer to adjust the size and mix of the Property to the demands of the marketplace before, during, and after development of the Property. This Declaration will be liberally construed to advance Developer's rights and interest in developing the Property.

13.2. Expansion of the Property. The Developer has the right to expand the Property by unilaterally subjecting any Additional Property, in whole, in part, or in phases, to this Declaration during the Developer Control Period.

(a) Expansion Procedure. The Developer will indicate its intent to have such Additional Property bound by this Declaration on the plat of such Additional Property and will record a declaration of annexation or supplemental declaration including and subjecting such Additional Property to this Declaration. Thereafter, such Additional Property will be considered as part of the Property in all respects, and lots therein will constitute Lots under this Declaration.

(b) Use of Expansion Property. Any Additional Property annexed hereto by the Developer will be exclusively for residential dwellings, architecturally compatible to the existing Units, similar to the Units already constructed, constructed out of similar materials, with similar Unit size. The Developer has the sole discretion as to development of the Common Area in any expansion area and may include any facilities or amenities thereon that Developer deems necessary and such Common Areas will be owned by the Association.

13.3. Withdrawal of Property. So long as it has the right to expand the Property, Developer has the right to remove any portion of the Property which has not yet been improved with structures from the coverage of this Declaration. The procedure for such withdrawal will follow the procedure for expansion as provided in this Article.

13.4. No Obligation to Expand or Develop. Developer has no obligation to annex any additional land to the Property or to develop or preserve any portion of additional land in any particular way or according to any particular time schedule.

13.5. Municipal Zoning and Subdivision Approvals. The Developer has the right to further subdivide the Property and to apply for any zoning or subdivision approvals or permits from the City of Santa Clara, or any other applicable governmental authority with respect to the Property or any adjacent property owned by Developer, whether or not such adjacent property is annexed into the Property. This right includes but is not limited to applying for and obtaining zoning permits, subdivision approvals, plat approvals, or approvals to amend the Plat or any plats. Further, except for any such approval that would (a) affect title to the Owner's Unit or (b) alter the boundaries of an Owner's Unit, each Owner hereby waives his or her right to object to any such approval sought by Developer, and, to the extent the approval and consent of any Owner is required under state or local law each Owner agrees to sign the application or other documents required for such action.

13.6. Dedication of Common Area. Notwithstanding anything to the contrary in this Declaration, during the Developer Control Period the Developer has the unilateral right to convey, transfer, sell, assign, or otherwise dedicate all or part of any Common Area to the City of Santa Clara or such other governmental entity or any third party as it deems necessary and appropriate. In the event the

Common Area has already been conveyed to the Association, the Association will approve and join in the dedication.

13.7. Developer Business, Marketing, and Sales. Notwithstanding any provisions to the contrary contained in this Declaration or any other Governing Documents, it is expressly permissible for Developer, or its written designee, to maintain such facilities and conduct such activities as in the sole opinion of Developer may be reasonably required, convenient or incidental to the construction and sale of Units during the Developer Control Period, and upon such portion of the Property including Lots or Common Area, if any, as Developer deems necessary, including but not limited to, a business office, storage areas, construction yard, signs, model units and sales offices. As part of the overall program of development of the Property into a residential community and to encourage the marketing thereof, the Developer has the right of use of any Units which have not been conveyed to purchasers or any Common Area thereon, including any Common Area, community buildings, without charge during the Developer Control Period to aid in its marketing activities.

13.8. Additional Development Rights. The Developer has the right to (a) dedicate any access roads and streets serving the Property for and to public use, to grant road easements with respect thereto and to allow such street or road to be used by owners of adjacent land; (b) convert any part or portion of the Property to a different regime of residential ownership; or (c) create or designate additional Common Area or Limited Common Area within the Property.

13.9. Assignment of Developer's Rights. Any and all rights and powers of the Developer contained in this Declaration and other Governing Documents may be delegated, transferred or assigned by the Developer, in whole or in part. To be effective, any such delegation, transfer, or assignment must be in writing, signed by Developer, indicate the extent and nature of such assignment, and be recorded in the Office of the Washington County Recorder. The assignment may limit Developer's rights to particular matters and reserve rights to the assigning Developer, as set forth in the instrument of assignment.

ARTICLE 14 AMENDMENT

14.1. By Class A Members. Except as otherwise specifically provided herein, this Declaration may be amended, modified, extended, or revoked, in whole or in part, by the affirmative vote or written consent, obtained by written ballot or otherwise, or any combination thereof, of Owners representing at least 67% of the Entire Membership in the Association. Notwithstanding the above, the percentage of votes necessary to amend a specific provision may not be less than the prescribed percentage of affirmative votes required for action to be taken under that provision.

