

When recorded, return to:

Preston E. Wood  
101 North Scenic Hills Circle  
North Salt Lake, Utah 84054

Tax Parcel No.: 01-047-0367

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**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS OF  
THE LOFTS @ 99<sup>TH</sup>, A PLANNED DEVELOPMENT**

This Declaration of Covenants, Conditions and Restrictions of The Lofts @ 99<sup>th</sup>, a Planned Development (this "Declaration") is made and entered into as of September 29<sup>th</sup>, 2014, by BRYCEWOOD DEVELOPMENT ("Declarant"), for the purpose of establishing a residential planned unit development project known as THE LOFTS @ 99<sup>TH</sup>, a Planned Development.

**RECITALS**

A. Declarant is the owner of certain real property located in North Salt Lake, Davis County, Utah, which is more particularly described in Exhibit B attached hereto and incorporated herein by this reference (the "Property"). Defined terms used in these Recitals and this Agreement shall have the meanings given in Article 1 below.

B. Declarant intends to create a residential planned unit development on the Property that will be known as "The Lofts @ 99<sup>th</sup>, a Planned Development" (the "Project"). The Project will consist of ten (10) Lots upon each of which Declarant intends to construct a Townhome. Each Townhome shall constitute a single family residence. Notwithstanding anything in this Declaration to the contrary, the Project is a planned unit development and not a cooperative or a condominium project.

C. In connection with the development of the Project, Declarant is recording this Declaration for the mutual benefit of the Owners. Each Owner acquiring a Lot or a Townhome in the Project is taking the same subject to all of the terms and conditions of this Declaration and, by accepting title thereto, agrees to be bound by this Declaration.

**DECLARATION**

Declarant hereby declares that all of the Property described below shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, assessments, charges and liens, and to the Plat recorded concurrently herewith. This Declaration is for the purpose of protecting the value and desirability of the Property and the individual Lots and Units by, among other things, establishing and coordinating architectural styles and using design, landscape and architectural features to create a pleasing environment. This Declaration shall be construed as covenants of equitable servitude; shall run with the land and be binding on

all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns; and shall inure to the benefit of each Owner thereof. The above Recitals shall constitute a part of this Declaration and are incorporated herein by this reference.

## ARTICLE 1 DEFINITIONS AND CONCEPTS

The following definitions and concepts shall control in this Declaration:

1.1. **“Articles”** means and refers to the Articles of Incorporation of the Association. The purpose of the Articles is to establish the Association as a non-profit corporation under Utah law.

1.2. **“Association”** means The Lofts @ 99<sup>th</sup> Homeowners Association, a Utah non-profit corporation, its successors and assigns.

1.3. **“Bylaws”** means and refers to the Bylaws of the Association, as the same may be amended, modified or restated from time to time as permitted in the Articles and Bylaws. 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 initial Bylaws is attached hereto as Exhibit A.

1.4. **“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 Association may find necessary and appropriate pursuant to the Governing Documents.

1.5. **“Community Association Act”** means the Utah Community Association Act, Title 57, Chapter 8a of the Utah Code, and any amendments thereto.

1.6. **“Declarant”** means BryceWood Development, LLC, a Utah limited liability company, and its successors and assigns.

1.7. **“Declarant Control Period”** means the period of time during which the Declarant has Class B membership status as provided for herein.

1.8. **“Declaration”** means this instrument and any amendments, restatements, supplements or annexations thereto which are recorded in the official records of the Davis County Recorder, State of Utah.

1.9. **“Governing Documents”** means, collectively, this Declaration, the Articles, the Bylaws and any amendments or supplements to any of the foregoing, and includes any rules, regulations and resolutions established pursuant to the authority of the Declaration, Articles or Bylaws.

1.10. **“Limited Common Areas”** means and refers to (a) the exteriors of Townhomes, including roofs and exterior walls, windows, doors and other exterior surfaces and (b) those areas shown, marked or otherwise designated on the Plat as “Limited Common Areas.”

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

1.12. **“Lot Owner”** means the owner of a Lot and is synonymous with the term “Owner” and “Unit Owner.”

1.13. **“Member”** means a member of the Association and is synonymous with the terms “Owner” and “Unit Owner.” As used herein and in the Bylaws and Articles, “Member” is used to identify Owners or Unit Owners as members of the Association.

1.14. **“Mortgage”** means a mortgage, a deed of trust, a deed to secure a debt or any other form of security instrument encumbering title to any Unit.

1.15. **“Mortgagee”** means and refers to a lender holding a first Mortgage, and includes a beneficiary under a deed of trust.

1.16. **“Owner”** means the entity, person or group of persons owning fee simple title to any Lot which 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” may include purchasers under a real estate purchase contract, provided such purchaser is granted the rights of an “Owner” in such contract, 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.

1.17. **“Plat”** means the subdivision plat recorded herewith prepared and certified by a Utah Registered Land Surveyor and any amendments or replacements thereof, or additions thereto.

1.18. **“Project”** means the residential subdivision project known or referred to as “The Lofts @ 99<sup>th</sup>, a Planned Development” which comprises the entire Property and which is made subject to this Declaration.

1.19. **“Property”** means the real property which is more fully described in Exhibit B attached hereto and incorporated herein by this reference.

1.20. **“Property Insurance”** has the meaning given in Section 5.1.

1.21. **“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 Lot on which the Unit is constructed.

1.22. **“Unit Owner”** means and is synonymous with the term “Owner” and “Lot Owner.”

## ARTICLE 2 PROPERTY RIGHTS

2.1. **Owner's Acknowledgment; Notice to Purchasers.** By accepting title to any Lot, all Owners are given notice that the use of their Units is limited by the covenants, conditions, restrictions, easements and other provisions in the Governing Documents, as they may be amended, expanded, modified or restated 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 Unit can be limited, restricted or otherwise affected by said covenants, conditions, restrictions, easements and other provisions in the Governing Documents. All purchasers of Units are on notice that the Association may have adopted changes to the Governing Documents that might differ from those a purchaser might receive from or have disclosed by the Owner from whom the purchaser is purchasing his or her Unit, including the initial Bylaws attached hereto as Exhibit A. Purchasers are encouraged to obtain copies of the current Governing Documents, which may be obtained from the Association.

2.2. **Units.**

(a) **Ownership.** Each Unit 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 shall interfere with the activities carried on within the confines of Units; provided, however, the Association may (i) restrict or prohibit commercial or other activities not normally associated with property that is intended for residential use, (ii) restrict or prohibit any activities that create additional monetary costs for the Association or other Owners, (ii) restrict or prohibit any activities that create a danger to the health or safety of occupants of other Units, (iv) restrict or prohibit any activities that generate excessive noise or traffic, (v) restrict or prohibit any activities that create unsightly conditions visible outside the dwelling, or (vi) restrict or prohibit any activities that create an unreasonable source of annoyance, all as may be determined by the Association.

(c) **Household Composition.** No rule of the Association shall interfere with the freedom of Owners to determine the composition of their households, except that the Association shall have the power, in its discretion, 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.

(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 regulation of use.

2.3. **No Common Area.** The Project shall not have any common areas. No Owner of a Unit shall have any rights, duties, easements or other interests with respect to any other Unit in the Project, except as expressly set forth in this Declaration and the Governing Documents, and no Owner of a Unit shall have any right to occupy or use any other Unit, except as expressly set forth herein. Notwithstanding the foregoing, each Owner, by accepting a deed to a Lot or Unit,

acknowledges that such Lot or Unit is subject to certain utility easements, as shown on the Plat, that are for the use and benefit of the Project and all Owners, and that the exteriors of the Townhomes are deemed "Limited Common Areas" for the purpose of architectural control, maintenance, improvements and use.

2.4. **Limited Common Area.** The Association's right of regulation of the Limited Common Area is limited to the right to regulate and control architectural and aesthetic appearances of the Limited Common Area and to require each Owner to maintain the Limited Common Area located within its Unit in accordance with rules and regulations established by the Association. The Association may further restrict, prohibit or limit the attachment of any fixture, piece of equipment or other structure to the exterior of the Limited Common Area, including without limitation television antennas and short wave radio antennas, in order to preserve the appearance and visual esthetics of the Project.

