

**DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS AND
RESERVATION OF EASEMENTS FOR
5TH & ORCHARD TOWNHOMES PLANNED UNIT
DEVELOPMENT**

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RESERVATION FOR the 5th & Orchard Townhomes Planned Unit Development. ("Declaration") is promulgated by the 5th and Orchard Townhomes, LLC. ("Declarant") and becomes effective when recorded with the Davis County Recorder's Office.

03-290-0001 TO 0029

RECITALS

- A. The 5th & Orchard Townhomes Planned Unit Development is a planned unit development located in Bountiful, Davis County, Utah;
- B. The Declarant intends to sell to various purchasers the fee title to the individual Lots contained in the Project, subject to the following covenants, conditions, restrictions, easements and limitations herein set forth which are hereby declared to be for the benefit of the whole tract and all of the Project described herein and the owners thereof, their successors and assigns;
- C. All Owners, guests, invitees, agents, and residents shall abide by the provisions of this Declaration;
- D. These covenants, conditions, restrictions, easements, and limitations shall run with the land described in Exhibit "A" and shall be binding on and burden all parties having or acquiring any right, title, or interest to the land or any part thereof and shall create servient tenements on the land. The covenants, conditions, restrictions, easements, and limitations shall also benefit all parties having or acquiring any right, title, or interest to the land and shall create dominant tenements on the land;
- E. The Association shall be incorporated as a Utah nonprofit corporation, and shall be entitled to the rights, obligations, and benefits of the Revised Nonprofit Corporation Act (Utah Code Ann. 16-6a-101, *et. seq.*) as amended from time to time.
- F. The Association shall be subject to the Utah Community Association Act (Utah Code 57-8a-101, *et. seq.*) and shall be entitled to the rights, obligations, and benefits if this act as may be amended from time to time.

NOW THEREFORE, for the benefit of the Project and the Owners thereof, the following covenants, conditions, restrictions and easements shall apply to and be binding on the Project:

I. DEFINITIONS

1.1. Act shall mean and refer to the Utah Community Association Act, codified beginning at Section 57-8a-101, Utah Code Annotated, as the same may be amended from time to time.

1.2. Annexable Property shall mean all real property described in Exhibit "B" of this Declaration, as amended.

1.3. Declaration shall mean and refer to this Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for 5th and Orchard Townhomes Planned Unit Development.

1.4. Assessments shall mean any charge imposed or levied by the Association against Owners including but not limited to annual assessments corresponding with the Common Expenses as well as special assessments, individual assessments, late fees, and fines, all as provided in this Declaration.

1.5. Architectural Review Committee or AR Committee shall mean and refer to the Board or, if so appointed by the Board, a committee having architectural control powers as further described in Article X.

1.6. Association shall mean and refer to the 5th and Orchard Townhomes PUD HOA, INC., a Utah non-profit corporation.

1.7. Board or Board of Directors shall mean and refer to the Board of Directors of the Association as duly elected in accordance with the terms and conditions of the Articles of Incorporation and Bylaws of the Association. The Board is the governing body of the Association.

1.8. Bylaws shall mean and refer to the Bylaws of the Association as the same may be amended from time to time.

1.9. Committee or Architectural Review Committee shall mean and refer to the Board or, if so appointed by the Board, a committee having architectural control powers as further described in Article X.

1.10. Common Areas shall mean and refer to the entire Property that is not included within the Lots, which is owned by the Association for the common use and enjoyment of the Owners. Common Areas are described on the Plat, including but not limited to, fences, landscaping, sidewalks, parking areas, and driveways, together with all improvements thereon and all easements appurtenant thereto including but not limited to private utility lines, landscape easements and personal property owned by the Association when the context so requires, all of which are not included within the dimensions of any Living Unit or the exteriors of the Living Unit.

1.11. **Common Expenses** shall mean (a) all sums lawfully assessed against Owners; (b) expenses of administration, maintenance, management, operation, repair and replacement of the Common Areas which are maintained by the Association; (c) expenses allocated by the Association among the Owners; (d) expenses agreed upon as common expenses by the Association or its Board of Directors; (e) expenses declared common expenses by the Declaration; and (f) other miscellaneous charges incurred by the Association or the Board pursuant to the Act, this Declaration, the Bylaws, or the Rules.

1.12. **Development** or **Project** shall at any point in time mean, refer to, and consist of the Subdivision then in existence.

1.13. **Director** shall mean and refer to an individual member of the Board of Directors.

1.14. **Governing Documents** or **Project Documents** shall mean and refer to the Declaration, Articles of Incorporation, Bylaws, plat maps, and any rules, regulations, policies, resolutions adopted by the Board.

1.15. **Limited Common Areas** shall mean and refer to those Common Areas designated on the Plat as reserved for the use and benefit of a designated Lot to the exclusion of other Lot Owners. Limited Common Areas include the designated parking spaces, front porches, covered or un-covered, and entries to units, and the exterior of fences separating Lots from the Common Area.

1.16. **Living Unit** shall mean and refer to a structure which is designed and intended for use and occupancy of a single residence, or less than all of the residences, together with all improvements located on or with respect to the Lot concerned which are used in connection with such residence.

1.17. **Lot** shall mean and refer to each of the individual lots within the 5th and Orchard Townhomes PUD project, as shown on the Plat, with the exception of the Common Areas.

1.18. **Manager** shall mean a person, persons, or entity, if any, selected by the Board to manage the affairs of the Association and Property.

1.19. **Member** shall mean and refer to a Lot Owner.