14.2. By Developer. Developer has the right to unilaterally amend, modify, extend, or revoke this Declaration for any purpose during the Developer Control Period, with or without notice to the Class A Members. Thereafter, Developer may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on any Unit; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans to make, purchase, insure, or guarantee mortgage loans on any Unit; (d) to satisfy the requirements of any local, state, or federal governmental agency; or (e) to correct any scrivener's error. However, any such amendment occurring after the Developer Control Period may not adversely affect the title to any Lot unless the Owner consents in writing. Developer's right to amend will

be construed liberally and includes, without limitation, the right to amend and/or restate this Declaration in part or in its entirety.

14.3. By the Board. The Board has the right, after the Developer Control Period, to unilaterally amend this Declaration if such amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination.

14.4. Validity. No amendment made during the Developer Control Period is effective unless the Developer provides its prior express written consent to such amendment, which consent is within Developer's sole and absolute discretion. Any procedural challenge to an amendment made by the Board must be made within six months of its recordation or such amendment is presumed to have been validly adopted. In no event will a change of conditions or circumstances operate to amend any provisions of this Declaration.

14.5. Effective Date. Unless a later effective date is specified in the amendment, any amendment will be immediately effective upon recording in the office of the Washington County Recorder a copy of such amendment accompanied by a verified certificate of the Secretary of the Association stating that the required number of votes or consents was obtained and that a record of such votes or originals of the consents will be placed on file in the Association's office. Notwithstanding the foregoing, in the case of unilateral amendment by Developer as provided for herein, such amendment will be immediately effective upon recording in the office of the Washington County Recorder a copy of such amendment signed and verified by the Developer.

ARTICLE 15 **ENFORCEMENT**

15.1. Violations Deemed a Nuisance. Every violation of this Declaration or any rule, regulation, or resolution established pursuant to the authority of this Declaration is deemed a nuisance and is subject to all the remedies provided for the abatement or correction of the violation provided for in this Declaration, any rule, regulation, or resolution, or by law or equity.

15.2. Legal Action Authorized. The Association, through the Board, the Developer, and any Owner, have the right to enforce, by any proceeding at law or in equity, all provisions of this Declaration or any rule, regulation, or resolution established pursuant to the authority of this Declaration, including all charges and liens now or hereafter imposed pursuant to the authority of this Declaration, against any person, persons, or entities violating or attempting to violate any provision of this Declaration or any rule, regulation, or resolution established pursuant to the authority of this Declaration, to restrain or abate or otherwise recover damages for the violation, and against the land to enforce any charge or lien created by this Declaration. In addition to taking legal action, the Developer and the Board have the right to grant variances and stay enforcement proceedings against any Owner on a case-by-case basis when they determine such action is in the best interests of the Association.

15.3. Fines and Penalties. The Board may levy a fine or penalty against any Owner for any violation by such Owner, or such Owner's guests, tenants or invitees of this Declaration or any rule or regulation established pursuant to the authority of this Declaration. Unless otherwise specifically set forth in this Declaration, such fine or penalty will be in an amount that is specifically provided for in a fine schedule adopted, and amended from time to time, by the Board. The Board may establish time frames and requirements for written notice, hearings, and cure periods (in accordance with Section 208 of the Act)

for Owners in violation prior to levying such fine or penalty, which notice shall be at least 48 hours. Any fine or penalty levied by the Board that is not paid within 30 days (such time period shall be stayed should the Governing Documents require any period to cure or for notice and hearing) is recoverable by the Association in the same manner as an assessment under Article 4, and creates a lien in favor of the Association against the Owner's Lot in the same manner as an assessment.

15.4. Attorney Fees and Costs. Any fine or penalty levied against an Owner for any violation will include any attorney fees and costs incurred by the Association with respect to such violation. The prevailing party in any action to enforce this Declaration or any rule or regulation established pursuant to the authority of this Declaration is entitled to an award of reasonable attorney fees and costs incurred in such action.

15.5. Nonexclusive Remedies. All the remedies set forth in this Declaration are cumulative and not exclusive to any others provided elsewhere in the Governing Documents, the Act, or by other applicable laws and ordinances.

15.6. Non-Liability. The Board, officers, or Members of the Association are not liable to any Owner, tenant, member or other individual for a mistake in judgment, or for any negligence or nonfeasance arising in connection with the performance or non-performance of duties under the Governing Documents or the Act.

15.7. Arbitration; Mediation. The Board may, by rule or resolution, establish procedures for mandatory mediation or arbitration to settle disputes between and among the Association and Owners. Any such rule or resolution will operate prospectively only.

ARTICLE 16 GENERAL PROVISIONS

16.1. Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. All rights and powers of the Association may be exercised by the Board without a vote of the membership except where applicable law or the Governing Documents specifically require a vote of the membership.