2.5. **Declarant's Reasonable Rights to Develop.** Notwithstanding anything in the Governing Documents to the contrary, no rule or action by the Association shall unreasonably impede Declarant's right to develop and market the Project.

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

3.1. **Membership.** Every Owner 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, and membership in the Association is appurtenant to, and may not be separated from, ownership of a Unit.

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

(a) **Class A.** Every Owner is a Class A Member, except that the Declarant is not a Class A member until Declarant's membership converts to Class A membership as provided for in Section 3.2(b) below. Class A Members are entitled to one (1) vote for each Unit owned. When more than one person holds an interest in any Unit, the group of such persons shall constitute a single Member, and the vote for such Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Unit. A vote cast at any Association meeting by any co-Owner, whether in person or by proxy, is conclusively presumed to be the vote of all co-Owners of the Unit 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 Unit. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

(b) **Class B.** The Class B member is the Declarant. The Class B member is entitled to four (4) votes for each Unit owned. Declarant will cease to be a Class B member and shall become a Class A member on the happening of one of the following events, whichever first occurs:

(i) the date upon seventy-five percent (75%) of the Lots subject to this Declaration have been conveyed to persons other than Declarant; or

(ii) the date that is seven (7) years from the date the first Lot is conveyed to a person other than Declarant; or

(iii) the date Declarant notifies the other Owners in writing that it is waiving its right to four (4) votes for each Lot it owns.

Upon the occurrence of the first of any of the foregoing events, Declarant shall thereafter be entitled to one (1) vote for each Lot owned by it.

**3.3. Change of Corporate Status.** The Association has been set up and established as a non-profit corporation under Utah law. However, 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 shall nevertheless continue to be effective as the Governing Documents of the Association, and the Association shall have all rights, power and authority granted in the Governing Documents, and no Unit 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 the suspension or administrative dissolution of the Association for failure to file annual reports or similar documents necessary to maintain its corporate existence, any two (2) Members are authorized, to the extent they deem necessary and without approval of the other Members, to take such actions as may be reasonably necessary to remove any suspension or administrative dissolution, including the authority to re-incorporate the Association under the same or similar name of the Association, and such corporation shall be deemed the successor to the Association. If the Members fail to remove any suspension or reincorporate as provided herein, the Association shall continue to operate and function under the Governing Documents as an unincorporated association.

**3.4. Rulemaking Authority.** The Association may, from time to time, subject to the provisions of the Governing Documents, adopt, amend and repeal reasonable rules and regulations dealing with the Project. Since the Project does not have any common areas, it is intended that the rules shall be limited in scope and nature to those matters that are necessary to preserve the appearance, esthetics and value of the Project and to restrict activities which are not normally associated with residential projects or that create or may create a hazard, nuisance, unsightly appearance, excessive noise or offensive smell.

**3.5. Notice; Promulgation of Rules.** A copy of the Association's rules and regulations, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Unit Owner. Upon such mailing or other delivery, said rules and regulations shall 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 Association may provide notice by electronic means such as electronic mail (e-mail) to Unit Owners and may require that Unit Owners, in addition to keeping the Association informed as to their current mailing address, maintain a current e-mail address with the Association for such purpose.

## **ARTICLE 4** **FINANCES AND ASSESSMENTS**

4.1. **Assessments; Authority.** The Association is hereby authorized to levy assessments against the Owners as provided for herein. The following are the types of assessments that may be levied 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 or assessment levied or charged by the Association 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 Declarant, each Owner of any Unit by acceptance of a deed therefor, whether or not it shall be so 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 shall be a charge on the Unit and shall be a continuing lien upon the Unit against which each such assessment or amount is charged, which lien shall arise when the Owner fails or refuses to pay an assessment when due. Such assessments and other amounts shall also be the personal obligation of the person who was the Owner of such Unit at the time when the assessment became due. No Owner may exempt himself or herself from liability for assessments by the sale, transfer, disposition or abandonment of his or her Unit 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 shall be claimed or allowed for any alleged failure of the Association or Declarant 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. If any Unit has more than one person as an Owner at the time an assessment or charge is made pursuant to this Article 4, the obligations and liabilities of all such persons as Owners shall be joint and several.

4.3. **Purpose of Assessments.** The assessments levied by the Association shall be used to advance the purposes for which the Association was formed, as set forth and articulated in the Governing Documents. The assessments may provide for, but are not limited to, the payment of insurance maintained by the Association; the payment of sewer, water and trash removal charges for the Project which are not separately assessed to each Owner or Unit; the payment of administrative expenses of the Association; the payment of insurance deductible amounts; the establishment of capital and operational reserve accounts; the payment of any professional services deemed necessary and desirable by the Association; and other amounts required by this Declaration or that the Association shall determine to be necessary to meet the primary purposes of the Association.

4.4. **Initial Annual Assessments.** The Declarant shall initially establish the amount of the annual assessments. Thereafter, the establishment of annual assessments shall be according to the procedures and requirements of Section 4.5 below and the Governing Documents.

#### **4.5. Annual Assessments; Budgeting.**

(a) Adoption of Budget. At least sixty (60) days before the beginning of each fiscal year, the Association shall prepare a budget of the estimated Common Expenses for that year. Annual assessments for Common Expenses shall be based upon the estimated net cash flow requirements of the Association to cover items including without limitation the cost of common sewer and water utilities and trash removal services provided to the Project that aren't separately metered and assessed to individual Owners and Units; premiums for insurance coverage as deemed desirable or necessary by the Association; reserves for any insurance deductible; legal and accounting fees; expenses and liabilities from a previous assessment period; and the supplementing of any reserve fund established by the Association.

(b) Notice of Budget and Assessment. The Association shall 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 thirty (30) days prior to the effective date of such budget. The budget shall automatically become effective unless disapproved in writing by Members representing at least sixty-seven percent (67%) of all eligible votes in the Association. Any such petition must be presented to the Association within ten (10) days after notice of the budget and assessment. There shall be 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 Association is thereafter authorized to levy the assessment as provided for herein.

(c) Failure or Delay in Adopting Budget. The failure or delay of the Association to prepare, distribute or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of an Owner's obligation to pay his or her allocable share of the expenses of the Association. In the event of such failure or delay, all Owners shall continue to pay assessments on the same basis as during the last year for which a budget was adopted and an assessment was made until notified of the amount of the new annual assessment, which new assessment shall be due on the first day of the next payment period which begins more than thirty (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 Association will increase the annual assessment by an amount not greater than five percent (5%) more than the previous annual assessment, then such budget and corresponding annual assessment shall be automatically approved and effective upon thirty days notice.

(e) Adjustment of Budget and Assessment. The Association 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 Section 4.5(b) above; 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 five percent (5%).

4.6. **Special Assessments.** In addition to the annual assessments, the Association may levy a special assessment in any assessment year, applicable to that year only, to cover unbudgeted expenses or expenses in excess of those budgeted, including without limitation the costs to defray, in whole or in part, the cost of any construction, reconstruction, repair or replacement of the Limited Common Area that may be undertaken by the Association. Any such special assessment may be levied against the entire Membership if such special assessment is for Common Expenses. Except as otherwise provided in this Declaration, any special assessment relating to Common Expenses shall require the affirmative vote or written consent of a majority of the entire Membership. Special assessments shall be payable in such manner and at such times as determined by the Association and may be payable in installments extending beyond the fiscal years in which the special assessment is approved.

4.7. **Specific Assessments.** The Association shall have the power to levy specific assessments against a particular Unit to cover costs incurred in bringing any Unit into compliance with the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees or guests; provided, however, the Association shall give the Unit Owner against whom the specific assessment is being made 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 Association 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 Association shall 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. An emergency situation is one in which the Association finds:

- (a) An expenditure, in its discretion, 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 Association 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 Association 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

Units; provided, however, that no assessments shall accrue against the Declarant for Units owned by Declarant so long as the Declarant has Class B membership.

4.10. **Declarant's Option to Fund Budget Deficits.** During the Declarant Control Period, Declarant may, in its sole discretion and without any obligation to do so, fund any budget deficit of the Association, including without limitation funding any initial capital or operational reserve fund. In the event Declarant funds any budget deficit, it shall not establish any obligation by Declarant to continue to fund any future deficits.

