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RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
4/30/2015 8:05:00 AM  
FEE \$62.00 Pgs: 21  
DEP eCASH REC'D FOR JF CAPITAL

After Recording Return To:  
BAC Layton, LLC  
1148 W. Legacy Crossing Blvd  
Suite 400  
Centerville, UT 84014

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Tax Parcel ID's: 103000101, 103000102, 103000103, 103000104, 103000105, 103000106, 103000107, 103000108, 103000109, 103000110, 103000111, 103000112, and 103000113.

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AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS AND  
RESTRICTIONS  
FOR  
ELLISON PARKESTATES

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THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is made on this 24<sup>th</sup> day of April, 2015 by BAC Layton, LLC, a Utah limited liability company (the "Declarant").

### RECITALS

A. A Declaration of Covenants, Conditions and Restrictions for Ellison Homeowners Association ("Original Declaration") was recorded in the real property records of Davis County, Utah, on July 30, 2014, as Entry No. 2815813 (Book 6070, Page 1015-1026).

B. Declarant is the successor in interest to Oakwood Homes of Utah, LLC, the declarant under the Original Declaration.

C. The Declarant is the owner and/or has the right to acquire certain real property located in the City of Layton (the "City"), Davis County, Utah, more particularly described on *Exhibit A* hereto (the "Property"). The Property is not a cooperative.

D. It is Declarant's intent that this Declaration completely restate, replace, and supersede the Original Declaration.

E. It is the desire and intention of the Declarant to sell the Property and subject the Property to mutually beneficial restrictions under a general plan of improvement for the benefit of all the Property in the Project and the future owners of the Property.

F. Ellison Homeowners Association (the "Association") has been incorporated as a Utah non-profit corporation to act as a homeowners association with the powers of managing, maintaining the Property, including roads, administering and enforcing this Declaration, and assessing and collecting a prorated share of the costs for maintaining and repairing any and all common areas on the Property and performing such other acts as are provided or set forth in this Declaration or the Bylaws or which generally benefit the Property.

G. All owners of lots, their successors, heirs and assigns identified in this Declaration shall have the right to enforce these covenants, conditions and restrictions.

H. Declarant has adopted, imposed and subjected the Property to certain covenants, conditions and restrictions described in this Declaration (collectively, the "Covenants") for the purpose of:

(1) Helping to insure uniformity in the development of the Lots;

(2) Creating certain covenants and use restrictions to help protect long term property values and a desired quality of life;

(3) Facilitating the sale by the Declarant, its successors and assigns, and by individual Owners of the Lots in the Community by reason of its ability to help assure such purchasers of uniformity and basic restrictions intending to preserve property values over time; and

(4) Maintaining the common areas located within the Property in accordance with City standards.

NOW, THEREFORE, the Declarant does hereby establish and impose upon the Property (as hereinafter defined), the Covenants for the benefit of, and to be observed and enforced by, the Declarant, its successors and assigns as well as by all purchasers of Lots, to wit:

#### ARTICLE 1- DEFINITIONS

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

- 1.1 "*Association*" means Ellison Homeowners Association, a Utah non-profit corporation.
- 1.2 "*Bylaws*" means the Bylaws of Ellison Homeowners Association adopted by the Association and attached hereto as *Exhibit B*.
- 1.3 "*Community*" means all of the land described in *Exhibit A* attached hereto.
- 1.4 "*Declarant*" means BAC Layton, LLC, and any successor or assign thereof to whom it shall expressly (a) convey or otherwise transfer, in writing, all of its right, title and interest in the Property in its entirety, without reservation of any kind; or (b) transfer, set over and assign all of its right, title and interest under this Declaration, or any amendment or modification thereof.
- 1.5 "*Improvements*" means every structure or improvement of any kind, including but not limited to landscaping required herein and any residence, deck, porch, awning, fence, garage, carport, driveway, storage shelter or other product of construction efforts on or in respect to the Property.
- 1.6 "*Lot*" or "*Lots*" means a subdivided parcel, lot or plot of ground within the Property and as designated on the Plat Map.
- 1.7 "*Owner*" means the person or persons who are vested with record title and owning any Lot (including the holder of a vendee's interest under a land sale contract, unless otherwise stated in the contract) whose interest in the Lot is held in fee simple according to the records of the County Recorder of Davis County, Utah.
- 1.8 "*Plat Map*" means the plat map entitled, "Ellison Park Estates Phase 1" (the "Project") recorded in the official records of the Recorder's Office of Davis County, Utah, on July 30, 2014, as Entry No. 2815812, a copy of which is attached hereto as *Exhibit C*, together with any plats recorded among the Recorder's Office in substitution thereof or amendment thereof, plus any plat incorporating additional real estate into the Project as provided in Article 2 below.
- 1.9 "*Property*" means all of the real property described in attached Exhibit A together with any additional real estate added to the Project pursuant to Article 2 below.
- 1.10 "*Single Family Residence*" shall mean a building, house, or dwelling unit used as a residence for a Single Family, including any appurtenant garage or similar out-building.
- 1.11 "*Single Family*" shall mean a group of one or more persons each related to the

other by blood, marriage or legal adoption, or a group of not more than three persons not related, together with their domestic servants, who maintain a common household in a dwelling.

## ARTICLE 2 - PROPERTY SUBJECT TO THIS DECLARATION

### 2.1 Submitted Property.

(a) The real property which is, and shall be, transferred, held, sold, conveyed and occupied subject to this Declaration is located in Davis County, Utah, also known as the "Community" or "Project", and is described on *Exhibit A* attached hereto, all of which real property is also referred to herein as the "Property".

(b) Declarant declares that all of the Property shall be owned, conveyed, hypothecated, encumbered, used, occupied and improved subject to this Declaration. The easements, covenants, conditions and restrictions described in this Declaration shall run with the Property and shall be binding upon all parties having or acquiring any right, title or interest in such property or any part thereof and shall inure to the benefit of each Owner.