1.20. **Mortgage** shall mean any and refer to a mortgage, deed of trust, or trust deed or the act of encumbering any Lot or any property by a mortgage, trust deed, or deed of trust.

1.21. **Mortgagee** shall mean and refer to any person or entity named as a mortgagee of a mortgage or beneficiary under or holder of a deed of trust.

1.22. **Occupant** shall mean and refer to any Person, other than an Owner, living, dwelling, or staying in a Living Unit. This includes, but is not limited to, all lessees, tenants, and the family members, agents, and representatives living, dwelling, or staying in a Living Unit.

1.23. **Owner** or **Lot Owner** shall mean and refer to the record owner, whether one or more Persons, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

1.24. **Person** shall mean and refer to a natural individual, corporation, business entity, estate, partnership, trustee, association, joint venture, government, governmental subdivision, or agency or other legal entity capable of holding title to real property.

1.25. **Plat** shall mean and refer to the official subdivision plats of 5th and Orchard Townhomes PUD, filed and recorded in the official records of the Davis County Recorder's Office.

1.26. **Property** shall mean and refer to all of the real property, which is covered by a Plat.

1.27. **Restrictions** shall mean the covenants, conditions, assessments, easements, liens, and restrictions set forth in this Declaration.

1.28. **Rules** shall mean and refer to the rules, resolutions, regulations, policies, etc. adopted by the Board.

1.29. **Subdivision** shall mean and refer to the entire residential development and/or planned residential unit development, which is created and covered by a Plat.

II. PROPERTY DESCRIPTION

2.1. **Submission**. The Property, which is and shall be held, transferred, sold, conveyed, and occupied subject to the provisions of this Declaration, consists of the real property situated in Davis County, State of Utah described as follows:

SEE THE LEGAL DESCRIPTION ATTACHED HERETO AS EXHIBIT "A" AND INCORPORATED HEREIN BY REFERENCE.

2.2. **Name**. The Project, as submitted to the provisions of this Declaration, shall be known as 5th and Orchard Townhomes Planned Unit Development.

2.3 **Description of Lots**. The Projects consists of 28 Lots, each of which includes a Living Unit and other improvements authorized on the Plat. All improvements have been and shall continue to be constructed in a style and of materials architecturally compatible with the other improvements on the Project. The Lots, their locations, and approximate dimensions are indicated on the respective Plats.

2.4 **Common Areas**. The Common Areas of the Project shall be and are the fences, landscaping, sidewalks, parking areas, and driveways, not included within the dimensions of any Unit, and any and all other Common Areas designated as such on the Plat, and any other future

interests in Common Areas pursuant to the terms of this Declaration. A Lot Owner shall be entitled to the use and enjoyment of the Common Areas within the Project.

III. MEMBERSHIP AND VOTING RIGHTS

3.1. **Membership.** Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Lot in which the Owner has the necessary interest, and shall not be separated from the Lot to which it appertains. Membership in the Association shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership of the Unit to which it is appurtenant, and then only to the new Owner. Any attempt to make a prohibited transfer is void. In the event the Owner of any Unit should fail or refuse to transfer the membership registered in his name to the purchaser of their Unit, the Association shall have the right to record the transfer upon its books and thereupon the old membership outstanding in the name of the seller shall be null and void.

3.2. **Voting Rights.** The Association shall initially have the following two classes of votes:

(a) **Class A.** Class A Members shall be all Owners other than the Declarant until the Class B membership ceases. Class A Members shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any Lot.

(b) **Class B.** The Class B Member shall be the Declarant. The Class B Member shall be entitled to 2 votes for every Lot owned by Declarant plus 2 votes for every class A vote. The Class B Membership shall automatically cease and be converted to a Class A membership upon the sale of the last lot.

After turnover, Owners shall be entitled to one (1) vote for each Lot in which the interest required for membership in the Association is held. Voting is limited to one (1) vote per Lot. There is a total of Nineteen (19) votes in the Association.

3.3. **Multiple Ownership Interests.** In the event there is more than one Owner of a particular Lot, the vote relating to such Lot shall be exercised as such Owners may determine among themselves. A vote cast by any of such Owners, whether in person or by proxy or by written ballot, shall be conclusively presumed to be the vote attributable to the Lot concerned unless an objection is immediately made by another Owner of the same Lot. In the event such an objection is made or if there are conflict votes from the same Lot, the vote involved shall not be counted for any purpose other than to determine whether a quorum exists.

3.4. **Record of Ownership / Reinvestment Fee.** Every Owner shall promptly cause to be duly filed of record the conveyance document (or in the case of contract buyer, a copy of the sales contract) to him of his Lot. Each Owner shall file a copy of such conveyance documents (or contract) with the secretary of the Association, with a reinvestment fee of .5% of the purchase price of the Lot, who shall maintain a record of ownership of the Lots. Any Owner who mortgages his Lot or any interest therein by a mortgagee which has priority over the lien of any

assessment provided herein shall notify the secretary of the Association of the name and address of the Mortgagee and also of the release of such Mortgage; and the secretary of the Association shall maintain all such information in the records of ownership. Any cost incurred by the Association in obtaining the information about an Owner as specified herein which is not furnished by such Owner shall nevertheless be at the expense of such Owner and shall be reimbursed to the Association as an "Individual Assessment" in accordance with the provisions of Section 5.6.