16.2. Disclaimer of Liability. The Association is not liable for any failure of services obtained by the Association or paid for as a Common Expense, or for personal injury or property damage caused by the elements, any Owner, or any other person resulting from electricity, water, snow, or ice which may leak or flow from or over any of the Property or from any pipe, drain, conduit, appliance, or equipment, or any secondary or consequential damages of any type. No diminution, offset, or abatement of any assessment may be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Property by the Association or from any action taken by the Association to comply with any law, ordinance, or with the order or directive of any governmental authority.

16.3. Dates and Times. In computing any period of time prescribed or allowed by the Governing Documents, the day of the act, event, or default from which the designated period of time begins to run will not be included. The last day of the period so computed will be included, unless it is a Saturday, a Sunday, or a state or federal holiday, in which event the period runs until the end of the next

day that is not a Saturday, a Sunday, or a state or federal holiday. The deadline of the last day of the period so computed will be 5:00 P.M., Mountain Time.

16.4. **Interpretive Conflicts.** In the event of any conflict between the provisions of any of the Governing Documents, the documents will control in the following order of authority: (1) the Plat; (2) the Declaration; (3) the Articles; (4) the Bylaws; and (5) any rule, regulation, or resolution passed pursuant to the authority of the foregoing documents. A conflict exists when two provisions covering the same subject matter have different conditions or requirements that cannot be reconciled.

16.5. **Severability.** All of the terms and provisions of this Declaration are construed together, but if any one of said terms and provisions, or any part thereof, at any time is held invalid, or for any reason becomes unenforceable, no other terms and provisions, or any part thereof, will be thereby affected or impaired; and the Developer, Association and Owners, their successors, heirs and assigns will be bound by each term and provision of this Declaration, irrespective of the invalidity or enforceability of any other term or provision.

16.6. **Duration.** The covenants, conditions, restrictions, and easements of this Declaration run with and bind the Property, and inure to the benefit of and are enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors, and assigns for a term of 20 years from the date this Declaration is recorded, after which time said covenants will be automatically extended for successive periods of 10 years.

16.7. **Notices; Electronic Notice.** Any notice required to be sent under the provisions of these Bylaws is deemed to have been properly sent when delivered by Electronic Transmission, or when deposited in U.S. Mail, to the last known address of the person who is entitled to receive it. In addition to keeping the Board informed as to their current mailing address, Owners are required to maintain a current e-mail address with the Board for such purpose. In the absence of a specific instruction from the Member, the Member's email address currently on file with the Association will be used to provide notice to the Member. Notwithstanding these provisions, an Owner may, by written demand, require the Association to provide notice to the Owner by mail.

16.8. **Gender and Grammar.** The singular, wherever used herein, is construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, will in all cases be assumed as though in each case fully expressed.

16.9. **Waivers.** No provision contained in this Declaration is deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations which may occur.

16.10. **Topical Headings.** The topical headings contained in any article, section, or subsection of this Declaration are for convenience only and do not define, limit, or construe the contents of this Declaration or any provision hereof.

* * *

IN WITNESS WHEREOF, the undersigned executes this document this 20 day of September, 2021.

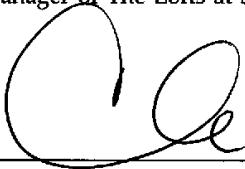
DEVELOPER:

The Lofts at Santa Clara, L.L.C.,
a Utah limited liability company

By: Austin Anderson
Austin Anderson, Manager

STATE OF UTAH)
) ss.
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this 20 day of September, 2021 by
Austin Anderson, as Manager of The Lofts at Santa Clara, L.L.C., a Utah limited liability company, on
behalf of the company.


Notary Public

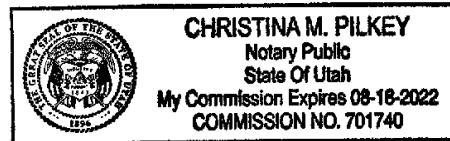


EXHIBIT "A"
(Legal Description)

Parcel 1 (Tax ID: SC-6-2-15-323):

Beginning at a point on the section line, said point being North 89°17'54" East 549.46 feet along the section line from the South Quarter Corner of Section 15, Township 42 South, Range 16 West, Salt Lake Base & Meridian, and running; thence North 89°17'54" West 445.70 feet along said section line to the easterly line of Lava Flow Drive; thence North 22°46'51" East 402.12 feet along said easterly line of Lava Flow Drive; thence South 69°17'48" East 273.45 feet; thence South 20°42'12" West 27.00 feet; thence South 69°17'48" East 41.50 feet; thence South 22°53'19" West 42.69 feet; thence North 89°17'54" West 30.64 feet; thence South 00°42'06" West 93.50 feet; thence South 89°17'54" East 54.59 feet; thence South 00°42'06" West 106.50 feet to the Point of Beginning.