(c) Declarant hereby reserves the right to expand the Project to include additional real estate adjacent to or nearby the Property. In the event Declarant exercises the right to expand the Project, all such additional real estate shall be considered Property and shall be subject to the easements, covenants, conditions and restrictions described in this Declaration.

(d) All property within the Community is subject to and must comply with the terms, conditions and zoning approvals from the City.

## ARTICLE 3 - MEMBERSHIP

3.1 Membership in the Association. Each and every Owner, in accepting a deed or contract for any Lot, whether or not it shall be so expressed in such deed or contract automatically becomes a member of the Association, and agrees to be bound by such reasonable rules and regulations as may, from time to time, be established by the Association. Membership shall be appurtenant and may not be separated from ownership of the Lot.

3.2 Transfer of Membership. The membership held by any Owner of a Lot shall not be transferred, pledged or alienated in any way, except upon the sale or encumbrance of such Lot, and then only to the purchaser of such Lot, at which time his/her membership shall automatically cease and the successor Owner shall become a Member. Any attempt to make a prohibited transfer is void, and will not be reflected upon the books and records of the Association. In the event the Owner of any Lot should fail or refuse to transfer the membership registered in his name to the purchaser of such Lot, the Association shall have the right to record the transfer upon the books of the Association. Membership in the Association is mandatory for all Owners.

3.3 Voting Rights. Declarant shall have all voting rights until such time as the Declarant sees fit to hand the Association over to the Owners or when one hundred percent of the lots are sold at which point each Member shall be entitled to one (1) vote for each Lot in which they hold the interest required by Section 3.2. When more than one person holds such interest in any Lot, all such persons shall be Members. The vote for such lot shall be

exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot. After the period of Declarant's control over the association, all voting rights shall be subject to the restrictions and limitations provided herein and in the Articles and Bylaws of the Association.

3.4 Record of Ownership. Every Owner shall properly cause to be filed of record the deed conveying ownership of the Lot. The new Owner shall submit a copy of the deed to the Association, which shall maintain a record of ownership of the Lots. Any Owner who mortgages his Lot or any interest therein by a mortgage which has priority over the lien of any assessment provided herein shall notify the Association of the name and address of the mortgagee; and the Association shall maintain all such information in the record of ownership.

#### **ARTICLE 4 - PROPERTY RIGHTS IN LOTS**

4.1 Use and Occupancy. Each Lot shall be bound by, and the Owner shall comply with, the restrictions contained in this Declaration for the mutual benefit of the Owners.

4.2 Right of Ingress and Egress. Each Owner shall have a right of ingress to and egress from their Lot, with such right being perpetual and appurtenant to the Lot ownership.

4.3 Restrictions on Lot Division. All Owners are prohibited from any further dividing of any and all Lots subject to this Declaration.

4.4 Restrictions on Common Area Divisions. No common area may be further subdivided and is prohibited from any further development.

4.5 Easements Shown on the Plat Map. Lots shall be subject to the easements shown on the Plat Map.

#### **ARTICLE 5 - ENCROACHMENTS**

5.1 No Encroachment. No Lot shall encroach upon an adjoining Lot. If, however, an encroachment occurs due to the settlement or shifting of a structure or any other reason whatsoever beyond the control of any Owner, there shall forthwith arise, without the necessity of any further or additional act or instrument, a good and valid easement for the maintenance of such encroachment, for the benefit of the Owner, its heirs, personal representatives and assigns, to provide for the encroachment and non disturbance of the Structure. Such easement shall remain in full force and effect so long as the encroachment shall continue.

5.2 Conveyance Subject to Easement. The conveyance or other disposition of a Lot shall be deemed to include and convey, or be subject to, any easements arising under the provisions of this Article without specific or particular references to such easement.

5.3 Liability. Nothing in this section shall relieve an Owner of liability in the case of the Owner's willful misconduct or failure to adhere to the Plat Map.

#### **ARTICLE 6 - ARCHITECTURAL CONTROL PROVISIONS**

6.1 Land Use and Building Each Lot shall be used exclusively for the construction

and occupancy of a Single Family Residence to be occupied by a Single Family. Except as may be specifically provided in this Declaration, no building shall be erected, altered, placed or permitted to remain on any Lot other than one (1) Single Family Residence.

6.2 Residence Size and Materials. All construction within the Project must comply with Layton City code.

6.3 Improvements.

(a) Completion of Improvements. Construction of all Improvements, including painting and all exterior finish, shall be completed within twelve (12) months from the beginning of construction so as to present a finished appearance when viewed from any angle. In the event of undue hardship due to weather conditions, the periods specified in this section may be extended for a reasonable length of time. The building areas shall be kept reasonably clean and in workmanlike order during the construction period. All construction activities shall conform to city ordinances and/or regulations.

(b) Fencing. Any individual Lot fencing must be six (6) feet high and in accordance with City requirements. No fences shall be allowed in the front yards or the front setback area.

(c) No Temporary or Prefab Structures. No previously erected, used, or temporary structure, mobile home, trailer house, or any other non-permanent structure may be installed or maintained within the Property, with the exception of those temporary structures permitted pursuant to Section 6.4 below. No prefabricated housing may be installed or maintained within the Property.

6.4 Temporary Structures

(a) Subject to Sections 6.4(b) and 6.4(c) below, no structure of a temporary character, trailer, tent, shack, garage, barn or other outbuilding shall be used on within the Property at any time as a residence, either temporarily or permanently.

(b) A single detached garage will be permitted on any Lot within the Property so long as: (i) such structure complies with all City code and set-back requirements; and (ii) the plan and materials for such structure have been approved by the ACC in accordance with Section 6.5(b).