3.5 **Proxies.** An Owner may give his proxy, either specific or general, to another Owner, a third person, or to a contract purchaser or his Lot to vote on all matters coming before the Association for vote provided the same is in writing, authenticated by witnesses or a notary public, and is presented to those Association officers conducting such vote.

IV. PROPERTY RIGHTS IN COMMON AREAS

4.1. **Easement of Enjoyment.** Each Member shall have a right and easement of use and enjoyment in and to the Common Areas. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom. Any Member may delegate the right and easement of use and enjoyment described herein to any family member, tenant, lessee, or contract purchaser who resides on such Member's Lot. This right of easement shall only extend to the Limited Common Area appurtenant to the Unit and not to other Limited Common Areas. Members, and Maintenance Crews shall have the right to cross Limited Common Area to maintain portions of any unit and any unit's private fenced in areas.

4.2. **Title to Common Areas.** The Declarant has conveyed title to the Association on various Common Areas.

4.3. **Limitation on Easement.** A Member's right and easement for the use and enjoyment of the Common Areas shall be subject to the following:

(a) The right of the Association to impose reasonable limitations on the number of guests per Member who at any given time are permitted to use the Common Areas;

(b) The right of the Association to charge reasonable admission and other fees for the use of the recreational facilities situated upon the Common Areas.

(c) The right of Davis County and any other governmental or quasi-governmental body having jurisdiction over the Property to access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Property for purposes of providing police and fire protection, transporting school children, and providing any other governmental or municipal service;

(d) The right of the Association to suspend voting rights and right to use the Common Areas by an Owner for any period during which any Assessments against his Lot remain unpaid, and for a period not to exceed sixty (60) days for any infraction of the Rule;

(e) The right of the Association to dedicate or transfer all or any part of the Common Areas, and any sewer, water and storm drain lines to any public agency or authority for such purposes and subject to such conditions as may be agreed to by the Association. Any such dedication or transfer must, however, be assented to by two-thirds (2/3) of the Lot Owners.

4.4. **Delegation of Use.** Any Owner may delegate his right of use and enjoyment to the Common Areas to family members, tenants, or contract purchasers who reside on the Property. The rights and privileges of such delegee or assignee shall be subject to suspension in the same manner and to the same degree as those of an Owner, as described in Article IV, Section 4.3 above.

4.5. **Compliance with Covenants and Restrictions and Rules and Regulations.** Each Owner and Owners' guests shall comply with the covenants and restrictions imposed by this Declaration on the use and enjoyment of the Common Area. Further, each Owner and Owners' guests shall fully and faithfully comply with the rules, regulations and restrictions applicable to use of the Common Area, as such rules, regulations and restrictions are from time to time adopted by the Association for the safety, care, maintenance, good order and cleanliness of the Common Area.

V. **ASSESSMENTS**

5.1. **Covenant to Pay Assessments.** Each Owner of any Lot by the acceptance of a deed therefore, whether or not it be so expressed in the deed, hereby covenant and agree with each other and with the Association to pay to the Association all Assessments, including by illustration but not limitation all Annual, Special, or Individual Assessments described below, and other fees, charges, levies, and fines as provided in the Governing Documents.

5.2. **Purpose of Assessments.** Assessments levied by the Association shall be used exclusively for the purpose of promoting the health, safety, and welfare of residents of the Property, including but not limited to the appearance and aesthetics of the Project. The use made by the Association of funds obtained from Assessments may include, but is not limited to, payment of the cost of taxes and insurance on the Common Areas; maintenance, repair and improvement of the Common Areas; establishing and funding a reserve to cover major repair or replacement of improvements within the Common Areas; and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under this Declaration, the Bylaws, or its Articles of Incorporation.

5.3. **Declarant's Covenant for Assessments.** Anything to the contrary notwithstanding, the Declarant shall not be obligated to pay Assessments on any Lots owned by it until such time as: (1) the physical structures are substantially completed; (2) certificates of permanent occupancy are issued and the Living Units are sold; or (3) Declarant elects in writing to pay the Assessments, whichever first occurs.

5.4. **Basis for Assessments.** The total annual Assessments against all Lots shall be based upon advance estimates of cash requirements by the Board to provide for the payment of each Owner's share of the Common Expenses and all estimated expenses growing out of or

connected with the maintenance and operation of the Common Areas, among other things, is expenses of management; grounds maintenance; taxes and special assessments levied by governmental authorities; premiums for all insurance which the Association is required or permitted to maintain; common lighting and heating; water charges; trash collection; sewer service charges; repairs and maintenance; legal and accounting fees; any deficit remaining from a previous period; the creation of a reasonable contingency reserve, surplus and/or sinking fund; and any other expenses and liabilities which may be incurred by the Board for the benefit of the Owners under or by reason of this Declaration.

5.5. **Annual Assessments.** Annual Assessments shall be made on a calendar year basis. The Board shall give written notice of each Annual Assessment not less than thirty (30) days nor more than sixty (60) days prior to the beginning of the next calendar year. Each Annual Assessment shall be due and payable in monthly installments on the first day of each and every month and no separate notices of such monthly installment shall be required. At least fifteen (15) days prior to the effective date of any change in the amount of the Annual Assessment, the Association shall give each Owner written notice of the amount.