Containing 115,196 square feet or 2.64 acres.

Parcel 2 (Tax ID: SC-6-2-15-324):

Beginning at a point on the section line, said point being North 89°17'54" East 549.46 feet along the section line from the South Quarter Corner of Section 15, Township 42 South, Range 16 West, Salt Lake Base & Meridian, and running; thence North 00°42'06" East 106.50 feet; thence North 89°17'54" West 54.59 feet; thence North 00°42'06" East 93.50 feet; thence South 89°17'54" East 30.64 feet; thence North 22°53'19" East 42.69 feet; thence North 69°17'48" West 41.50 feet; thence North 20°42'12" East 37.00 feet; thence Northeast 32.99 feet along an arc of a 21.00 foot radius curve to the left (center bears North 20°42'12" East, long chord bears North 65°42'12" East 29.70 feet with a central angle of 90°00'00"); thence North 20°42'12" East 54.00 feet; thence Northwest 23.56 feet along an arc of a 15.00 foot radius curve to the left (center bears North 69°17'48" West, long chord bears North 24°17'48" West 21.21 feet with a central angle of 90°00'00") to the southerly line of Santa Clara Drive; thence South 69°17'48" East 398.54 feet along said southerly line of Santa Clara Drive; thence South 234.71 feet to said section line; thence North 89°17'54" West 379.64 feet to the Point of Beginning.

Containing 121,962 square feet or 2.80 acres.

EXHIBIT "B"
(Bylaws)

[See attached]

**BYLAWS
of
Heritage Pointe Townhomes
Owners Association**

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* * *

BYLAWS
OF
HERITAGE POINTE TOWNHOMES OWNERS ASSOCIATION

ARTICLE 1
OFFICES AND REGISTERED AGENT

1.1. Principal Office. The principal office of Heritage Pointe Townhomes Owners Association, hereinafter referred to as the "Association", will be located in Washington County, Utah, at such place as the Board designates. The location of the principal office may be changed by resolution of the Board of Directors.

1.2. Registered Office and Agent. The registered office and registered agent of the Association, as required by Section 501 of the Utah Revised Nonprofit Corporation Act, Utah Code Ann. §§ 16-6a-101 et seq. (1953, as amended) (hereinafter the "Act"), may be changed from time to time as provided in the Act.

ARTICLE 2
DEFINITIONS

Except as otherwise provided herein, the definitions set forth in the Declaration of Covenants, Conditions, and Restrictions for Heritage Pointe Townhomes ("Declaration") and any applicable amendments and supplements thereto or restatements thereof shall control in these Bylaws.

ARTICLE 3
MEMBERSHIP AND VOTING RIGHTS

3.1. Membership. The Association has two classes of membership, Class A and Class B, as more fully set forth in the Declaration.

3.2. Voting Rights. Voting rights will be as set forth in the Declaration.

3.3. Evidence of Membership. No person, persons, entity or entities may exercise the rights of membership until satisfactory proof has been furnished to the Secretary of the Association of qualification as a Member, or nominee of a Member, pursuant to the terms of the Articles of Incorporation and the Bylaws. Such proof may consist of a copy of a duly executed and acknowledged warranty deed or title insurance policy showing said person, persons, entity or entities, or the person nominating him or her qualified in accordance therewith, in which

event said deed or title insurance policy shall be deemed conclusive evidence in the absence of a conflicting claim based upon a later deed or title insurance policy.

3.4. Suspension of Membership. The rights of membership are subject to the payment of assessments and other charges levied by the Association. If a Member fails to make payment of any assessment or other charge levied by the Association within 30 days after the same becomes due and payable the voting rights of such Member may be suspended by the Board of Directors until such assessment or charge has been paid. Rights of a Member may also be suspended for violation of any of the use restrictions and for infraction of any rules and regulations established by the Board of Directors. Except for suspension of voting rights for failure to pay assessments or other charges, any suspension of the rights of membership will be pursuant to notice and hearing. The Board will establish a procedure for notice and hearing that is fair and reasonable taking into consideration all of the relevant facts and circumstances.

ARTICLE 4 MEETINGS OF MEMBERS

4.1. Annual Meetings. The first annual meeting of the Association shall be held within one year after the date of the incorporation of the Association. Subsequent annual meetings shall be set by the Board of Directors. If the day of the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour of the first day following which is not a legal holiday.

4.2. Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of the Members who are entitled to vote 33% of the Entire Membership.