4.11. **Payment; Due Dates.** The assessments provided for herein shall commence to accrue against a Unit upon conveyance of the Unit to a bona fide purchaser, adjusting the amount of such assessment according to the number of months remaining in the fiscal year. Due dates shall be established by resolution of the Association, with such resolution. Installments of assessments may be levied and collected on a monthly, quarterly, semi-annual, or annual basis, as determined by resolution of the Association. The Association may require advance payment of assessments at closing of the transfer of title to a Unit.

4.12. **Capitalization of Association.** Upon acquisition of record title to a Unit by the first Owner thereof other than Declarant, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to 15% of the annual assessment per Unit for that year or in such other amount as the Association may specify which may be a flat rate from year to year approximating 15% of the annual assessment per Unit levied during the first year in which the Association adopts a budget, but in no event shall such contribution from Declarant exceed \$300 per Unit. This amount shall be in addition to, and not in lieu of, the annual assessment and shall not be considered an advance payment of such assessment. This amount shall be for use in covering operating expenses and other expenses incurred by the Association pursuant to the Governing Documents.

4.13. **Effect of Non-Payment of Assessment; Remedies of the Association.** Any assessment or installment thereof not paid within thirty (30) days after the due date therefor shall be delinquent and shall bear interest from the due date at the rate of eighteen percent (18%) per annum (or such lesser rate as the Association shall determine appropriate) until paid. In addition, the Association may assess a late fee for each delinquent installment that shall not exceed ten percent (10%) of the installment.

(a) **Remedies.** To enforce this Article 4, the Association 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) foreclose the lien against the Unit 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;

(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 57-8a-204 of the Community Association Act, the Owner's right to receive utility services paid as a Common Expense;

(v) if the Owner is leasing or renting his Unit, the Association may, in accordance with section 57-8a-205 of the Community Association Act, demand that the Owner's tenant pay to the Association all future lease payments due from the Owner, beginning with the next monthly or other periodic payment, until the amount due to the Association is paid;

(vi) exercise any other rights authorized by the Community Association Act for non-payment of assessments and other charges;

(vii) suspend the voting rights of the Owner for any period during which any assessment or portion thereof against the Owner's Unit remains unpaid; and/or

(viii) accelerate all assessment installments that will become due within the subsequent twelve (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 (2) or more times within a twelve (12) month period.

(b) Attorney Fees and Costs. There shall 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 Unit from time to time of commencement of the foreclosure. The Association shall be 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 to foreclose on any Lot or Unit to collect any assessment due under this Declaration. Under the power of sale, an Owner's Unit 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 and said Owner was the "trustor." For purposes of foreclosing on any Unit as provided herein, and in compliance with Utah Code Ann. §57-8a-212(1)(j), the Declarant hereby conveys and warrants pursuant to Utah Code Ann. §57-1-20 and 57-8a-402 to Integrated Title Insurance Services, LLC, with power of sale, the Lots and all improvements to the Lots for the purpose of securing payment of assessments under this germs of this Declaration. The Association may designate any person or entity qualified by law to serve as trustee for purposes of power of sale foreclosure.

4.14. 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) the Limited Common Area; (c) all Units or other real property owned by Declarant; and (d) any other property declared exempt as set forth in this Declaration or within any Plat.

4.15. **Subordination of Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to the lien of any first Mortgage held by a Mortgagee if the Mortgage was recorded prior to the date the assessment became due.

4.16. **Termination of Lien.** A sale or transfer of any Unit shall not affect any assessment lien made as to such Unit prior to such sale or transfer; provided, however, the sale or transfer of any Unit pursuant to foreclosure of a first Mortgage or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer, however, shall relieve a Unit or Owner from personal liability for assessments coming due after he or she takes title or from the lien of such later assessments.

4.17. **Books, Records and Audit.**

(a) The Association shall maintain current copies of the Governing Documents and other similar documents, as well as its own books, records and financial statements which shall all be available for inspection by Owners and insurers as well as by holders, insurers and guarantors of first mortgages during normal business hours upon reasonable notice. Charges shall 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 shall prepare a roster of Owners for each Unit and the assessments applicable thereto at the same time that it shall fix the amount of the annual assessment, which roster shall be kept by the Treasurer of the Association, who shall record payments of assessments and shall allow inspection of the roster by any Member at reasonable times.

(c) The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Unit has been paid. Such certificates, 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. **Property and Casualty Insurance.**

(a) To the extent reasonably available, the Association shall obtain and continue in effect, on behalf of all Owners all insurance required to be obtained by it pursuant to Utah Code Ann. §57-8a-403, including blanket property insurance on the physical structure of all Units and the Limited Common Areas appurtenant thereto insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils (the "Property Insurance"). If the Association becomes aware that Property Insurance is not reasonably available, it shall give all Owners notice of such fact within seven (7) days. The total amount of coverage provided by the Property Insurance shall not be less than 100% of the full replacement cost of the insured property at the time the insurance is purchased and at each renewal date, excluding items normally excluded from property insurance policies and without

deduction for depreciation or coinsurance. The Property Insurance policy may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements herein. The Property Insurance shall include coverage for any fixture, improvement or betterment installed by an Owner to his or her Unit, including floor coverings, cabinets, light fixtures, electrical fixtures, heating or plumbing fixtures, paint, wall coverings, windows and any other item permanently part of or affixed to the Unit or Limited Common Area appurtenant thereto. Notwithstanding anything herein to the contrary, the Association is not required to obtain Property Insurance or any other insurance for any property or other improvement that is not attached to a Unit or other attached dwelling.

(b) The Property Insurance shall be written in the name of the Association, and the proceeds thereof shall be payable to the Association as trustee for the Owners. Each Owner shall be an insured under the Property Insurance policy.

(c) Insurance premiums for then Property Insurance policy, and any other insurance premiums paid by the Association, shall be a Common Expense of the Association to be included in the annual assessments levied by the Association.

(d) The Association may make a special assessment to each Owner to cover the amount of any deductible under the Property Insurance policy, not to exceed \$10,000 in the aggregate or such other amount satisfying the requirements of Utah Code. Ann. §57-8a-405(9). The Association shall set aside the amount of any deductible collected pursuant to this subsection and not use the same for any purpose other than paying the deductible with respect to any claim made on the Property Insurance policy.

(e) In the event of an insured loss covered by the Property Insurance policy, the deductible shall be treated as a Common Expense in the same manner as the premiums for the Property Insurance policy. However, if the Association 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 lessees, then the Association may assess the full amount of such deductible against such Owner and the Owner's Lot.

(f) If a loss occurs that is covered by the Property Insurance policy in the name of the Association and another property insurance policy in the name of an Owner:

(i) the Association's policy provides primary insurance coverage; and

(ii) notwithstanding Subsection 5.1(e) and subject to Subsection 5.1(g)

(A) the Owner is responsible for the Association's policy deductible and (B) the Owner's policy applies to that portion of the loss attributable to the Association's policy deductible.

(g) As used in this Subsection 5.1(g), "Covered Loss" means a loss, resulting from a single event or occurrence, that is covered by the Association's Property Insurance policy; "Lot Damage" means damage to any combination of a Lot, a dwelling on a Lot, or a Limited Common Area appurtenant to a Lot or appurtenant to a dwelling on a Lot; and "Lot Damage Percentage" means the percentage of total damage resulting in a Covered Loss that is

attributable to Lot Damage. An Owner who owns a Lot that has suffered Lot Damage as part of a Covered Loss is responsible for an amount calculated by applying the Lot Damage Percentage for that Lot to the amount of the deductible under the Association's Property Insurance policy. If an Owner does not pay the amount required under this Subsection 5.1(g) within thirty (30) days after substantial completion of the repairs to, as applicable, the Lot, a dwelling on the Lot, or the Limited Common Area appurtenant to the Lot, the Association may levy an assessment against a the Lot for that amount.

(h) The Association shall provide notice to each Owner of the Owner's obligation under Subsection 5.1(g) for the Association's policy deductible and of any change in the amount of the deductible.

(i) If, in the exercise of the business judgment rule, the Association determines that a claim is likely not to exceed the Association's Property Insurance policy deductible, then (i) the Owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible; (ii) the Owner who does not have a policy to cover the Association's Property Insurance policy deductible is responsible for the loss to the amount of the Association's policy deductible, as provided in Subsection 5.1(g); and (iii) the Association need not tender the claim to the Association's insurer.