(c) Declarant may place or erect temporary or portable structures to be used for the purpose of establishing a sales office within the Property. Furthermore, Declarant may place temporary sheds for storage in connection with construction, so long as such sheds are maintained in a good condition and removed no later than the date of completion of construction.

6.5 Architectural Control Committee.

(a) There shall be an Architectural Control Committee (the "ACC") of the Association. The initial ACC shall be the Declarant at the following address: 1148 W. Legacy Crossing Blvd., Suite 400, Centerville, UT 84014.

(b) The ACC shall approve or deny plans for all buildings proposed for erection, placement, or alteration within the Project within ten (10) business days of a formal written submittal. Failure of the ACC to approve or deny the plans within such time period shall

not constitute an approval. The City may require that building permit applications show evidence that the ACC has approved each building plan.

(c) The ACC shall have the right, but not the duty, to enforce the terms of this Declaration by any legal means and shall be entitled to recover its costs and attorney fees from the other party in any such enforcement action by the ACC, whether or not a judicial proceeding is instituted.

6.6 Common Areas. Maintenance and landscaping shall be performed by the Association to keep common areas in their original condition and in accordance with City standards. The sole Common Area in the Community is a landscaped park strip along Gordon Avenue and Lot 101. The Association shall own, irrigate, and maintain the common area. Maintenance shall be carried out by the Association in perpetuity and shall be paid for through the means of collection of association fees and assessments.

No alteration to the common areas is allowed without the prior written consent from the City. In due time, Declarant will deed all common areas to the Association.

6.7 Assessments. An "Initial Membership Fee" in an amount to be determined by the Association shall be due within the first calendar month of occupancy. A "Monthly Membership Assessment", in an amount to be determined by the Association shall be collected from each Owner on a monthly basis. The first Monthly Membership Assessment shall be due on the last day of the second month of occupancy. The Initial Membership Fee and the Monthly Membership Assessment amount shall be fixed or modified by the Association on an annual calendar year basis. The assessments shall be used by the Association to maintain and preserve the common areas and for other purposes related to the powers, obligations, and duties of the Association as set forth in the Declaration or the Bylaws. The Association may also assess Special Assessments or Supplemental Assessments as necessary to maintain and preserve the Common Areas and to perform such other obligations imposed on the Association or permitted to be performed by the Association pursuant to this Declaration or the Bylaws. The Association may also fix the amount for late fees to be imposed in the event any Monthly Membership Assessment or other financial obligation of an Owner to the Association is not paid in a timely fashion. The assessments identified herein, together with interest, late charges, costs, and reasonable attorney fees, shall be a charge on and continuing lien upon the Lot against which such assessments are made. Each Owner's obligation to satisfy such assessments is an independent covenant, with all amounts due and payable without setoff or deduction. In the event of a default, the Association may enforce the lien against a Lot by foreclosure in the manner set forth below. The Association's lien shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Utah or any exemption now or hereafter provided by the Laws of the United States. The acceptance of a deed to any Lot subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien.

6.8 Effect of Nonpayment of Assessment; Association's Remedies. Any assessment not paid within ten (10) days after the due date thereof shall bear interest from the due date at the rate of eighteen percent (18%) per annum, or at such lesser rate as may be set from time to time by the Association, and the Association may also assess a monthly late charge thereon. The Association may bring an action at law against the Owner personally obligated to pay the same,

and may foreclose the lien against such Owner's Lot, and in the event a judgment is obtained, such judgment shall include interest on the assessment and reasonable attorney fees to be fixed by the court, together with the costs of the action. Foreclosure or attempted foreclosure by the Association of its lien shall not be deemed to estop or otherwise preclude the Association from thereafter again foreclosing or attempting to foreclose its lien for any subsequent assessments, charges, costs or fees, which are not fully paid when due. The Association shall have the power and right to bid on or purchase any Lot at foreclosure or other legal sale, and to acquire and hold, lease, mortgage, vote the membership votes appurtenant to ownership such Lot, convey or otherwise deal with such Lot. In addition to the other rights and remedies set forth herein, the Association shall have all of the rights and remedies pertaining to enforcement of assessment liens as set forth in, and to be exercised in accordance with, the provisions of the Utah Community Association Act, including, without limitation, the provisions in Utah Code Ann. §§57-8a-302 and -303, as the same may be amended. The Association shall have the right to appoint a trustee and appoint a successor trustee as provided by statute. In any action brought by the Association (or counterclaim or cross claim brought by the Association) to collect assessments or to foreclose a lien for unpaid assessments, the Association shall be entitled to have a receiver appointed to collect all sums alleged to be due from the Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the action to the extent of the Association's assessments of any kind or nature permitted hereunder.

#### ARTICLE 7 - RESTRICTIONS ON USE

7.1 Restrictions and Requirements. The following restrictions and requirements are in addition to all other restrictions and requirements contained in this Declaration:

(a) Residential Use. Lots shall be used for residential purposes in accordance with, and subject to, the other provisions of this Declaration. Except as provided in this subsection, no trade, craft, business, profession, commercial or similar activities of any kind shall be conducted on or within any Lot or in any other portion of the Community. Nothing in this Section shall be construed so as to prevent or prohibit:

(i) Activities relating to the rental or sale of Lots;

(ii) An Owner from maintaining his or her professional personal library; keeping his or her personal business or professional records; handling his or her personal business or professional telephone calls; or conferring with business associates or customers so long as there is no significant increase in traffic or noise on or in such Owner's Lot; or

(iii) The right of Declarant, its successors and assigns or any contractor or homebuilder to construct any Improvement on any Lot and to store construction materials and equipment on such Lots in the normal course of construction.