4.3. Notice of Meetings. Written notice of each meeting of the Members will be given by, or at the direction of, the Secretary or person authorized to call the meeting, by Electronic Transmission of a copy of such notice, at least 14 days before such meeting to each Member entitled to vote on the matter for which the meeting has been called, addressed to the Member's email address last appearing on the books of the Association. Such notice should specify the place, date and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

4.4. Waiver of Notice. The notice provided for hereinabove is not indispensable and any meeting of the Members is deemed validly called for all purposes if all Members are represented thereat in person or by proxy, or if a quorum is present and waivers of notice of time, place and purpose of such meeting are duly executed in writing either before or after said meeting by those Members not so represented or not given such notice. The attendance of any Member at a meeting in person or by proxy, without protesting prior to the conclusion of the meeting the lack of notice of such meeting, will constitute a waiver of notice by that Member.

4.5. Quorum. Except as hereafter provided, and as otherwise provided in the Articles or Declaration, the presence at the meeting of Members entitled to cast, or of proxies entitled to cast 20% of the Entire Membership will constitute a quorum for any action. If, however, such quorum is not present or represented at any meeting, the Members entitled to vote thereat will have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, at such adjourned meeting a quorum will be present with the participation of any number of owners present in person or by proxy. Where the Declaration requires a percentage vote of all Members, the quorum required for such vote will be the same as the minimum percentage vote required to approve the action which is the subject of the vote; provide however, that in calculating any such percentage, Members whose voting rights have been suspended will not be included.

4.6. Proxies. At all meetings of Members each Member may vote in person or by proxy. All proxies must be in writing and filed with the Secretary prior to the vote being taken at meeting for which the proxy is valid. Every proxy is revocable and will automatically cease when the membership of the Member voting by proxy has ceased.

4.7. Voting. If a quorum is present, the affirmative vote of the majority of the Members present at the meeting shall be the act of all the Members, unless the act of a greater number is expressly required by law, by the Declaration, by the Articles, or elsewhere in these Bylaws. Upon direction of the presiding officer, the vote upon any business at a meeting will be by ballot, but otherwise any such vote need not be by ballot.

4.8. Action by Written Ballot in Lieu of Meeting. Any action authorized to be taken at any annual, regular, or special meeting may be taken by written ballot in lieu of such meeting if the ballot is delivered by or at the direction of the Secretary to each Member entitled to vote on the matter, which ballot will (a) set forth in detail the proposed action; (b) provide an opportunity to vote for or against the proposed action; (c) state the date when such ballot must be returned in order to be counted, which date must not be less than 30 days after delivery of the ballot; (d) state by what means it should be returned and where; and (e) should be accompanied by any written information, that has been approved by a majority of the Board of Directors, sufficient to permit each Member casting a ballot to reach an informed decision on the matter. Each ballot should contain a means of identification for each Member entitled to vote, which will identify such Member by Lot number. The number of votes cast by written ballot pursuant to this section shall constitute a quorum for action on the matter. Where any matter in the Governing Documents calls for the consent of Members but does not specify that such consent must be obtained at a meeting, then no meeting of the Members is required or is necessary to obtain such consents. Written notice of each meeting of the Members will be given by, or at the direction of, the Secretary or person authorized to call the meeting, by Electronic Transmission of a copy of such notice, at least 14 days before such meeting to each Member entitled to vote on the matter for which the meeting has called, addressed to the Member's email address last appearing on the books of the Association. Such notice will specify the place, date and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

4.9. Acceptance of Votes. If the name signed on any consent, written ballot, vote, waiver, proxy appointment, or proxy appointment revocation, corresponds to the name of a Member, the Association, acting in good faith, may accept and give effect to the same as the act of the Member, notwithstanding that the signature may not be technically correct. For example, if a Lot is owned by a trust, thereby making the trust the Member, and the individual fails to sign as "trustee," it will not invalidate the signature or vote of the Member.

4.10. Procedure; Parliamentary Rules. The order of business and all other matters of procedure at every meeting of Members will be determined by the presiding officer. Except as may be modified by resolution of the Board of Directors, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with Utah law or the Governing Documents.

4.11. Place of Meetings. The Board of Directors may designate the place of any annual or special meeting of the Members by stating or fixing such place pursuant to resolution, provided, however, that such place must be within Washington County, State of Utah. If the Board of Directors makes no designation, annual and regular meetings will be held at the Association's principal office.

ARTICLE 5 BOARD OF DIRECTORS

5.1. Qualifications. A Director must be a natural person of at least 18 years of age or older and, except with respect to Directors appointed by the Developer, a Member of the Association. In the event that a Member is not a natural person, a natural person who holds an ownership interest in the entity which is the Member may serve as a member of the Board of Directors if duly appointed or elected as provided for herein.

5.2. Number. The affairs of this Association will be managed by a Board of Directors consisting of at least three qualified persons. The number of Directors may range from a minimum of three to a maximum of five Directors. The number of persons constituting the whole Board of Directors may initially be fixed by resolution of the incorporator(s) of the Association. Following the election of Directors, the number of Directors comprising the Board of Directors may thereafter be fixed from time to time by the Board of Directors.