## 5.2. Damage to a Portion of the Project.

(a) If a portion of the Project for which the Association is required to obtain Property Insurance is damaged or destroyed, the Association shall repair or replace the portion within a reasonable amount of time unless:

(i) the Project is terminated;

(ii) repair or replacement would be illegal under a state statute or local ordinance governing health or safety; or

(iii) (A) at least 75% of the allocated voting interests of the Owners in the Association vote not to rebuild; and (B) each Owner of a dwelling on a Lot and the Limited Common Area appurtenant to that Lot that will not be rebuilt votes not to rebuild.

(b) If a portion of the Project is not repaired or replaced because the Project is terminated, the termination provisions of applicable law and the Governing documents apply.

The cost of repair or replacement in excess of Property Insurance proceeds and reserves is a Common Expense.

5.3. Entire Project Damaged or Destroyed. If the entire Project is damaged or destroyed and not repaired or replaced, then:

(a) the Association shall use the Property Insurance proceeds attributable to any damaged common areas to restore the damaged area to a condition compatible with the remainder of the Project;

(b) the Association shall distribute the insurance proceeds attributable to Lots and common areas (if any) that are not rebuilt to:

(i) the Owners of the Lots that are not rebuilt;

(ii) the Owners of the Lots to which those common areas (if any) that are not rebuilt were allocated; or

(iii) the Mortgagees or lien holders of the Lots; and

(c) the Association shall distribute the remainder of the insurance proceeds to all the Owners or Mortgagees in proportion to the Common Expense liabilities of all the Lots.

5.4. **Decision Not to Rebuild a Unit.** If the Owners vote not to rebuild a Unit: (a) the Unit's allocated interests are automatically reallocated upon the Unit Owner's vote as if the Unit had been condemned; and (b) the Association shall prepare, execute, and submit for recording an amendment to the Declaration reflecting the reallocations described in this Section 5.4.

5.5. **Liability Insurance.** The Association shall not be required to obtain liability insurance with respect to the Project since the Project does not have any common areas.

5.6. **Fidelity Insurance.** The Association, in its discretion, 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 by the Association for the benefit of the Owners or Members. If the Association elects to procure fidelity insurance, the Association shall seek a policy which shall (a) name the Association as obligee or beneficiary, (b) be 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) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee."

5.7. **Annual Review of Policies.** The Association shall 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. The Association 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.

5.8. **Changes to Community Association Act.** The insurance provisions set forth in this Article 5 are intended to comply with and conform to the terms and conditions in Part 4 of the Community Association Act. If Part 4 of the Community Association Act is amended or modified after the date of this Declaration, the Declarant during the Declarant Control Period and the Association after the Declarant Control Period may amend this Article 5 to conform to the terms and conditions of Part 4 of the Community Association Act, as amended, by filing a recorded amendment to or restatement of this Declaration in the official records of the Davis County Recorder, State of Utah.

## ARTICLE 6 PARTY WALLS

6.1. **General Rules of Law to Apply.** Each wall that is built as a part of the original construction upon the Project which serves and/or separates any two adjoining Units shall constitute a party wall. To the extent not inconsistent with the provisions of this Article 6, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

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

6.3. **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 Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such 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.

6.4. **Exposure to Elements.** Notwithstanding any other provision of this Article 6, an Owner who by negligent or willful actions causes a party wall to be exposed to the elements shall 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.

6.5. **Right to Contribution Runs with Land.** The right of any Owner to contribution from any other Owner under this Article 6 shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

## ARTICLE 7 MAINTENANCE

7.1. **Association's Responsibility.** The Association shall not have any responsibility for upkeep and maintenance of the Project or the Units, unless expressly required by this Declaration or expressly assumed by the Association pursuant to the authority of this Declaration.

7.2. **Owner's Responsibility.** Each Owner shall be responsible for maintenance of his or her Unit, and any Limited Common Area designated for the exclusive use and occupancy of his or her Unit, in a manner consistent with all applicable provisions of the Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned to the Association by the Governing Documents. Without limiting the foregoing, each Owner shall, at such Owner's cost and expense, maintain the Limited Common Area appurtenant to his or her Unit so as to preserve, protect and restore the appearance thereof consistent with the original design and construction and with the Limited Common Areas of the other Units to as to maintain a consistency in the design, construction, color and quality of the exteriors of all Units. Each Unit Owner shall also be responsible, at his or her sole cost and expense, to remove snow, ice

and other obstacles from any public or private walkways or sidewalks appurtenant to his or her Unit. For purposes of this Section 7.2, public sidewalks located in front of (and for end Units, to the side of) each Unit shall be deemed appurtenant to that Unit. The Association shall, however, in the default of the Owner to perform maintenance with respect to an Owner's Limited Common Area which is such Owner's responsibility, and after ten (10) days' written notice to such Owner (which notice shall not be required in the event of emergency or threat to life, health, property or safety), provide exterior maintenance upon the Limited Common Area for which such Owner is responsible and may shall charge such Owner the costs of such maintenance as a specific assessment.

7.3. **Access at Reasonable Hours.** For the sole purpose of performing the maintenance required or otherwise authorized by this Article 7, the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to the Owner, to enter upon any Lot or Limited Common Area at reasonable hours.

7.4. **Other Services Provided by Association.** In addition to the maintenance of the common sewer and water utility servicing the Project and the payment of all costs with respect thereto (including costs for water and sewer usage that are not separately assessed to Units, as described in Section 4.3 above), to the extent determined to be necessary or desirable by the Association, the Association may provide additional services to the Unit Owners as a Common Expense or specific assessment, as appropriate.

7.5. **Alteration of Certain Maintenance Duties by Rule.** The duty of maintenance for the area of a Lot outside the walls of the Unit, and the Limited Common Areas adjacent and appurtenant to the Units may be altered by rule of the Association.

## **ARTICLE 8** **USE AND CONDUCT RESTRICTIONS AND REQUIREMENTS**

The following use and other restrictions shall apply to the Project. These restrictions are in addition to those established by federal, state, or local law and ordinance and those which may be set forth elsewhere in the Governing Documents.

8.1. **General Use Restrictions.** All of the Property which is subject to this Declaration is hereby restricted to residential dwellings and buildings in connection therewith. All buildings or structures erected on the Property shall be of new construction and no buildings or structures shall be removed from other locations to the Property. After the initial construction of a Unit on a Lot, no subsequent building or structure dissimilar to that initial construction shall be built on that Lot. No building or structure of a temporary character, trailer, basement, tent, camper, shack, garage, barn or other outbuilding shall be placed or used on any Lot at any time.

8.2. **Quiet Enjoyment.** No noxious or offensive activity shall be carried on upon any part of the Property nor shall anything be done thereon which may be or may become an annoyance or nuisance to the Unit Owners, or which shall in any way interfere with the quiet enjoyment of each of the Owners or which shall in any way increase the rate of insurance.

8.3. **Parking.** No Owner shall park more than two (2) motor vehicles on his or her Lot or within the Project at any time. No motor vehicle which is inoperable shall be allowed

within the Property (other than within the enclosed garage of a Unit), and any inoperable motor vehicle which remains parked on any Lot (other than in the enclosed garage of a Unit) over 72 hours shall be subject to removal by the Association at the vehicle owner's expense, which expense shall be payable on demand. If the motor vehicle is owned by a Unit Owner, any amounts payable to the Association pursuant to this Section 8.4 shall be secured by the Lot, and the Association may enforce collection of said amounts in the same manner provided for in this Declaration for the collection of assessments. Recreational vehicles, boats, travel trailers and similar personal property shall only be parked within the Project as permitted by rule of the Association.

8.4. **Timeshares Prohibited.** No Unit Owner shall offer or sell any interest in his Unit under a "timesharing" or "interval ownership" plan, or any similar plan.

8.5. **Signs.** The Association shall have the right to regulate the display, use, size and location of signs within the Property. The right to regulate includes the right of prohibition. Notwithstanding the Association's right of regulation, no signs, advertising signs, billboards, objects of unsightly appearance or nuisances shall be erected, placed or permitted to remain on the exterior of any Unit where the same are visible from the public streets or roadways. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant or its agents during the Declarant Control 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.