(b) Drainage System. There shall be no interference with the established drainage patterns or systems over or through any Lots so as to affect any other Lot or any real property outside the Property. The term "established drainage" shall mean the detention basin, drainage swales, conduits, inlets and outlets designed and constructed for the Property.

(c) Offensive Activities. No noxious, offensive or unsightly conditions,



including, but not limited to, the placement or storage of cars, car parts and appliances, or other noxious or offensive activities shall be permitted on or in any Lot or other portion of the Property, nor shall anything be done in or placed upon or within any Lot which interferes with or jeopardizes the enjoyment of other Lots or which is a source of unreasonable annoyance to other Owners.

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

(e) Animals.

(i) The keeping of any animal by a Lot Owner shall be in compliance with any Davis County or Layton City ordinances.

(ii) Those animals which are permitted shall not cause any noise or disturbance that would be deemed a nuisance to other Owners or residents within the Property. Any inconvenience, damage or unpleasantness caused by such animals shall be the responsibility of the respective Owners thereof and Owners shall be responsible for removal of wastes of their animals from all portions of the Property.

(f) Rubbish and Trash. No part of the Property may be used or maintained as a dumping ground for rubbish, trash, garbage, or any other waste. No garbage, trash, or other waste may be kept or maintained on any part of the Property except in a sanitary container or within a trash enclosure screened from public view. All such waste and garbage must be promptly and periodically removed.

(g) Vehicles in Disrepair. No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any part of the Property unless such vehicle is within a garage. A vehicle shall be deemed in an "extreme state of disrepair" when its presence offends the occupants of the other Lots.

(h) Noise Disturbance. Residents shall exercise extreme care about making noises or the use of musical instruments, radios, televisions, or amplifiers and may not disturb other residents.

## ARTICLE 8 - DECLARANT RIGHTS AND CONTROL

8.1 Other Rights. In addition to any other rights under this Declaration, Declarant:

(a) Sales Office and Model. Shall have the right to maintain sales offices and models on one or more of the Lots which Declarant owns. Declarant and prospective purchasers and their agents shall have the right to use and occupy the sales offices and models during reasonable hours any day of the week.

(b) For Sale Signs. May maintain a reasonable number of "For Sale" signs, the size of which may be determined by Declarant.

(c) Right to Add Property. Declarant reserves the right to unilaterally annex

additional property to the Property in its sole discretion.

8.2 Easements Reserved to Declarant.

(a) An easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Property and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or 'advisable to provide service to any Lot, is hereby expressly granted.

(b) The Declarant further reserves unto itself, and its successors and assigns, the right to grant easements, rights-of-way and licenses to any person, individual, corporate body or municipality, to install and maintain pipelines, underground or above-ground lines, with the appurtenances necessary thereto for public utilities, or quasi-public utilities or to grant such other licenses or permits as the Declarant may deem necessary for the improvement of the Community in, over, through, upon and across any and all of the roads, streets, avenues, and alleys and in, over, through, upon and across each and every Lot in any easement area set forth in this Declaration or shown on the Plat Map.

(c) The Declarant further reserves unto itself and its successors and assigns, the right to dedicate all of said roads, streets, alleys, rights of way or easements, including easements in the areas designated as storm water management reservation, to public use all as shown on the Plat Map.

**ARTICLE 9 - OWNER MAINTENANCE  
OBLIGATIONS**

9.1 Lots/Declarant Improvements. Maintenance of the Lots and all structures, landscaping and all other Improvements thereon shall be the sole responsibility of the Owner thereof who shall maintain such Lot in accordance with this Declaration. The maintenance of all Improvements constructed by Declarant, including walls, entry monuments and other similar structures shall be the sole responsibility of the Owner of the Lot upon which such Improvement has been erected.

**ARTICLE 10 - COMPLIANCE AND ENFORCEMENT**

10.1 Compliance. Each Owner, tenant or occupant of a Lot shall comply with the provisions of this Declaration. Failure to comply therewith shall be grounds for an action or suit maintainable by an aggrieved Owner. The Association or an Owner seeking to enforce the provisions of this Declaration shall be entitled an award of costs and attorney fees in any action in which the Association or Owner prevails.

10.2 Injunctive Relief. Nothing in this section shall prevent an Owner or other interested party from resorting to a court of competent jurisdiction in those instances where injunctive relief may be appropriate.

**ARTICLE 11 - INSURANCE**

11.1 Hazard Insurance on Improved Dwelling Lot Property Lots. Each Owner of an

improved Lot shall at all times maintain fire and extended coverage insurance or other appropriate damage and physical loss insurance, in an amount equal to and not less than one hundred percent (100%) of the current replacement value of the Improvements on such Lot.

11.2 Obligation of Dwelling Lot Property to Repair and Restore. In the event of any damage or destruction of the Improvements on a Lot, the insurance proceeds from any insurance policy on an improved Lot, unless retained by a Mortgagee of a Lot, shall be applied first to the repair, restoration or replacement of the damaged or destroyed Improvements. Any such repair, restoration or replacement shall be done in accordance with the plans and specifications for such Improvements originally approved by the Declarant.

## ARTICLE 12 - AMENDMENT AND DURATION

### 12.1 Amendments.

(a) Approval Required. So long as Declarant owns any lot in the Community, Declarant shall have the right to amend this Declaration without the consent of any other Owner, unless consent is otherwise required from City. Thereafter, an amendment to this Declaration may be submitted.

(b) Additional Approval Requirements. No amendment may create, limit or diminish any special Declarant rights, change the boundary of any Lot or uses to which any Lot is restricted unless the Owners of the affected Lots unanimously consent to the amendment. No person, firm or entity shall change, modify or amend any of the conditions of this Declaration without first obtaining City approval.

(c) Execution and Recordation. An amendment shall not be effective until the amendment is certified and recorded in the Recorder's Office of Davis County, Utah.