5.3. Term of Office; Staggered Terms. At the first annual meeting at which Members elect the Directors, the two persons obtaining the highest number of votes will serve for two years and all others will serve for one year. Thereafter, upon the expiration of the initial term of each Director, his or her successor will be elected for two-year terms. Nothing prevents a person from serving as a Director for successive terms or more than one term if duly elected by the Members.

5.4. Removal. A Director may be removed from the Board with cause, by a majority vote of the Entire Membership. Any Director who is absent from three consecutive Board meetings will be automatically removed from the Board unless otherwise determined by the Board. In the event of death, resignation or removal of a Director, a temporary successor will be selected by the remaining Directors and will serve for the unexpired term of his or her predecessor or until special election of a successor.

5.5. Compensation. No Director will receive compensation for any service he or she renders to the Association. However, a Director may be reimbursed for actual expenses incurred in the performance of their duties as a Director.

5.6. Developer Control Period. Notwithstanding anything herein to the contrary, Directors serving during the Developer Control Period will be appointed by the Developer acting in its sole discretion and will serve at the pleasure of the Developer. There is no requirement for the election of Directors as forth in Article 6 until the termination of the Developer Control Period unless the Developer expressly provides otherwise in writing.

ARTICLE 6 NOMINATION AND ELECTION OF DIRECTORS

6.1. Nomination. Nominations for election to the Board may be made from the floor at the annual meeting of Members. In addition, the Board of Directors may establish a nominating committee to nominate qualified Members for election to the Board. If established, the nominating committee shall consist of a chairperson, who must be a member of the Board of Directors, and two or more Members of the Association. The nominating committee will be appointed by the Board of Directors at least 60 days prior to each annual meeting of the Members, to serve through such annual meeting. The nominating committee will make as many nominations for election to the Board of Directors as determined necessary, in its sole discretion, but not less than the number of vacancies that are to be filled.

6.2. Election; Voting. Election to the Board of Directors will be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Articles of Incorporation and these Bylaws. The persons receiving the largest number of votes are elected. Cumulative voting is not permitted.

6.3. Voting by Mail. Election of Directors may be handled by mail voting in the following manner, which may be, at the determination of the Board, the sole method of voting or used in conjunction with in-person voting. Ballots will be sent to each Member by the Secretary not more than 60 days and not fewer than 30 days before the date set for election. Ballots will instruct Members to seal their ballot in a ballot envelope and then place the sealed envelope into a larger envelope along with a signed paper, provided by the Secretary, identifying the Member whose vote is contained in the inner envelope. Ballots may be

delivered to the Secretary in person or by mail; provided, however, that ballots must be received by the Secretary prior the election. Upon receiving the ballots, the Secretary will open the outer envelope, remove the identification paper, and record which Members have voted. The identification paper and outer envelope will then be separated from the ballot envelope. The ballot envelope will be retained by the Secretary until opened on the election date.

ARTICLE 7 MEETINGS OF DIRECTORS

7.1. Regular Meetings. The first meeting of the Board of Directors will follow the annual meeting of the Members at which a Board is first elected by the Members. Thereafter, regular meetings of the Board of Directors will be held at such date, time and place as may be determined from time to time by resolution of the Board of Directors. Written notification of each regular Board meeting will be provided to all Directors via Electronic Transmission at least 48 hours prior to any regular Board meeting. Delivery or mailing under this section may be accomplished by email by using the current email address on file for each member of the Board. Meetings of the Board will comply with the provisions of Section 57-8a-226 of the Community Association Act.

7.2. Special Meetings. Special meetings of the Board of Directors will be held when called by the President of the Association or by any two Directors, after not less than two days' notice to each Director.

7.3. Quorum. A majority of the number of Directors constitutes a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present is regarded as the act of the Board, unless a greater number is required by law, the Articles, or these Bylaws.

7.4. Action Without a Meeting. Whenever the Directors are required or permitted to take any action by vote, such action may be taken without a meeting on written consent which may be given by Electronic Transmission, setting forth the action so taken, signed by all Directors.

7.5. Place of Meetings. During the Developer Control Period regular or special meetings of the Board of Directors may be held in or out of the State of Utah. Regular or special meetings of the Board of Directors who are elected by the Members must be held in Washington County, Utah.

7.6. Presence of Directors at Meetings. The Board may allow any Director to participate in a regular or special meeting by, or conduct the meeting through the use of, any means of communication by which all Directors participating in the meeting may hear each other during the meeting. A Director participating in a meeting through means permitted under this section will be considered to be present in person at the meeting.