8.6. **Compliance with Laws.** No Unit Owner shall permit anything to be done or kept in his Unit or any part of the Property that is in violation of any applicable federal, state, or local law, ordinance, or regulation.

8.7. **No Commercial Activities.** No commercial activities of any kind whatever shall be conducted on any portion of the Property, including an in-home business as defined by local ordinances. The foregoing restrictions shall not apply to the commercial activities, signs and billboards, if any, of the Declarant 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.

8.8. **Smoking.** The Association is authorized to, by rule or resolution, prohibit tobacco smoking within or around the patios of any Unit when it is reasonably 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 Unit Owners. In addition, the Association is authorized to enforce and otherwise bring an action for nuisance under the provisions of Title 78, Chapter 38 of the Utah Code for and on behalf of any Unit Owner against any other Unit Owner or occupant whose smoking creates or constitutes a nuisance under said provision of the Utah Code.

8.9. **Pets and Animals.**

(a) **Restrictions.** The Association has the right to regulate and restrict, by rule of the Association, the keeping and harboring of pets and animals within the Property, including the keeping and harboring of pets and animals within the Units. 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. Until such time as the Association adopts a policy expressly authorizing the keeping of pets and animals, the same shall not be prohibited within the Property. The Association may also establish procedural rules and regulations to implement its rules which should include provisions for notice and hearing. Commercial breeding of pets and animals is prohibited within the Property and may not be allowed or authorized by Association rule or resolution.

(b) **Owner Responsibility.** In the event the Association authorizes the keeping of pets and animals, Unit 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 Unit Owner or person within the Property, or the safety of any guests, lessees, or invitees, particularly among children. Unit 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 Unit Owner. Unit 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 shall include any attorney fees, costs and expenses incurred by the Association.

8.10. **Hazardous Activities and Substances.** No Owner shall engage in or permit any of said Owner's guests, visitors, tenants or invitees to engage in any activity that will cause an increase in insurance premiums for insurance coverage on the Property nor shall any Owner or any Owner's guests, visitors, tenants or invitees engage in any activity that will cause or permit any hazardous substance or material to be stored, used or disposed of on or within the Property.

8.11. **External Apparatus.** The Association, by rule adopted by the Association, regulate, restrict or prohibit Owners from hanging, displaying, attaching or otherwise affixing any object (including without limitation awnings, canopies or shutters) on the exterior or roof of such Owner's Unit if the same is visible from the public street in front of the Project (*i.e.*, Merrimac Avenue) if such object detracts from the overall appearance and appeal of the Project.

8.12. **Exterior Television or Other Antennas.** To the extent not prohibited by law, no television, radio or other electronic antenna or device of any type shall be erected, constructed, affixed, placed or permitted to remain on the exterior of any Unit, including the roof, where the same is visible from the public street in front of the Project (*i.e.*, Merrimac Avenue). The Association is hereby authorized to establish and promulgate rules and regulations to govern the placement and installation of antennas covered by the Federal Communications Commission's rules on "Over-the-Air Reception Devices," which requires such antennas to be screened from street level view.

8.13. **Garbage Removal.** All rubbish, trash and garbage shall be regularly removed from the Unit and shall not be allowed to accumulate thereon. Garbage shall be placed in proper containers. Garbage containers for each Unit shall be kept inside the garages of such Units until such garbage containers are ready to be placed on the street for pick up by the city.

8.14. **Pest Control.** No Unit Owner or Unit occupant shall permit any object or condition to exist within or upon the Unit which would induce, breed or harbor insects, rodents or other pests. Each Unit Owner shall perform such pest control activities within and upon his or her Unit as may be necessary to prevent insects, rodents and other pests from being present in his or her Unit.

8.15. **Oil and Mining Operations.** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the Property. No derrick, lift, shaft or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon the Property.

8.16. **Interior Utilities.** All utilities, fixtures and equipment installed within a Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter boundaries of a Lot, shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act or any work that will impair any easement or hereditament nor do any act nor allow any condition to exist which will adversely affect the other Lots or Owners.

## **ARTICLE 9** **LEASES AND LEASING**

9.1. **Purpose and Intent of Lease Restrictions.** The purpose of this Article 9 is to further Declarant's intent to protect the value and desirability of the Project as a harmonious and attractive residential community and to avoid any deterioration of the same into a transient-apartment like community.

9.2. **Notification of Board.** An Owner who enters into a lease or rental agreement must notify the Association of the same, in writing, within fifteen (15) days after execution of the lease or rental agreement and along with such notification must provide to the Association a copy of the lease or rental agreement. 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.

9.3. **Leasing Restrictions.** Any lease or rental agreement for any Unit shall be in writing and shall clearly state that (a) the terms of such lease or rental agreement shall be subject in all respects to the provisions of this Declaration and the other Governing Documents and (b) any failure by tenant/lessee/renter to comply with the terms of such documents shall be 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 Association. To further Declarant's intent, as set forth above, Owners may only lease their Units to Single Families. For purposes of this Article, the term "Single Family" means an individual living alone, a group of two or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than four persons who maintain a single housekeeping unit within the Unit. Any lease or rental

agreement, whether an initial agreement or any renewal thereof, shall provide for a minimum lease term of not less than sixth (6) months; provided, however, the Association shall have 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. Furthermore, the Association is authorized to make this Article more restrictive, including without limitation requiring longer minimum lease periods and establishing rental caps on the number of Units that may be rented within the Property.

**9.4. 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 \$250, which shall constitute a lien upon such Owner's Lot, for each violation by Owner's tenant/lessee/renter of this Declaration or other Governing Documents. Such fine shall be imposed after the Association has given an Owner not less than ten (10) days' written notice of such violation, and the Owner has failed to take appropriate actions within such 10-day period to remedy the same; provided, however, the Association shall not be required to give written notice before assessing a fine if the Association has previously given the Owner written notice during the preceding 12-month period for the same or similar violations. The Association may impose an additional fine on the Owner for each day such violation continues after the 10-day notice period provided herein (unless the Association is not required to give ten (10) days' written notice as provided herein), which additional fines shall 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 shall 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 shall be recoverable by the Association in the same manner as an assessment under Article 4 and shall create a lien in favor of the Association against the Owner's Unit in the same manner as an assessment.

**9.5. Enforcement of Lease by Association.** Any lease or rental agreement for any Unit within the Property shall include the following language, and, if such language is not expressly contained in such lease or rental agreement, the Owner leasing his Unit hereby agrees that such language shall be deemed incorporated into the lease:

NOTICE: Any violation of the Declaration of Covenants, Conditions and Restrictions of The Lofts @ 99<sup>th</sup>, Planned Development (the "Declaration") and/or any rules and regulations adopted pursuant thereto (collectively, the "Violations"), by the lessee, tenant, any occupant or any guest of lessee, is deemed to be a default under the terms of the lease and authorizes the Landlord/Owner to terminate the lease without liability and to evict the lessee in accordance with Utah law. The Landlord/Owner hereby delegates and assigns to the The Lofts @ 99<sup>th</sup> Homeowners Association, or any management company which contracts with the Association, power and authority of enforcement against the lessee for breaches resulting from any Violations, including the power and authority to evict the lessee as attorney-in-fact on behalf and for the benefit of the Landlord/Owner, in accordance with the terms hereof. If the Association proceeds to evict the lessee, any costs, including reasonable attorney fees, court costs, and any other expenses incurred by the Association associated with the eviction shall be an assessment and lien against the Unit.