12.2 Duration. This Declaration perpetually shall run with the land and shall be and remain in full force and effect at all times with respect to all property included within the Property.

## ARTICLE 13 – MANDATORY PRE-LITIGATION REQUIREMENTS

13.1 Statement of Intent. Every Owner is capable of obtaining an inspection and is permitted to perform, or pay someone else to perform, an inspection on any Lot, together with any Improvements thereon, that Owner is purchasing, or any aspect of the Property; all prior to purchasing a Lot. Moreover, if any warranty has been provided, it identifies the only items that are warranted by the Declarant. Having had the ability to inspect prior to purchasing a Lot, having received a written warranty if any warranty is provided, and having paid market price for a Lot in the condition it and the Lots and Common Area are in at the time of purchase, including any Improvements thereon, it is acknowledged that it is unfair and improper to later

seek to have the Declarant and/or any subcontractor performing work in the Property to change, upgrade, or perform any additional work to the Property outside of any express warranty obligation. Moreover, the Owners (by purchasing a Lot) and the Declarant acknowledge and agree that litigation is an undesirable method of resolving disputes and conflicts in that it can be slow, expensive, uncertain, and can often negatively impact the sale value and ability to obtain financing for the purchase of Lots for years, unfairly prejudicing those Owners who must or want to sell their Lot during any period when litigation is pending. For this reason, the Owners by purchasing a Lot and the Declarant agree and acknowledge that before any claims or disputes are pursued through court action, all of the "Pre-Litigation Requirements" set forth below shall be satisfied. In addition, the Association and the Owners agree that they take ownership and possession of the Lots, Common Areas, and Limited Common Areas, if any, AS IS, with no warranties of any kind except as set forth in a written warranty or as otherwise required as a matter of law. The Declarant specifically disclaims any warranties of merchantability, fitness for a particular use, or of habitability, to the full extent allowed by law.

13.2 Notice of Claim and Opportunity to Cure (Applicable to All Owners and the Association). All claims and disputes of any kind that any Owner or the Association may have involving the Declarant, or any agent, employee, executing officer, manager, affiliate or owner of the Declarant, or any Builder, engineer or contractor involved in the design or construction of the Property, which arises from or is in any way related to a Lot, Improvement, Building, Common Areas, Limited Common Areas, if any, or any other component of the Property (a "Dispute"), shall first be identified in a written Notice of Claim (defined below) delivered to the Declarant, and the Declarant shall have one hundred fifty (150) days to cure or resolve the claim or defect or to try to get the Builder or the appropriate subcontractor to cure or resolve the claim or defect, prior to initiating any formal court action. If the Dispute is not resolved within the 150-day right to cure period, then with respect to any claims, actions or Disputes that the Association desires to pursue, the "Pre-Litigation Requirements" set forth below must be satisfied in full before initiating formal court action. If additional, different, or modified claims, damages, calculations, supporting information, or descriptions are added, provided to, or asserted against the Declarant that were not included in any previously submitted Notice of Claim, the right to cure period provided for in this section shall immediately apply again and any pending action or proceedings shall be stayed during the 150-day period.

For purposes of the above provision, "Notice of Claim" shall mean and include the following information: (1) an explanation of the nature of the claim, (2) a specific breakdown and calculation of any alleged damages, (3) a specific description of the claim along with any supporting opinions, information, or factual evidence upon which the claim is based, (4) photographs of any alleged condition, if applicable, (5) samples of any alleged defective conditions or materials, (6) all efforts taken to avoid, mitigate, or minimize the claim or any alleged damages arising therefrom, and (7) the names, phone numbers, and address of each person providing factual information, legal or factual analysis, or legal or factual opinions related to the claim.

13.3 Pre-Litigation Requirements for the Association. Notwithstanding any other

provision to the contrary in this Declaration, the Association shall not file, commence or maintain any lawsuits, actions or legal proceedings, including arbitration proceedings, against Declarant, the individual managers, owners, members or officers of Declarant, Declarant's contractors, engineers or architects, or any other person or entity involved in the design or construction of the Lots, Common Areas, or any Improvements thereon unless and until the Notice of Claim requirements set forth above have been satisfied, and all of the following "Pre-Litigation Requirements" have been satisfied:

(a) The Association has obtained a legal opinion from an attorney licensed to practice law in Utah having at least ten (10) years of experience, with the legal opinion providing in substance the following: (i) a description of the factual allegations and legal claims to be asserted in the action; (ii) an analysis of the facts and legal claims explaining why it would be in the best interests of the Association to file and pursue such action, taking into account the anticipated costs and expenses of litigation, the likelihood of success on the merits of the claims, and the likelihood of recovery if a favorable judgment is obtained by the Association; and (iii) providing a budget of the estimated amounts of legal fees, costs, expert witness fees and other expenses likely to be incurred in connection with such action (the "Litigation Budget");

(b) A copy of the opinion letter described in subsection (a) above has been provided to all Owners, and, after the Owners have had a reasonable period of time to review the opinion letter, the decision for the Association to file the subject action has been approved by Owners (excluding Declarant) who collectively hold at least sixty-five percent (65%) of the total votes in the Association; and

(c) The Association has collected funds from the Owners, by special assessment or otherwise, equal to at least one-half (1/2) of the Litigation Budget as set forth in the opinion letter obtained pursuant to subsection (a) above.

If any claims or actions of the Association are filed without satisfying all of the requirements of subsections (a), (b) and (c) above, such claims/action shall be dismissed without prejudice and shall not be re-filed unless and until all such requirements have been satisfied. In any action to enforce the requirements of this Section, the prevailing party shall be entitled to an award of reasonable attorney fees and costs. For purposes of clarity, this Section and the requirements set forth herein shall not apply to any actions or legal proceedings filed by the Association to recover payment of any annual assessments, special assessments, reimbursement assessments or other amounts required to be paid by Owners to the Association under this Declaration, nor does this Section apply to claims or actions that individual Owners may file relating solely to their own properties. Individual Owners, however, shall not be allowed to file or pursue any actions or claims for other Owners or for the Association.