ARTICLE 8
POWERS AND DUTIES OF THE BOARD OF DIRECTORS

8.1. **Powers.** All corporate powers will be exercised by or under the authority of, and the business and affairs of the Association managed under the direction of, the Board of Directors, subject to any powers or limitations set forth in the Declaration, the Act, or the Articles. This includes the authority to prepare, execute, certify and record amendments to the Declaration on behalf of the Association, for any amendments made pursuant to the amendment procedures provided in the Declaration.

8.2. **Duties.** It shall be the duty of the Board of Directors to manage the affairs of the Association in accordance with the terms of the Act, the Articles, the Declaration, these Bylaws, and other Governing Documents.

ARTICLE 9
OFFICERS AND THEIR DUTIES

9.1. **Enumeration of Offices.** The officers of this Association are a President and Vice-President, who shall at all times be Members of the Board of Directors, a Secretary and a Treasurer, who need not be Members of the Board of Directors nor of the Association, and such other officers as the Board may from time to time create by resolution.

9.2. **Election of Officers.** The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

9.3. **Term.** The Board will elect the officers of the Association annually and each will hold office for one year unless the officer sooner resigns, is removed, or otherwise disqualified to serve.

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

9.5. **Resignation and Removal.** The Board may remove any officer from office with or without cause. A officer may resign at any time by giving notice to the Board, or any officer of the Board. Such resignation will take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise necessary to make it effective.

9.6. **Vacancies.** A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy will serve for the remainder of the term of the officer being replaced.

9.7. Multiple Offices. The same person may hold the offices of secretary and treasurer. No person shall simultaneously hold more than one of any of the other offices except in the case of any special office created pursuant to Section 9.4.

9.8. Duties. The officers and their duties are as follows:

(a) *President.* The President presides at all meetings of the Board of Directors; sees that orders and resolutions of the Board are carried out; signs all leases, mortgages, deeds and other written instruments, and co-signs all checks and promissory notes.

(b) *Vice President.* The Vice-President acts in the place and stead of the President in the event of absence, inability or refusal to act, and exercises and discharges such other duties as may be required by the Board.

(c) *Secretary.* The Secretary records the votes and keeps the minutes of all meetings and proceedings of the Board and the Association together with their addresses, and performs such other duties as required by the Board.

(d) *Treasurer.* The Treasurer receives and deposits in appropriate bank accounts all monies of the Association and disburses such funds as directed by resolution of the Board of Directors; signs all checks and promissory notes of the Association that have been duly authorized and approved by the Board; maintains a roster of all Members, assessments and payments; keeps proper books of account; issue certificates of payment of assessments; notifies the Board of Members who are delinquent in paying assessments; prepares an annual budget and statement of income and expenditures to be delivered and presented to the membership at its regular annual meeting; and delivers a copy of the budget and statement to the Members at said meeting.

9.9. Compensation. No salary or other compensation will be paid to any officer of the Association for services rendered by such officer, but this does not preclude an officer of the Association from performing any other service for the Association as an employee or on a contract basis and receiving compensation therefor.

ARTICLE 10 COMMITTEES

10.1. Creation and Appointment. The Board may create such committees as it deems necessary and appropriate to perform such tasks as the Board may designate by resolution. The Board has the authority to appoint members of each committee it creates. Each committee shall operate in accordance with the terms of such resolution.

ARTICLE 11
FINANCIAL MATTERS

11.1. **Depositories.** The Board of Directors shall select such depositories as it considers proper for the funds of the Association. All checks and drafts against such deposited funds will be signed and countersigned by persons authorized by these Bylaws or by Board resolution to sign such checks and drafts.

11.2 **Contracts; Management Contract.** The Board of Directors may authorize any officer or officers, agent or agents, in addition to those specified in these Bylaws, to enter into any contract or execute and deliver any instrument in the name of or on behalf of the Association, and such authority may be general or confined to specific instances. Unless so authorized by the Board of Directors, no officer, agent or employee has any power or authority to bind the Association by any contract or engagement or to pledge its credit or render it liable for any purpose or for any amount.

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

11.4 **Annual Report.** The Board of Directors will present at the annual meeting of the Members the report of the Treasurer, giving the annual budget and a statement of income and expenses, and a report of other affairs of the Association during the preceding year. The Board of Directors will provide all Members, at the expense of the Association, copies of said annual budget and statement of income and expense.

ARTICLE 12
BOOKS AND RECORDS

12.1 **Association Records.** The Association will keep and maintain those records required by the Declaration, the Act, and these Bylaws. Such records will be maintained in written form or in another form capable of conversion into written form within a reasonable time.