9.6. **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 10** **SAFETY AND SECURITY**

Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and security of their property within the Property. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of safety or security within the Property, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

## **ARTICLE 11** **EASEMENTS**

11.1. **Encroachments.** Each Lot and the Property included in the Limited Common Areas shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Declarant. In the event a Townhome or permitted structure containing on a Lot is partially or totally destroyed and then rebuilt, the Owners of the Lots so affected agree that minor encroachments of parts of the adjacent Units or Limited Common Areas due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

11.2. **Utilities.** There is designated on the Plat an easement upon, across, over and under the Property for public utility purposes. By virtue of this easement, it shall be expressly permissible for all public utilities serving the Property to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the Property, provided that all such services shall be placed underground, except that said public utilities may affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under roofs and exterior walls. Notwithstanding anything to the contrary contained in this Section 11.2, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on the Property in such a way as to unreasonably encroach upon or limit the use of any structure thereon. In the initial exercise of easement rights under this Section 11.2, a utility shall make reasonable efforts to occupy and use the same physical location or lane as other utilities. After a utility service has initially exercised its easement rights under this Section 11.2, the utility shall make reasonable efforts to occupy and use the same physical location as its prior installations. Should any utility furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement on said Property without conflicting with the terms hereof. Declarant reserves the right to convey to itself and to other adjoining landowners, easements for roadway and utility use in the Project and the right to connect to and use utility easements owned or controlled by the Association or serving the Property.

11.3. **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 a Lot and any Limited Common Area to perform the duties of

maintenance and repair authorized or permitted the Association under this Declaration or the other Governing Documents.

11.4. **Drainage and Irrigation Easements.** Declarant reserves for itself and its successors and assigns, and for the Association, and its officers, agents, employees and successors and assigns, an easement to enter on, across, over, in and under any portion of the Property for the purpose of modifying the grade of any drainage channels on the Property to improve the drainage of water. Declarant also reserves the right to use or delegate the use of any irrigation ditches existing on the Property on the date this Declaration is recorded, and Declarant reserves for itself and its successors and assigns the right to construct, access and maintain additional irrigation ditches and lines on the Property for such other purposes as Declarant may from time to time deem appropriate.

11.5. **Owners' Easements of Enjoyment.** Every Owner has a right and easement of use and enjoyment in and to the Limited Common Area designated by the Declarant for the exclusive use of an Owner's Unit. This easement is appurtenant to and passes with the title to every Lot, subject to the provisions of the Governing Documents. A Unit Owner has no easement of use of the air space outside of the boundaries of his Unit or, in the case of a patio or deck, outside the confines of the patio or deck as depicted on the Plat. Therefore, subject to the Association's right of regulation, each Unit Owner's easement of use with respect to an appurtenant patio or deck shall not extend (i) horizontally beyond or outside of the center line of any wall or other exterior surface constituting the perimeter boundary of the patio or deck or (ii) vertically beyond the interior surface of any covered area or ceiling over the patio/deck. In the event that a patio or deck is uncovered, the Unit Owner's easement of use of the airspace for such patio or deck shall not extend beyond the height of the interior surface of the ceiling within the Unit Owner's Unit.

11.6. **Easement for Declarant.** The Declarant shall have a transferable easement over and on the Project and the facilities and utilities of the Project for the purpose of making improvements on the Property for the purpose of doing all things reasonably necessary and proper in connection with the development and marketing of the Project.

11.7. **Reservation of Easements by Declarant.** The Declarant hereby reserves to itself during the Declarant Control Period the right to reserve easements over, beneath and through the Property, including over the Limited Common Area and related facilities, for the purpose of making improvements to and developing the Property, including without limitation constructing, installing, marketing and maintaining any landscaping features, entrance features, project signage, street lights, paths, trails or sidewalks or other facilities or things benefiting the Property. The Declarant reserves to itself during the Declarant 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 Declarant's plan for development of the Property, without compensation therefor.

11.8. **Easements of Record.** The easements provided for in this *Article 11* shall in no way affect any other recorded easement.

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

## **ARTICLE 12** **SPECIAL DEVELOPMENT RIGHTS**

12.1. **Intent and Purpose of Special Development Rights.** In addition to any other rights granted or reserved to the Declarant in this Declaration and the other Governing Documents, and notwithstanding any covenants, conditions, restrictions or other provisions of limitation within this Declaration, the Declarant, as the developer of the Property, is granted special development rights. These combinations of rights maximize the flexibility of the Declarant to adjust the size and mix of the Property to the demands of the marketplace, both before and after creation of the Project. This Declaration shall be liberally construed to advance Declarant's rights and interest in developing the Property.

12.2. **Municipal Zoning and Subdivision Approvals.** The Declarant shall have the right to further subdivide the Property and to apply for any zoning or subdivision approvals or permits from City of North Salt Lake, Utah, or any other applicable governmental authority with respect to the Property or any adjacent property owned by Declarant, whether or not such adjacent property is annexed into the Project. 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 Lot, each Unit Owner hereby waives his or her right to object to any such approval sought by Declarant, 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.

12.3. **Declarant Business, Marketing and Sales.** Notwithstanding any provisions to the contrary contained in this Declaration or any other Governing Documents, it shall be expressly permissible for Declarant, or its written designee, to maintain such facilities and conduct such activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction and sale of Units during the Declarant Control Period, and upon such portion of the Property as Declarant deems necessary, including without limitation 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 Declarant shall have the right of use of any Units which have not been conveyed to purchasers without charge during the Declarant Control Period to aid in its marketing activities.

12.4. **Additional Development Rights.** The Declarant shall have 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 common areas or additional Limited Common Areas within the Property.

12.5. **Assignment of Declarant's Rights.** Any and all rights and powers of the Declarant contained in this Declaration and other Governing Documents may be delegated, transferred or assigned by the Declarant, in whole or in part. To be effective, any such delegation, transfer, or assignment must be in writing, signed by Declarant, indicate the extent and nature of such assignment, and be recorded in the Office of the Davis County Recorder

## **ARTICLE 13** **AMENDMENT**

13.1. **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 sixty-seven percent (67%) of the total votes in the Association. Notwithstanding the above, the percentage of votes necessary to amend a specific provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that provision.

13.2. **By Declarant.** Declarant has the right to unilaterally amend, modify, extend or revoke this Declaration for any purpose during the Declarant Control Period, with or without notice to the Class A Members. Thereafter, Declarant 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 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. However, any such amendment occurring after the Declarant Control Period shall not adversely affect the title to any Lot unless the Owner shall consent in writing. Declarant's right to amend shall be construed liberally and shall include, without limitation, the right to amend and/or restate this Declaration in part or in its entirety.

13.3. **By the Association.** The Association has the right, after the Declarant 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.

13.4. **Validity.** No amendment made by the Class A Members or the Association during the Declarant Control Period shall be effective unless the Declarant provides its prior express written consent to such amendment, which consent is within Declarant's sole and absolute discretion. Any procedural challenge to an amendment must be made within six months of its recordation 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 this Declaration.

13.5. **Effective Date.** Unless a later effective date is specified in the amendment, any amendment shall be immediately effective upon recording in the office of the Davis 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. In the case of unilateral amendment by Declarant as provided for herein, such amendment shall be immediately effective upon recording in the official records of the Davis County Recorder, State of Utah, a copy of such amendment signed and verified by the Declarant.

## **ARTICLE 14** **ENFORCEMENT**

14.1. **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.

14.2. **Legal Action Authorized.** The Association, the Declarant or any Owner, shall 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 Declarant and the Association shall 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.

14.3. **Fines and Penalties.** The Association may levy a fine or penalty against any Owner who fails to refrain from violating this Declaration or any rule or regulation established pursuant to the authority of this Declaration. Such fine or penalty shall be in an amount that is specifically provided for in a fine schedule adopted, and amended from time to time, by the Association. The Association may establish time frames and requirements for written notice, hearings, and cure periods 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 Association that is not paid within 15 days (such time period shall be stayed should the Governing Documents require any period to cure or for notice and hearing) shall be recoverable by the Association in the same manner as an assessment under Article 4, and shall create a lien in favor of the Association against the Owner's Unit in the same manner as an assessment.

14.4. **Attorney Fees and Costs.** Any fine or penalty levied against an Owner for any violation shall 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 shall be entitled to an award of reasonable attorney fees and costs incurred in such action.

14.5. **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 Community Association Act, or by other applicable laws and ordinances.

14.6. **Non-Liability.** The Association, officers, or Members of the Association shall not be liable to any Unit Owner, lessee, tenant, member or other individual for a mistake in judgment, or for any negligence or non-feasance arising in connection with the performance or non-performance of duties under the Governing Documents or the Community Association Act.

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

## **ARTICLE 15** **GENERAL PROVISIONS**

15.1. **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 Association without a vote of the membership except where applicable law or the Governing Documents specifically require a vote of the membership.