#### **ARTICLE 14- MISCELLANEOUS PROVISIONS**

14.1 Invalidity; Number; Captions. The invalidity of any part of this Declaration



**EXHIBIT A**

**Legal Description of Property**

ELLISON PARK ESTATES PHASE I

BEGINNING AT A POINT ON THE SOUTH LINE OF GORDON AVENUE SAID POINT BEING LOCATED NORTH 89°50'40" EAST COINCIDENT WITH THE SECTION LINE 1630.23 FEET AND SOUTH 00°11'10" WEST 42.00 FEET FROM THE NORTHWEST CORNER OF SECTION 19, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING THENCE NORTH 89°50'40" EAST COINCIDENT WITH SAID SOUTH LINE 193.04 FEET TO A POINT ON A NON TANGENT ARC, SAID POINT BEING ON THE EASTERLY LINE OF THAT CERTAIN LAYTON CITY PARCEL DESCRIBED IN DEED AND RECORDED AT THE OFFICE OF THE DAVIS COUNTY RECORDER AS ENTRY # 2269809, IN BOOK 4281, PAGE 254; THENCE SOUTHWESTERLY ALONG THE EASTERLY LINE OF SAID PARCEL THE FOLLOWING (4) COURSES: (1) SOUTHWESTERLY 25.35 FEET ALONG THE ARC OF A 16.32 FOOT RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 89°00'17" (LONG CHORD BEARS SOUTH 44°41'10" WEST 22.88 FEET, CENTER BEARS SOUTH 00°48'33" EAST 16.32 FEET) TO A POINT OF TANGENCY, (2) SOUTH 00°11'10" WEST 99.29 FEET, (3) SOUTH 03°02'49" WEST 60.11 FEET, AND (4) SOUTH 00°11'10" WEST 1024.48 FEET TO THE NORTH LINE OF THAT CERTAIN PARCEL RECORDED AS ENTRY 2215128, IN BOOK 4150, ON PAGE 1349 AT THE OFFICE OF THE DAVIS COUNTY RECORDER; THENCE SOUTH 89°50'40" WEST ALONG SAID NORTH LINE 174.00 FEET TO THE EAST LINE OF THAT CERTAIN PARCEL DESCRIBED IN ENTRY 1849390, BOOK 3261, PAGE 857; AND THENCE NORTH 00°11'10" EAST ALONG SAID EAST LINE 1200.00 FEET TO THE SOUTH LINE OF SAID GORDON AVENUE AND THE POINT OF BEGINNING. CONTAINING: 299,293 SF OR 4.81 ACRES (13 LOTS)

Parcel ID's 103000101 through 103000113

**EXHIBIT B**

**Association Bylaws**

BYLAWS  
OF  
ELLISON HOMEOWNERS ASSOCIATION

**ARTICLE 1  
OFFICES**

Section 1.1. **Business Offices.** The principal office of the Association shall be located at any place either within or outside the State of Utah, as designated in the Association's Articles of Incorporation or the Association's most recent annual report on file with the Division of Corporations and Commercial Code providing such information. The Association may have such other offices, either within or outside the State of Utah as the Board of Directors may designate or as the business of the Association may require from time to time.

Section 1.2. **Registered Office.** The registered office of the Association required by the Utah Revised Non-Profit Business Association Act, as amended (the "**Act**") shall be located within the State of Utah. The address of the registered office may be changed from time to time.

**ARTICLE 2  
MEMBERS**

Section 2.1. **Annual Member Meeting.** The annual meeting of the members shall be held on such day and at such time as shall be fixed by the Board of Directors, for the purpose of electing directors and for the transaction of such other business as may come before the meeting. If the day fixed for the annual meeting is a legal holiday in the State of Utah, the meeting shall be held on the next succeeding business day.

Section 2.2. **Special Member Meetings.** Special meetings of the members may be called, for any purposes described in the notice of the meeting, by the president, or by the Board of Directors, and shall be called by the president at the request of the holders of not less than half of all outstanding votes of the Association entitled to be cast on any issue at the meeting.

Section 2.3. **Place of Member Meeting.** The Board of Directors may designate any place, either within or outside the State of Utah, as the place for any annual meeting of the members and for any special meeting of the members called by the Board of Directors. The president of the Association or any group of members of the Association may designate any place, within or outside the State of Utah, as the place for any special meeting of the members called by the president or the group of members. If no designation is made by the Board of Directors, the president, or the group of members, as the case may be, the place of the meeting shall be the principal office of the Association.

Section 2.4. **Notice of Member Meeting.**

(a) **Required Notice.** Written notice stating the place, day, and hour of any annual or special member meeting shall be delivered not less than ten (10) nor more than sixty (60) days before the date of the meeting, either personally or by mail, by or at the direction of the Board of Directors, the president, or other persons calling the meeting, to each member of record entitled to vote at such meeting, and to any other member entitled by the Act or the Association's Articles of Incorporation to receive notice of the meeting. Notice shall be deemed to be effective when mailed.

(b) **Adjourned Meeting.** If any member meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place, if the new date, time, or place is announced at the meeting before adjournment. However, if the adjournment is for more than thirty (30) days, or if after the adjournment a new record date for the adjourned meeting is or must be fixed (see Section 2.5 of these Bylaws), then notice must be given pursuant to the requirements of paragraph (a) of this Section 2.4 to members of record who are entitled to vote at the meeting.