12.2 **Inspection of Books and Records.** The books, records, and papers of the Association will at all times, during reasonable business hours, be subject to inspection by any Member pursuant to the provisions of Section 57-8a-227 of the Community Association Act. The Articles and these Bylaws will be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE 13
RULES AND REGULATIONS

The Board of Directors has the power to adopt and establish by resolution such rules and regulations as it deems necessary for the maintenance, operation, management and control

of the property, equipment, facilities and utility systems of the Association. The Board of Directors may alter from time to time such rules and regulations. The Members will at all times obey such regulations and use their best efforts to see that they are faithfully observed by the persons with whom they reside, their family, guests, tenants, invitees and others over whom they may exercise control or supervision.

ARTICLE 14
AMENDMENT

14.1 By the Board. These Bylaws may be altered, amended or repealed, in whole or in part, by a majority vote of the Board of Directors at any regular Board meeting or at a special Board meeting called for that purpose, unless it would result in a change of the rights, privileges, preferences, restrictions, or conditions of a membership class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class, or unless otherwise prohibited by Utah Code Title 16, Chapter 6a or the Utah Community Association Act.

14.2. By the Class A Members. These Bylaws and any amendments thereto may be altered, amended or repealed, in whole or in part, by a majority vote of the Entire Membership at any annual meeting of the Members or at any special meeting of the Members called for that purpose.

14.3. By Developer. Developer has the right to unilaterally alter, amend or repeal these Bylaws, in whole or in part, for any purpose during the Developer Control Period, with or without notice to the Class A Members. Thereafter, Developer may unilaterally amend these Bylaws if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on any Lot; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans to make, purchase, insure, or guarantee mortgage loans on any Lot; (d) to satisfy the requirements of any local, state, or federal governmental agency; or (e) to correct any scrivener's error.

14.4 Validity. No amendment made by the Board or the Class A Members during the Developer Control Period is effective unless the Developer provides its prior express written consent to such amendment, which consent is within Developer's sole and absolute discretion. No amendment may remove, revoke, or modify any right or privilege of Developer without the written consent of Developer. Any procedural challenge to an amendment must be made within six months of the effective date of the amendment or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these Bylaws.

14.5 Effective Date. Any amendment to these Bylaws will be effective upon the date such amendment is duly adopted as provided for herein, and recorded as required by Utah Code § 57-8a-216(3), which date the Secretary will certify on the amendment and file with the

Association's records. The Board will provide notice to Members of any amendment to these Bylaws, however, the receipt of such notice is not a prerequisite to the validity of the amendment.

ARTICLE 15
GENERAL PROVISIONS

15.1 **Notices: Electronic Notice.** Any notice required to be sent under the provisions of these Bylaws is deemed to have been properly sent when delivered by Electronic Transmission, or when deposited in the U.S. Mail to the last known address of the person who is entitled to receive it. In addition to keeping the Board informed as to their current mailing address, Owners must maintain a current e-mail address with the Board for such purpose. In the absence of a specific instruction from a Member, the Member's current email address will be used to provide notice to the Member. In addition to keeping the Board informed as to their current mailing address, Owners must maintain a current e-mail address with the Board for such purpose.

15.2 **Dates and Times.** In computing any period of time prescribed or allowed by these Bylaws, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday (either federal or Utah state), in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday. The deadline of the last day of the period so computed shall be 5:00 P.M., Mountain Time.

15.3 **Waivers.** No provision contained in these Bylaws shall be deemed to have been waived by reason of any failure to enforce or follow it, irrespective of the number of violations which may occur.

15.4 **Construction and Interpretation.** These Bylaws shall be construed wherever possible as consistent with the Declaration and the Act. Conflicts between documents shall be resolved as set forth in the Declaration.

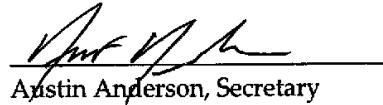
15.5 **Gender and Grammar.** The singular, wherever used herein, is construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, will in all cases be assumed as though in each case fully expressed.

15.6 **Titles and Headings.** The titles and headings contained in these Bylaws are for convenience only and do not define, limit, or construe the contents of these Bylaws.

* * *

CERTIFICATION

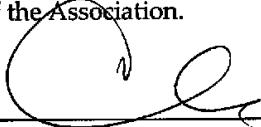
The undersigned hereby certifies that he is the duly appointed Secretary of Heritage Pointe Townhomes Owners Association, a Utah non-profit corporation, and the foregoing Bylaws constitute the Bylaws of Heritage Pointe Townhomes Owners Association as duly adopted by the Incorporator on the 21st day of July, 2021.



Austin Anderson, Secretary

STATE OF UTAH)
: ss
COUNTY OF WASHINGTON)

The foregoing instrument was acknowledged before me this 20 day of
September, 2021, by Austin Anderson, as Secretary of Heritage Pointe Townhomes
Owners Association, a Utah non-profit corporation, on behalf of the Association.



Notary Public