15.2. **Disclaimer of Liability.** The Association shall not be liable for any failure of services to be obtained by the Association or paid for as a Common Expense, or for personal injury or property damage caused by the elements, any Unit 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 shall 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.

15.3. **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 shall not be included. The last day of the period so computed shall 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 shall be 5:00 P.M., Mountain Time.

15.4. **Interpretive Conflicts.** In the event of any conflict between the provisions of any of the Governing Documents, the documents shall control in the following order of authority: (1) the Declaration; (2) the Articles; (3) the Bylaws; and (4) any rule, regulation, or resolution passed pursuant to the authority of the foregoing documents.

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

15.6. **Duration.** The covenants, conditions, restrictions and easements of this Declaration shall run with and bind the Property, and shall inure to the benefit of, and be enforceable by, the Association, the Owner of any Lot subject to this Declaration, and their respective legal representatives, heirs, successors and assigns for a term of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless terminated by two-thirds (2/3ds) of the Owners and the recordation of a notice of termination in the official records of the Davis County Recorder, State of Utah.

15.7. **Notices.** Any notice required to be sent under the provisions of this Declaration shall be deemed to have been properly sent when deposited in the U.S. Mail, postage prepaid, to the last known address of the person who is entitled to receive it. The Association may, by resolution, adopt a policy for notification via electronic communication or transmission (such as e-mail) to Unit Owners in lieu of notice by mail. In addition, the Association may require that Unit Owners maintain a current e-mail address with the Association for such purpose. The Association may, from time to time, adopt other methods for giving any notice to Owners for purposes of this Declaration or the other governing documents, provided such methods are fair and reasonable and otherwise comply with the Community Association Act.

15.8. **Gender and Grammar.** The singular, wherever used herein, shall be 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, shall in all cases be assumed as though in each case fully expressed.

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

15.10. **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, as the Declarant herein, has hereunto set its hand this 29<sup>th</sup> day of September, 2014.

BRYCEWOOD DEVELOPMENT, LLC  
a Utah limited liability company

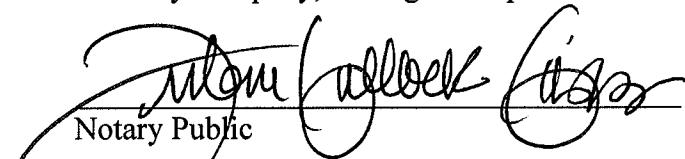
By:

Preston E. Wood  
Its Manager

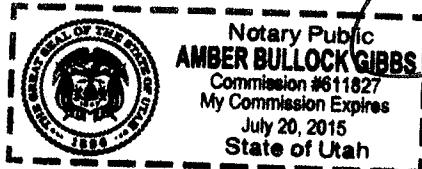
ACKNOWLEDGMENT

STATE OF UTAH )  
: ss  
County of Davis )

On this 10 day of September, 2014, before me, the undersigned notary public, personally appeared Preston E. Wood, the Manager of BryceWood Development, LLC, a Utah limited liability company, who duly acknowledged to and before me that he signed the foregoing instrument for and on behalf of said limited liability company, having all requisite authority to so act.

  
Notary Public

[seal]



**EXHIBIT A**

**BYLAWS OF THE ASSOCIATION**

**SEE ATTACHED.**

**BYLAWS  
OF  
THE LOFTS @ 99<sup>TH</sup>  
HOMEOWNERS ASSOCIATION**

These Bylaws apply to The Lofts @ 99<sup>th</sup>, Planned Development located in Davis County, Utah (the “Project”), and govern The Lofts @ 99<sup>th</sup> Homeowners Association, a Utah non-profit corporation (the “Association”).

**ARTICLE 1  
OFFICES AND REGISTERED AGENT**

1.1. **Principal Office.** The principal office of the Association shall be located in Davis County, Utah, at such place as the Board shall designate. 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 agent of the Association, as required by the Utah Revised Nonprofit Corporation Act, Utah Code §§ 16-6a-101 *et seq.* (the “Act”), may be changed from time to time as provided in the Act.

**ARTICLE 2  
DEFINITIONS - DECLARATION**

Capitalized terms used in these Bylaws that are not defined herein shall have the meanings given in that certain “Declaration of Covenants, Conditions and Restrictions of The Lofts @ 99<sup>th</sup>, Planned Development” dated September 29, 2014 (the “Declaration”), and recorded in the official records of the Davis County Recorder, State of Utah, on [\_\_\_\_\_], 2015 as Entry Number [\_\_\_\_\_].

**ARTICLE 3  
MEMBERSHIP AND VOTING RIGHTS**

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

3.2. **Voting Rights.** Voting rights for each class of membership shall be as set forth in Section 3.2 of the Declaration.

3.3. **Evidence of Membership.** No person, persons, entity or entities shall exercise the rights of membership until satisfactory proof has been furnished to the Secretary of the Association of the qualification of such person as a Member, or as a nominee of a Member, pursuant to the terms of the Articles 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 thirty (30) days after the same shall become 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 for a period not to exceed sixty (60) days. Except for suspension of voting rights for failure to pay assessments or other charges, any suspension of the rights of membership shall be pursuant to notice and hearing. The Board shall 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.** There shall be no requirement to hold an annual meeting during the period of Declarant's Class B membership (*i.e.*, during the Declarant Control Period, as defined in the Declaration). Thereafter, annual meetings of the Members for the election of Directors, the presentation of the annual financial report of the Association and for the transaction of such other business as the Board of Directors may determine, shall be held at such time and place as may be designated by the Board. 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 twenty-five percent (25%) of all of the votes of the Association.

4.3. **Notice of Meetings.** Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least thirty (30) days before such meeting to each Member entitled to vote on the matter for which the meeting has called, addressed to the Member's address last appearing on the books of the Association. Such notice shall 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 shall be 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 shall be 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, shall 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, twenty percent (20%) of all the votes of each class of membership shall constitute a quorum

for any action. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented. Where the Declaration requires a percentage vote of all Members, the quorum required for such vote must be the same as the minimum percentage vote required to approve the action which is the subject of the vote; provided however, that in calculating any such percentage, Members whose voting rights have been suspended shall not be included.

4.6. **Proxies.** At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary prior to the vote being taken at meeting for which the proxy is valid. Every proxy shall be revocable and shall 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 shall 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 shall: (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 shall not be less than thirty (30) days after delivery of the ballot; (d) state by what means it shall be returned and where; and (e) shall be accompanied by any written information, which has been approved by a majority of the Board, sufficient to permit each Member casting the ballot to reach an informed decision on the matter. Each ballot shall contain a means of identification for each Member entitled to vote, which shall identify such Member by Unit 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 shall be required or is necessary to obtain such consents.

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 Unit is owned by a trust, thereby making the trust the Member, and the individual fails to sign as "trustee," it shall 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 shall be determined by the presiding officer. Except as may be modified by resolution of the Board, *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 Davis County, State of Utah. If the Board of Directors makes no designation, annual and regular meetings shall 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 Declarant, 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 shall be managed by a Board of Directors consisting of at least three (3) qualified persons. The number of directors may range from a minimum of three (3) to a maximum of five (5) directors. The number of persons constituting the whole Board of Directors may be fixed from time to time within this range by resolution of the Board of Directors.

5.3. **Term of Office; Staggered Terms.** At the first annual meeting at which Members elect the Directors, the two (2) persons obtaining the highest number of votes shall serve for two (2) years and all others shall serve for one (1) year. Thereafter, upon the expiration of the initial term of each director, his or her successor shall be elected for one-year terms. Nothing shall prevent any person from serving as a director for successive terms or more than one term if duly elected by the Members.

5.4. **Removal.** Any Director may be removed from the Board with cause, by a majority vote of the Members of the Association. Any Director who shall be absent from three (3) consecutive Board meetings shall 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 shall be selected by the remaining Directors and shall serve for the unexpired term of his or her predecessor or until special election of a successor.

5.5. **Compensation.** No Director shall receive compensation for any service he or she may render to the Association. However, any Director may be reimbursed for actual expenses incurred in the performance of his or her duties as a Director.