(c) Waiver of Notice. Any member may waive notice of a meeting (or any notice required by the Act, the Association's Articles of Incorporation, or these Bylaws), by a writing signed by the member, which is delivered to the Association (either before or after the date and time stated in the notice as the date or time when any action will occur or has occurred) for inclusion in the minutes or filing with the Association's records.

A member's attendance at a meeting:

(1) Waives objection to lack of notice or defective notice of the meeting, unless the member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting;

(2) waives objection to consideration of a particular matter at the meeting that is not within the purpose or purposes described in the meeting notice, unless the member objects to considering the matter when it is presented.

(d) Contents of Notice. Notice of any special meeting of the members shall include a description of the purpose or purposes for which the meeting is called. Except as provided in this Section 2.4(d), in the Articles of Incorporation, or in the Act, notice of an annual meeting of the members need not include a description of the purpose or purposes for which the meeting is called.

Section 2.5. Fixing of Record Date. For the purpose of determining members of any voting group entitled to notice of or to vote at any meeting of members, or members entitled to take action without a meeting or to demand a special meeting, or members entitled to receive payment of any distribution or dividend, or in order to make a determination of members for any other proper purpose, the Board of Directors may fix in advance a date as the record date. Such record date shall not be more than seventy days prior to the date on which the particular action, requiring such determination of members, is to be taken. If no record date is so fixed by the Board of Directors, the record date shall be at the close of business:

(a) With respect to an annual meeting of the members or any special meeting of the members called by the Board of Directors or any person or group specifically authorized by these Bylaws to call a meeting of the members, as of the close of business on the day before the first notice is delivered to members;

(b) with respect to a special member meeting demanded by the members, on (i) the earliest date of any of the demands pursuant to which the meeting is called, or (ii) the date that is sixty (60) days prior to the date the first of the written demands is received by the Association, whichever is later; and

(c) with respect to actions taken in writing without a meeting, on the date the first member delivers to the Association a signed written consent upon which the action is taken.

When a determination of members entitled to vote at any meeting of members has been made as provided in this Section, such determination shall apply to any adjournment thereof unless the Board of Directors fixes a new record date, which it must do if the meeting is adjourned to a date more than one hundred twenty (120) days after the date fixed for the original meeting.

Section 2.6. Member Quorum and Voting Requirements. A quorum shall be constituted and defined as the presence of any Member at a duly called meeting in person or proxy. If a quorum exists, action on a matter by a voting group is approved if the votes cast within the voting group favoring the action exceed the votes cast opposing the action, unless the Articles of Incorporation, a Bylaw adopted by the members pursuant to the Act, or the Act require a greater number of affirmative votes.

Section 2.8. Proxies. At all meetings of members, a member may vote in person or by a proxy executed in any lawful manner. Such proxy shall be filed with the Association before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution unless otherwise provided in the proxy.

Section 2.9. Voting of Members. Unless otherwise provided in the Articles of Incorporation, each member shall be entitled to one (1) vote.

Section 2.10. Voting for Directors. Except as set forth in the Articles of Incorporation, at each election of directors, each member entitled to vote at such election shall be entitled to one vote for each of the directors to be elected.

### ARTICLE 3 – BOARD OF DIRECTORS

Section 3.1. General 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 limitation set forth in the Articles of Incorporation or in any agreement authorized by the Act.

Section 3.2. Number, Tenure, and Qualifications of Directors. At all times when there are three (3) or less members, the number of directors of the Association shall be not less than the number of members of the Association. The number of directors of the Association shall not be less than one (1) nor more than five (5). The number of directors may be fixed or changed within the range by the members or the Board of Directors, subject to any limitations set forth in the Articles of Incorporation, but no decrease shall shorten the term of any incumbent director.

Each director shall hold office until the next annual meeting of members or until removed. However, if a director's term expires, the director shall continue to serve until the director's successor shall have been elected and qualified, or until there is a decrease in the number of directors.

Section 3.3. Regular Meetings of the Board of Directors. A regular meeting of the Board of Directors shall be held without other notice than provided by this Section 3.3 immediately after, and at the same place as, the annual meeting of members. The Board of Directors may provide, by resolution, the time and place for the holding of additional regular meetings without other notice than such resolution.

Section 3.4. Special Meetings of the Board of Directors. Special meetings of the Board of Directors may be called by or at the request of the president or any one director, who may fix any place within the county where the Association has its principal office as the place for holding the meeting.

Section 3.5. Director Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, unless the Articles of Incorporation require a greater number.

A majority of the number of directors prescribed by resolution (or if no number is prescribed, the number in office immediately before the meeting begins) shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, unless the Articles of Incorporation require a greater number.

Section 3.6. Manner of Acting. The act of the majority of the directors present at a meeting at which a quorum is present when the vote is taken shall be the act of the Board of Directors, unless the Articles of Incorporation require a greater percentage.

Unless the Articles of Incorporation provide otherwise, any or all directors may 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 may simultaneously hear each other during the meeting. A director participating in a meeting by this means is deemed to be present in person at the meeting.

A director who is present at a meeting of the Board of Directors when corporate action is taken is considered to have assented to the action taken, unless:

- (a) The director objects at the beginning of the meeting, or promptly upon arrival, to holding it or transacting business at the meeting;
- (b) the director contemporaneously requests his dissent or abstention as to any specific action to be entered into the minutes of the meeting; or
- (c) the director causes written notice of a dissent or abstention as to any specific action to be received by the presiding officer of the meeting before its adjournment or by the Association promptly after adjournment of the meeting.

Section 3.7. Removal of Directors. Subject to any limitations set forth in the Articles of Incorporation, the members may remove one or more directors at a meeting called for that purpose if notice has been given that a purpose of the

meeting is such removal. The removal may be with or without cause, unless the Articles of Incorporation provide that directors may only be removed with cause.