5.6. **Special Assessments.** In addition to the Annual Assessments, the Board may levy in any calendar year a Special Assessment up to One-thousand dollars (\$1,000), payable over such a period as the Board may determine for the purpose of defraying, in whole or in part any expense or expenses not reasonably capable of being fully paid with funds generated by Annual Assessments; the cost of any construction, reconstruction, or unexpected repair or replacement of the Property or Common Areas; or for any other expense incurred or to be incurred as provided in this Declaration. Additional Special Assessments over One-thousand dollars (\$1,000) in a calendar year may be levied if assented to by a majority of the Members present in person or by proxy at a meeting duly called for such purpose. Notice in writing of the amount of any Special Assessments and the time for their payment shall be given as soon as is reasonably possible to the Owners. Payment shall be due on the dates and in the manner provided in the notice.

5.7. **Individual Assessments.** In addition to Annual and Special Assessments authorized pursuant to Sections 5.5 and 5.6 above, the Board may levy at any time Individual Assessments: (a) on each Lot specifically benefited by any improvements to adjacent roads, sidewalks, planting areas or other portions of the Common Areas made on the written request of the Owner of the Lot to be charged; (b) on each Lot the Owner or Occupant of which shall cause any damage to the Common Areas necessitating repairs; and (c) on each Lot as to which the Association shall incur any expense for maintenance or repair work performed or enforcement action taken pursuant to the provisions of the Governing Documents to bring a Lot and/or its Living Unit into compliance. The aggregate amount of any such Individual Assessments shall be determined by the cost of such improvements, repairs, maintenance, or enforcement action, including all overhead and administrative costs and attorney's fees, and shall be allocated among the affected Lots according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be. Individual Assessments may be levied in advance of the performance of the work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to an Individual Assessment against the Lot(s) benefited, unless such work was necessitated by the Lot Owner's or Occupants' negligence.

5.8. **Uniform Rate of Assessment.** Except for Individual Assessments provided in Section 5.7 above, Annual and Special Assessments shall be fixed at a uniform rate for all Lots. Notwithstanding the above language.

5.9. **Personal Obligation and Lien.** All Assessments, together with any interest, late fees, collection costs, and attorneys' fees if collection efforts become necessary shall be, constitute, and remain: (a) a charge and continuing lien upon the Lot with respect to which such Assessment is made; and (b) the personal obligation of the person who is the Owner of such Lot at the time the Assessment falls due. No Owner may exempt himself or his Lot from liability for payment of Assessments by waiver of his rights concerning the Common Areas or by abandonment of his Lot. In a voluntary conveyance of a Lot, the grantee shall be jointly and severally liable with the grantor for all such unpaid Assessments, late payment fees, interest, and costs of collection, including reasonable attorneys' fees, which shall be a charge on the Lot at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. Owner is required to pay the Assessments regardless if all improvements have not yet been installed.

5.10. **Certificate Regarding Payment.** Upon the request of any Owner, prospective purchaser, mortgagee, or encumbrancer of a Lot, the Association shall issue a certificate stating whether or not Assessments respecting such Lot are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon. The Association may charge the requesting Owner, prospective purchaser, mortgagee, or encumbrancer of a Lot a reasonable fee of up to twenty-five dollars (\$25) or an amount greater if so provided in the Act.

5.11. **Default in Payment of Assessment; Enforcement of Lien.** Assessments not paid within thirty (30) days of the due date thereof shall be deemed delinquent and subject to interest at the rate of eighteen percent (18%) per annum. In addition to the interest charge, a late fee may be imposed by the Board in an amount established through Rules. If an Assessment or other charge levied under this Declaration becomes delinquent, the Association may exercise any or all of the following remedies:

(a) The Association may suspend such Owners voting rights.

(b) The Association shall have a lien against each Lot for any Assessment levied against the Lot and any fines or other charges imposed under this Declaration or the Bylaws against the Owner of the Lot from the date on which the Assessment, fine, or charge is due. At any time any Assessment (of any type provided for by this Declaration or the Bylaws) or installment thereof is delinquent, the Association, by and through its Board or any Manager, may file a notice of lien in the deed records of Davis County, Utah against the Lot in respect to which the delinquency pertains. Once filed, such lien shall accumulate all future Assessments or installments, interest, late fees, penalties, fines, attorneys' fees, and other appropriate costs properly chargeable to an Owner by the Association, until such amounts are fully paid. Said lien may be foreclosed at any time as allowed by law. The lien of the Association shall be superior to all other liens and encumbrances except a lien or encumbrance recorded before the Original Declaration

was recorded; a first or second security interest on the Lot secured by a mortgage or trust deed that is recorded before the Association's notice of lien; or a lien for real estate taxes or other governmental assessments against the Lot. The Association through its duly authorized agents, may bid on the Lot at any foreclosure sale, and may acquire and hold, lease, mortgage, and convey the Lot.

(c) The Association may bring an action to recover a money judgment for unpaid Assessments, fines, and charges under this Declaration against the Lot Owner without foreclosing or waiving the lien described in paragraph (b) above. Recovery on any such action, however, shall operate to satisfy the lien, or the portion thereof, for which recovery is made.

(d) If the delinquent Owner is leasing his Lot or any portion thereof, the Board may, at its option, so long as such default shall continue, demand and receive from any tenant of the Owner the rent due or becoming due and the payment of such rent to the Board shall discharge such tenant for rent due, and shall discharge the Owner for such Assessments to the extent of the amount so paid.

(e) The Association may terminate utilities paid out of the Common Expense and the right to use the Common Areas.

(f) The Association shall have any other remedy available to it by law or in equity.

5.12. **Reserve Account.** The Association shall establish a reserve account to fund long-term maintenance of other areas required to be maintained by the Association; insurance; all other Common Expenses; and the administration, management, operation, and reserves of the Association. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect. The Board shall follow any statutory requirement to conduct a reserve analysis and use such reserve analysis in making budget decision for the funding of a Reserve Account.