5.6. **Declarant Control Period.** Notwithstanding anything herein to the contrary, Directors serving during the Declarant Control Period (as defined in the Declaration) shall be appointed by the Declarant acting in its sole discretion and shall serve at the pleasure of the Declarant. There shall be no requirement for the election of Directors as forth in Article 6 until the termination of the Declarant Control Period unless the Declarant 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 chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors at least sixty (60) days prior to each annual meeting of the Members, to serve through such annual meeting. The nominating committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

6.2. **Election; Voting**. Election to the Board of Directors shall 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 and these Bylaws. The persons receiving the largest number of votes shall be 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 shall be sent to each Member by the Secretary not more than sixty (60) days and not fewer than thirty (30) days before the date set for election. Ballots shall 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, ballots must be received by the Secretary prior to the election. Upon receiving the ballots, the corporate secretary shall open the outer envelope, remove the identification paper and record which Members have voted. The identification paper and outer envelope shall then be separated from the ballot envelope. The ballot envelope shall 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 shall 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 shall be delivered or mailed to all Directors at least seven (7) days prior to any regular Board meeting. Meetings of the Board shall be open to all Members, unless litigation or potential litigation, contract negotiation or employment or personnel matters are being discussed.

7.2. **Special Meetings**. Special meetings of the Board of Directors shall be held when called by the President of the Association or by any two (2) Directors, after not less than two (2) days' notice to each Director.

7.3. **Quorum.** A majority of the number of Directors shall constitute 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 shall be 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, setting forth the action so taken, signed by all Directors.

7.5. **Place of Meetings.** Regular or special meetings of the Board of Directors during the Declarant Control Period 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 shall be held in Davis 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 shall 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 shall 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 limitations set forth in the Declaration, the Act, or the Articles.

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, and these Bylaws, and other Governing Documents.

## **ARTICLE 9** **OFFICERS AND THEIR DUTIES**

9.1. **Enumeration of Offices.** The officers of this Association shall be 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 shall elect the officers of the Association annually and each shall hold office for one (1) year unless the officer shall sooner resign, or be removed, or otherwise be disqualified to serve.

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

9.5. **Resignation and Removal.** The Board may remove any officer from office with or without cause. Any officer may resign at any time by giving notice to the Board, or any officer of the Board. Such resignation shall 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. The officer appointed to such vacancy shall 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 special office created pursuant to Section 9.4.

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

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

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

(c) **Secretary.** The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and the Association together with their addresses, and shall perform such other duties as required by the Board.

(d) **Treasurer.** The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and disburse such funds as directed by resolution of the Board of Directors; sign all checks and promissory notes of the Association; maintain a roster of all Members, assessments and payments; keep proper books of account; issue certificates of payment of assessments; notify the Board of Members who are delinquent in paying assessments; prepare an annual budget and statement of income and expenditures to be presented to the membership at its regular annual meeting; and deliver a copy of the budget and statement to the Members at said meeting.

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

9.10. **Declarant Control Period.** Officers serving during the Declarant Control Period shall serve at the pleasure of the Board and need not be elected on an annual basis as set forth herein.

## **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 shall have the authority to appoint members of each committee it creates. Each committee shall operate in accordance with the terms of such resolution.

10.2. **Architectural Control Committee.** The Board may establish an Architectural Control Committee composed of three (3) or more representatives who may be appointed by the Directors or by the Declarant and given authority with respect to architectural control matters described in the Declaration and such other matters as the Board may delegate.

## **ARTICLE 11** **FINANCIAL MATTERS; INSURANCE**

11.1. **Assessments and Other Financial Matters.** The Board of Directors shall have the power to make assessments, impose fines and take all other actions with respect to financial and similar matters, and to enforce any violation of the Governing Documents that the Association may take pursuant to the Declaration, including without limitation pursuing any right or remedy for the nonpayment of any assessment or fine. In so doing, the Board of Directors shall have all rights, powers and privileges set forth in the Utah "Community Association Act," Utah Code Sections 57-8a-101, *et seq.* (as the same may be amended from time to time, the "Community Association Act").

11.2. **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 shall be signed and countersigned by persons authorized by these Bylaws or by Board resolution to sign such checks and drafts.

11.3. **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 shall have 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.

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

11.5. **Annual Report; Reserve Analysis.** The Board of Directors shall 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. Without limiting the generality of the foregoing, the Board of Directors shall comply with the requirements of the Community Association Act concerning preparing, advertising or disclosing, presenting and adopting budgets for the Association; cause a reserve analysis to be done from time to time, but not less frequently than as required by the Community Association Act; present any reserve analysis to the Members at a special or regular meeting and provide an opportunity for the Members to discuss the same and vote on whether or not to establish a reserve fund and, if so, how to fund it; if approved by the Members, create or establish a reserve fund separate from other funds of the Association in accordance with the Community Association Act; and use funds in the reserve account for the uses permitted under the Community Association Act. The Board of Directors shall provide all Members, at the expense of the Association, copies of said annual budget and statement of income and expense.

11.6. **Insurance.** The Board of Directors shall take such actions as may be necessary under the Declaration or the Community Association Act with respect to obtaining and maintaining insurance for the Project.

## **ARTICLE 12** **BOOKS AND RECORDS**

12.1. **Association Records.** The Association shall keep and maintain those records required by the Declaration, the Act, and these Bylaws. Such records shall 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 shall at all times, during reasonable business hours, be subject to inspection by any Member. The Articles and these Bylaws shall 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 shall have the power to adopt and establish by resolution such rules and regulations as it may deem 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 shall 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.

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 Members at any

annual meeting of the Members or at any special meeting of the Members called for that purpose.

14.3. **By Declarant.** Notwithstanding anything herein to the contrary, during the Declarant Control Period, Declarant has the right to unilaterally alter, amend or repeal these Bylaws, in whole or in part, for any purpose, with or without notice to the Class A Members. Thereafter, Declarant 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 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.

14.4. **Validity.** No amendment made by the Board or the Class A Members during the Declarant Control Period shall be effective unless the Declarant provides its prior express written consent to such amendment, which consent is within Declarant's sole and absolute discretion. No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant. 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 shall be effective upon the date such amendment is duly adopted as provided for herein, which date the Secretary shall certify on the amendment and file with the Association's records. The Board shall provide notice to Members of any amendment to these Bylaws, however, the receipt of such notice shall not be 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 shall be deemed to have been properly sent when deposited in the U.S. Mail, postpaid, to the last known address of the person who is entitled to receive it. Members are required to maintain a current mailing address with the Association. In the absence of specific instruction from the Member, the Members current mailing address will be deemed to be the mailing address for the Unit owned by the Member. The Board may, by resolution, adopt a policy for notification via electronic communication or transmission (such as e-mail) to Members in lieu of notice by mail. In addition, the Board may require that Members 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, shall be 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, shall 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.

**EXHIBIT B**

**LEGAL DESCRIPTION OF THE PROPERTY**

The following real property is located in Davis County, Utah:

Lots 1 through 10 of a proposed planned unit development known or to be known as The Lofts @ 99<sup>th</sup>, a Planned Development, according to the official plat thereof to be recorded in the official records of the Davis County Recorder, and consisting of the following real property:

BEG AT A PT E 71.16 FT & N 557.80 FT FR THE SW COR OF SEC 1-T1N-R1W, SLM; RUN TH N 21°47'33" E, A DIST OF 153.87 FT; TH S 67°58'20" E, A DIST OF 156.90 FT; TH S 22°00'55" W, A DIST OF 153.76 FT; TH N 68°00'49" W, A DIST OF 156.30 FT TO THE POB. CONT. 0.55 ACRES TOGETHER WITH A DESC R/W ALSO: BEG AT A PT ON THE W'LW LINE OF HWY 89, LOC IN THE SW ¼ OF SEC 1 & THE SE ¼ OF SEC 2-T1N-R1W, SLB&M; & RUN TH N 67°58'20" W 156.90 FT AG SD S'LY LINE OF SD PUD PLAT; TH N 21°47'33" E 10.00FT TH S 67°58'20" E 156.94 FT O THE W'LW LINE OF HWY 89; TH S 22°00'53" W 10.00 FT TO THE POB. CONT. 0.036 ACRES TOTAL ACREAGE .0586 ACRES