Section 3.8. Board of Director Vacancies. Unless the Articles of Incorporation provide otherwise, if a vacancy occurs on the Board of Directors, including a vacancy resulting from an increase in the number of directors:

- (a) The members may fill the vacancy;
- (b) the Board of Directors may fill the vacancy; or
- (c) if the directors remaining in office constitute fewer than a quorum of the Board of Directors, they may fill the vacancy by the affirmative vote of a majority of all the directors remaining in office.

#### ARTICLE 4 - OFFICERS

Section 4.1. Number of Officers. The officers of the Association shall be a president and secretary, to be appointed by the Board of Directors, and such other officers and assistant officers as may be deemed necessary, including a treasurer, one or more vice presidents, etc., each of whom may be appointed by the Board of Directors. If specifically authorized by the Board of Directors, an officer may appoint one or more officers or assistant officers. The same individual may simultaneously hold more than one office in the Association.

Section 4.2. Appointment and Term of Office. The officers of the Association shall be appointed by the Board of Directors for such term as is determined by the Board of Directors. The designation of a specified term does not grant to the officer any contract rights, and the Board of Directors can remove the officer at any time prior to the end of such term. If no term is specified, each officer shall hold office until the officer resigns, dies, or until removed in the manner provided in Section 4.3 of these Bylaws.

Section 4.3. Removal of Officers. Any officer or agent may be removed by the Board of Directors at any time, with or without cause, subject to any restrictions or limitations set forth in any contract for employment or other similar contract regarding term and appointment of officers. Such removal shall be without prejudice to the contract rights, if any, of the person so removed. Appointment of an officer or agent shall not of itself create contract rights.

#### ARTICLE 5 INDEMNIFICATION OF DIRECTORS, OFFICERS, EMPLOYEES, FIDUCIARIES, AND AGENTS

Section 5.1. Indemnification of Directors. Unless otherwise provided in the Articles of Incorporation, the Association shall indemnify any individual made a party to a proceeding because the individual is or was a director of the Association, against liability incurred in the proceeding, but only if the Association has authorized the payment in accordance with the Act and a determination has been made in accordance with the procedures set forth in the Act that the individual has met the standards of conduct set forth in Subsections (a), (b), and (c) below.

- (a) Standard of Conduct. The Association shall indemnify the individual if the Association determines that:
  - (1) The individual's conduct was in good faith; and
  - (2) the individual reasonably believed that the individual's conduct was in, or not opposed to, the Association's best interests; and
  - (3) in the case of any criminal proceeding, the individual had no reasonable cause to believe the individual's conduct was unlawful.
- (b) No Indemnification Permitted in Certain Circumstances. The Association shall not indemnify an individual under this Section 5.1:
  - (1) In connection with a proceeding by or in the right of the Association in which the individual was adjudged liable to the Association; or

(2) in connection with any other proceeding charging that the individual derived an improper personal benefit, whether or not involving action in the individual's official capacity, in which proceeding he or she was adjudged liable on the basis that he or she derived an improper personal benefit.

(c) Indemnification in Derivative Actions Limited. Indemnification permitted under this Section 5.1 in connection with a proceeding by or in the right of the Association is limited to reasonable expenses incurred in connection with the proceeding.

Section 5.2. Advance of Expenses for Directors. If a determination is made, following the procedures of the Act, that the individual has met the following requirements; and if an authorization of payment is made, following the procedures and standards set forth in the Act, then unless otherwise provided in the Articles of Incorporation, the Association shall pay for or reimburse the reasonable expenses incurred by an individual who is a party to a proceeding because he is or was a director of the Association in advance of final disposition of the proceeding, if:

(a) The individual furnishes to the Association a written affirmation of the individual's good faith belief that the individual has met the standard of conduct described in Section 5.1 of these Bylaws;

(b) the individual furnishes to the Association a written undertaking, executed personally or on the individual's behalf, to repay the advance if it is ultimately determined that the individual did not meet the standard of conduct (which undertaking must be an unlimited general obligation of the individual but need not be secured and may be accepted without reference to financial ability to make repayment); and

(c) a determination is made that the facts then known to those making the determination would not preclude indemnification under Section 5.1 of these Bylaws or Part 9 of the Act.

Section 5.3. Indemnification of Officers, Employees, Fiduciaries, and Agents. Unless otherwise provided in the Articles of Incorporation, the Association shall indemnify and advance expenses to any individual made a party to a proceeding because the individual is or was an officer, employee, fiduciary, or agent of the Association to the same extent as to an individual made a party to a proceeding because the individual is or was a director of the Association, or to a greater extent, if not inconsistent with public policy, if provided for by general or specific action of the Board of Directors.

## ARTICLE 6 - AMENDMENTS

Section 6.1. Amendments. The Association's Board of Directors may amend these Bylaws, except to the extent that the Articles of Incorporation, these Bylaws, or the Act reserve this power exclusively to the members in whole or in part. However, the Board of Directors may not adopt, amend, or repeal a Bylaw that fixes a member quorum or voting requirement that is greater than required by the Act.

If authorized by the Articles of Incorporation, the members may adopt, amend, or repeal a Bylaw that fixes a greater quorum or voting requirement for members, or voting groups of members, than is required by the Act. Any such action shall comply with the provisions of the Act.

The Association's members may amend or repeal these Bylaws even though these Bylaws may also be amended or repealed by the Association's Board of Directors, and despite the fact that these Bylaws may have been amended or repealed by the Association's Board of Directors.

The undersigned, being the duly appointed and authorized Director of Ellison Homeowners Association, a Utah corporation, hereby certifies that the foregoing is a full, true and correct copy of the Bylaws of said corporation, together with all amendments as of the date of this Certificate of Secretary.

WITNESS the signature of the undersigned this 29th day of April, 2015.

INCORPORATOR:



By: Megan De Leon

Its: Director

EXHIBIT C  
Plat Map