5.13. **Reimbursement of Tax Collection by County Authorized.** It is recognized that under the Declaration the Association will own the Common Areas and that it will be obligated to pay property taxes to Davis County, to the extent taxes are required on such Common Areas. It is further recognized that each Owner of a Lot as a Member of the Association will be required to reimburse the Association for his pro rata share of such taxes paid. Notwithstanding anything to the contrary contained in the Declaration, Davis County shall be authorized to collect such pro rata share of taxes directly from each Owner by inclusion and said share with the tax levied on each Lot.

VI. DUTIES AND POWERS OF THE ASSOCIATION

6.1. **General Powers and Obligations.** The Association shall have, exercise and perform all of the following powers, duties, and obligations:

(a) The powers, duties, and obligations granted to the Association by this Declaration, its Bylaws, and the Articles of Incorporation;

(b) The powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah;

(c) The powers, duties, and obligations of a homeowners association pursuant to the Utah Community Association Act, or any successor thereto;

(d) The powers, duties, and obligations not reserved specifically to the Lot Owners; and

(e) Any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to this Declaration or otherwise promoting the general benefit of the Owners within the Project.

The powers and obligations of the Association may from time to time be amended, repealed, enlarged, or restricted by changes in this Declaration made in accordance with the provisions herein, accompanied by any necessary changes in the Articles of Incorporation or Bylaws of the Association made in accordance with such instruments and with the nonprofit corporation laws of the State of Utah.

6.2. **Specific Powers and Duties.** The powers and duties of the Association shall include, without limitation, the following:

(a) **Maintenance and Services.** The Association shall provide maintenance and services for the Project as provided in Article VII and other provisions of this Declaration.

(b) **Insurance.** The Association shall obtain and maintain in force policies of insurance as provided in this Declaration or the Bylaws of the Association. The Association shall have no obligation to obtain or maintain any insurance covering the personal and real property of any Owner(s), and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance.

(c) **Rulemaking.** The Association, through its Board of Directors, shall make, establish, promulgate, amend, and repeal Rules governing the conduct of persons and the operation and use of the Property as it may deem necessary or appropriate in order to assure a clean, aesthetically pleasing, peaceful, and orderly use and enjoyment of the Property.

(d) **Assessments.** The Association shall adopt budgets and impose and collect Assessments as provided in Article V of this Declaration.

(e) **Enforcement.** The Association shall perform such acts, whether or not expressly authorized by this Declaration, as may be reasonably necessary to enforce the provisions of the Governing Documents of the Association.

(f) **Title to Common Areas.** The Association shall hold title to all Common Areas conveyed to it by its developer and pay all real property taxes and assessments levied upon any portion of the Common Areas, unless paid by the Owners, provided that the Association shall have the right to contest or compromise any such taxes or assessments.

(g) **Employment of Agents, Advisers, and Contractors.** The Association, through its Board, may employ the services of any person or corporation as managers, hire employees to manage, conduct, and perform the business, obligations, and duties of the Association, employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, community association managers, landscape architects, accountants, recreational experts, architects, planners, lawyers, reserve study specialists, or what is convenient for the management, maintenance, and operation of the Property. Any agreement with a Manager shall not exceed a term of two (2) years, renewable by agreement of the parties for a successive two (2) year term, and shall be terminable by the Association upon no more than sixty (60) advanced notice.

(h) **Litigation.** The Board may instigate litigation to enforce the provisions of this Declaration or any other Common Law or statutory right which the Association is granted. The Association shall not commence any litigation without prior approval of the majority of the Members, if the litigation shall exceed the cost of five thousand dollars (\$5,000.00) either in attorney fee expenses or in costs (including any expert reports).

6.3. **Liability.** A member of the Board or an officer of the Association shall not be liable to the Association or any Member thereof for any damage, loss, or prejudice suffered or claimed on account of any action or failure to act in the performance of his or her duties, except for intentional or willful bad acts or acts of recklessness. In the event any Board member or any officer of the Association is made a party to any proceeding because the individual is or was a director or officer of the Association, the Association shall indemnify such individual against liability and expenses incurred to the maximum extent permitted by law, except where the Board member or officer is found by a court of law to have acted recklessly, willfully, or intentionally in carrying out his/her duties.

6.4. **Board of Directors.** Except where a matter or vote is specifically reserved to the Owners, the Board of Directors shall act in all instances on behalf of the Association.

6.5. **Proceedings.** The Association, acting through the Board, shall have the power and the duty to reasonably defend the Association (and, in connection therewith, to raise counterclaims) in any pending or potential lawsuit, arbitration, mediation or governmental proceeding (collectively hereinafter referred to as a "Proceeding"). The Association, acting through the Board, shall have the power, but not the duty, to reasonably institute, prosecute, maintain and/or intervene in a Proceeding, in its own name, but only on matters affecting or pertaining to this Declaration as to which the Association is a proper party in interest, and any exercise of such power shall be subject to full compliance with the following provisions:

(a) Any Proceeding commenced by the Association: (1) to enforce the payment of an assessment or an assessment lien or other lien against an Owner as provided for in this Declaration, or (2) to otherwise enforce compliance with the Declaration, Bylaws, or Rules and Regulations of the Association, or to obtain other relief from, any Owner who has violated any provision thereof, or (3) against a supplier, vendor, contractor or provider of services, pursuant to a contract or purchase order with the Association, and in the ordinary course of

business, or (4) for money damages wherein the total amount in controversy for all matters arising in connection with the action is not likely to exceed Ten Thousand Dollars (\$10,000.00) in the aggregate, shall be referred to herein as an "Operational Proceeding". The Board from time to time may cause an Operational Proceeding to be reasonably commenced and prosecuted, without the need for further authorization.

(b) Any and all pending or potential Proceedings other than Operational Proceedings shall be referred to herein as "Non-Operational Controversy" or "Non-Operational Controversies". To protect the Association and the Owners from being subjected to potentially costly or prolonged Non-Operational Controversies without full disclosure, analysis and consent; to protect the Board and individual members of the Board or its appointed officers and agents from any charges of negligence, breach of fiduciary duty, conflict of interest or acting in excess of their authority or in a manner not in the best interests of the Association and the Owners; and to ensure voluntary and well-informed consent and clear and express authorization by the Owners, strict compliance with all of the following provisions of this Section shall be mandatory with regard to any and all Non-Operational Controversies commenced, instituted or maintained by the Board:

1. The Board shall first endeavor to resolve any Non-Operational Controversy by good faith negotiations with the adverse party or parties. The good faith negotiations shall include a written notice that shall include an explanation of the nature of the claim, a specific breakdown and calculation of any alleged damages, a specific description of the claim along with any supporting evidence upon which the claim is based, photographs of any alleged condition, if applicable, and one hundred eighty (180) days to cure or resolve the claim. In the event that such good faith negotiations fail to reasonably resolve the Non-Operational Controversy, the Board shall endeavor in good faith to resolve such Non-Operational Controversy by mediation, provided that the Board shall not incur liability for or spend more than Five Thousand Dollars (\$5,000.00) in connection therewith (provided that, if more than said sum is reasonably required in connection with such mediation, then the Board shall be required first to reasonably seek approval of two-thirds (2/3) of the voting power of the Members for such additional amount for mediation before proceeding to either arbitration or litigation). In the event that the adverse party or parties refuse mediation, or if such good faith mediation still fails to reasonably resolve the Non-Operational Controversy, the Board shall not be authorized to commence, institute or maintain any arbitration or litigation of such Non-Operational Controversy until the Board has fully complied with the following procedures:

a. The Board shall first investigate the legal merit, feasibility and expense of prosecuting the Non-Operational Controversy, by obtaining the written opinion of a licensed Utah attorney, expressly stating that such attorney has reviewed the underlying facts and data in sufficient, verifiable detail to render the opinion, and expressly opining that the Association has a substantial likelihood of prevailing on the merits with regard to the Non-Operational Controversy, without substantial likelihood of incurring any material liability with respect to any counterclaim which may be asserted against the Association. The Board shall be authorized to spend up to an aggregate of Five Thousand Dollars

(\$5,000.00) to obtain such legal opinion, including all amounts paid to said attorney therefor, and all amounts paid to any consultants, contractors and/or experts preparing or processing reports and/or information in connection therewith. The Board may increase said \$5,000.00 limit, with the express consent of two-thirds (2/3) of all of the Members of the Association, at a special meeting called for such purpose.

b. Said attorney opinion letter shall also contain the attorney's best good faith estimate of the aggregate maximum "not-to-exceed" amount of legal fees and costs, including, without limitation, court costs, costs of investigation and all further reports or studies, costs of court reporters and transcripts, and costs of expert witnesses and forensic specialists (all collectively, "Quoted Litigation Costs") which are reasonably expected to be incurred for prosecution to completion (including appeal) of the Non-Operational Controversy. Said opinion letter shall also include a draft of any proposed fee agreement with such attorney. If the attorney's proposed fee arrangement is contingent, the Board shall nevertheless obtain the Quoted Litigation Costs with respect to all costs other than legal fees, and shall also obtain a written draft of the attorney's proposed contingent fee agreement. (Such written legal opinion, including the Quoted Litigation Costs, and also including any proposed fee agreement, contingent or non-contingent, are collectively referred to herein as the "Attorney Letter").

c. Upon receipt and review of the Attorney Letter, if two-thirds (2/3) or more of the Board affirmatively vote to proceed with the institution or prosecution of, and/or intervention in, the Non-Operational Controversy, the Board thereupon shall duly notice and call a special meeting of the Members. The written notice to each Member of the Association shall include a copy of the Attorney Letter, including the Quoted Litigation Costs and any proposed fee agreement, contingent or non-contingent, together with a written report ("Special Assessment Report") prepared by the Board: (1) itemizing the amount necessary to be assessed to each Member ("Special Litigation Assessment"), on a monthly basis, to fund the Quoted Litigation Costs, and (2) Specifying the probable duration and aggregate amount of such Special Litigation Assessment. At said special meeting, following review of the Attorney Letter, Quoted Litigation Costs and the Special Assessment Report, and full and frank discussion thereof, including balancing the desirability of instituting, prosecuting and/or intervening in the Non-Operational Controversy against the desirability of accepting any settlement proposals from the adversary party or parties, the Board shall call for a vote of the Members, whereupon: (a) if less than two-thirds (2/3) of the total voting power of the Association votes in favor of pursuing such Non-Operational Controversy and levying the Special Litigation Assessment, then the Non-Operational Controversy shall not be pursued further, but (b) if two-thirds (2/3) of the total voting power of the Association affirmatively vote in favor of pursuing such Non-Operational Controversy, and in favor of levying a Special Litigation Assessment on the Members in the amounts and for the duration set forth in the

Special Assessment Report, then the Board shall be authorized to proceed to institute, prosecute and/or intervene in the Non-Operational Controversy. In such event, the Board shall engage the attorney who gave the opinion and quote set forth in the Attorney Letter, which engagement shall be expressly subject to the Attorney Letter. The terms of such engagement shall require that said attorney shall be responsible for all attorneys' fees and costs and expenses whatsoever in excess of one hundred twenty percent (120%) of the Quoted Litigation Costs, and that said attorney shall provide, and the Board shall distribute to the Members, not less frequently than quarterly, a written update of the progress and current status of, and the attorney's considered prognosis for, the Non-Operational Controversy, including any offers of settlement and/or settlement prospects, together with an itemized summary of attorneys' fees and costs incurred to date in connection therewith.

d. In the event of any bona fide settlement offer from the adverse party or parties in the Non-Operational Controversy, if the Association's attorney advises the Board that acceptance of the settlement offer would be reasonable under the circumstances, or would be in the best interests of the Association, or that said attorney no longer believes that the Association is assured of a substantial likelihood of prevailing on the merits without prospect of material liability on any counterclaim, then the Board shall have the authority to accept such settlement offer. In all other cases, the Board shall submit any settlement offer to the Owners, who shall have the right to accept any such settlement offer upon a majority vote of all of the Members of the Association.

(c) In no event shall any Association working capital fund be used as the source of funds to institute, prosecute, maintain and/or intervene in any Proceeding (including, but not limited to, any Non-Operational Controversy).

(d) Any post-turnover litigation involving the Association (as Plaintiff) and the Declarant shall strictly comply with each of the provisions of this Section 6.5. The parties hereby covenant, stipulate, and agree that in the event the Association fails to satisfy the prerequisites set forth herein, the Association will indemnify, defend, hold harmless, and exculpate Declarant to the fullest extent permissible by law, and Declarant shall be entitled to recover any and all attorneys fees and costs expended as a result of enforcing this provision 6.5., which fees and costs may include, without limitation, pre-litigation attorneys fees, costs incurred in connection with investigation of potential claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. The parties further covenant, stipulate, and agree that failure to comply with section 6.5 herein will result in damages to Declarant including, without limitation, reputational harm, and may result in damages to Declarant including lost revenues, and loss of business and sales opportunities.

(e) Any provision in this Declaration notwithstanding: (1) other than as set forth in this Section 6.5, the Association shall have no power whatsoever to institute, prosecute,

maintain or intervene in any Proceeding, (2) any institution, prosecution or maintenance of, or intervention in, a Proceeding by the Board without first strictly complying with, and thereafter continuing to comply with, each of the provisions of this Section 6.5, shall be unauthorized and *ultra vires* (i.e., an unauthorized and unlawful act, beyond the scope of authority of the corporation or of the person(s) undertaking such act) as to the Association, and shall subject any member of the Board who voted or acted in any manner to violate or avoid the provisions and/or requirements of this Section 6.5 to personal liability to the Association for all costs and liabilities incurred by reason of the unauthorized institution, prosecution or maintenance of, or intervention in, the Proceeding; and (3) this Section 6.5 may not be amended or deleted at any time without the express prior written approval of both: (a) Members representing not less than sixty-seven percent (67%) of the total voting power of the Association, and (b) not less than seventy-five percent (75%) of the total voting power of the Board; and any purported amendment or deletion of this Section 6.5 or any portion hereof, without both of such express prior written approvals shall be void.

VII. MAINTENANCE

7.1. **Maintenance.** The Association will provide maintenance upon the exterior of each Living Unit, Lot, fencing, and the Common Area as follows: paint, repair, replace, and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, fencing, streets and other exterior improvements except glass surfaces. The Association will provide snow removal from the streets, sidewalks, and Driveways within the Property.

7.2. **Services.** The Association shall provide or contract for such services as the Board of Directors may reasonably deem to be of benefit to the Property.

7.3. **Owner Responsibility.** Each Owner shall keep the interior of his Living Unit, including without limitation, interior walls, ceilings, floors, and permanent fixtures and appurtenances thereto, together with all doors and windows separating his Living Unit from the exterior of the building and any decks and all Limited Common Areas appurtenant to his Living Unit in a clean and sanitary condition and in a state of good repair. Each Owner shall be responsible for keeping the patios in front of each Owners Unit in a clean state of repair. The HOA will maintain all vegetation installed by the Declarant. Any modifications to vegetation must be approved by the HOA.

7.4. **Owner Maintenance Neglect.** The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage, or otherwise, to enter upon any Lot for the purpose of maintaining and repairing such Lot or any improvement thereon (including a Living Unit) if for any reason the Owner fails to maintain and repair such Lot or improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of this Declaration or any Rules of the Association. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoy any breach or threatened breach of this Declaration or any Rules promulgated by the Board, or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such Rules.

7.5. **Maintenance Caused by Owner Negligence.** In the event that the need for maintenance or repair of Common Areas or the exterior of a Living Unit as specified herein is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of the family, guests, tenants, or invitees of an Owner, the Board may cause such repairs to be made by the Association and the cost of such maintenance or repair work shall be added to and become an Individual Assessment (as set forth in Section 5.5) to which such Lot is subject.

VIII. **INSURANCE**

8.1. **Insurance.** The Board of Directors shall obtain insurance as required in this Declaration, the Act, or other applicable laws. The Association may obtain insurance that provides more or additional coverage than the insurance required in this Declaration. Different policies may be obtained from different insurance carriers and standalone policies may be purchased instead of or in addition to embedded, included coverage, or endorsements to other policies. Insurance premiums shall be a Common Expense.

8.2. **Property Insurance.**

(a) **Hazard Insurance.** The Association shall maintain a blanket policy of property insurance covering the entire Project, including the Common Area and all buildings including all Living Units, fixtures, and building services equipment as provided in the Act. The Association may maintain broader coverage if afforded by the insurance contract.

1. The blanket policy shall exclude land and other items not normally and reasonably covered by such policies. The blanket policy shall be an "all in" or "all inclusive" insurance as those terms are used in the insurance industry and shall include insurance for any fixture, improvement, or betterment installed in or to the Living Unit or any Limited Common Areas or otherwise permanently part of or affixed to Common Areas, Living Units, or Limited Common Areas, including but not limited to floor coverings, cabinets, light fixtures, electrical fixtures, heating and plumbing fixtures, paint, wall coverings, windows.

2. At a minimum, the blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, and theft; and (2) all perils normally covered by "special form" property coverage.

3. The blanket policy shall be in an amount not less than one hundred percent (100%) of current replacement cost of all property covered by such policy (including the Living Units) at the time the insurance is purchased and at each renewal date. The actual replacement cost of the property shall be determined by using methods generally accepted in the insurance industry.

4. The blanket policy shall include either of the following endorsements to assure full insurable value replacement cost coverage: (1) a Guaranteed Replacement Cost Endorsement under which the insurer agrees to replace the insurable property regardless of the cost; and (2) a Replacement Cost Endorsement under which the

insurer agrees to pay up to one hundred percent (100%) of the Property's insurable replacement cost but not more. If the policy includes a coinsurance clause, it must include an Agreed Amount Endorsement which must waive or eliminate the requirement for coinsurance.

5. Each property policy that the Association is required to maintain shall also contain or provide for the following: (i) "Inflation Guard Endorsement," if available, (ii) "Building Ordinance or Law Endorsement," (the endorsement must provide for contingent liability from the operation of building laws, demolition costs, and increased costs of reconstruction), and (iii) "Equipment Breakdown," if the project has central heating or cooling or other equipment or other applicable fixtures, equipment, or installation, which shall provide that the insurer's minimum liability per accident at least equals the lesser of two million dollars (\$2,000,000) or the insurable value of the building containing the equipment.

(b) Owner Responsibility for Payment of Deductible. If a loss occurs that is covered by a property insurance policy in the name of the Association and another property insurance policy in the name of an Owner:

1. the Association's policy provides primary insurance coverage;
2. Notwithstanding Subsection 8.2.(a)(1) above, and subject to Subsection 8.2.(b)(3) below:
 - a) the Owner is responsible for the Association's policy deductible;and
 - b) the Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.

3. An Owner that has suffered damage to any combination of a Unit or a Limited Common Area appurtenant to a Living Unit ("Unit Damage") as part of a loss, resulting from a single event or occurrence, that is covered by the Association's property insurance policy ("a Covered Loss") is responsible for an amount calculated by applying the percentage of total damage resulting in a Covered Loss that is attributable to Unit Damage ("Unit Damage Percentage") for that Living Unit to the amount of the deductible under the Association's property insurance policy; and

4. If an Owner does not pay the amount required under Subsection b) above within 30 days after substantial completion of the repairs to, as applicable, the Unit or the Limited Common Area appurtenant to the Living Unit, the Association may levy an assessment against the Owner for that amount.

(c) Association's Obligation to Segregate Property Insurance Deductible. The Association shall keep in a segregated bank account an amount equal to the Association's property insurance policy deductible or \$10,000, whichever is less. This requirement shall not apply to any earthquake or flood insurance deductible.

(d) **Association's Right to Not Tender Claims that are Under the Deductible.** If, in the exercise of its business judgment, the Board of Directors determines that a claim is likely not to exceed the Association's property insurance policy deductible: (a) the Owner's policy is considered the policy for primary coverage to the amount of the Association's policy deductible; (b) an 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; and (c) the Association need not tender the claim to the Association's insurer.

(e) **Notice Requirement for Deductible.** The Association shall provide notice to each Owner of the Owner's obligation under Subsection (b) above for the Association's policy deductible and of any change in the amount of the deductible. If the Association fails to provide notice of the initial deductible, it shall be responsible for the entire deductible in case of any loss. If the Association fails to provide notice of any increase in the deductible, it shall be responsible for paying any increased amount that would otherwise have been assessed to the Owner. The failure to provide notice shall not invalidate or affect any other provision in this Declaration.

8.3. **Comprehensive General Liability (CGL) Insurance.** The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than Two Million Dollars (\$2,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which should preclude the insurer from denying the claim of an Owner because of the negligence acts of the Association or another Owner.

8.4. **Director's and Officer's Insurance.** The Association shall obtain Directors' and Officers' liability insurance protecting the Board of Directors, the officers, and the Association against claims of wrongful acts, mismanagement, failure to maintain adequate reserves, failure to maintain books and records, failure to enforce the Project's Documents, and breach of contract (if available). This policy shall: (1) include coverage for volunteers and employees, (2) include coverage for monetary and non-monetary claims, (3) provide for the coverage of claims made under any fair housing act or similar statute or that are based on any form of discrimination or civil rights claims, and (4) provide coverage for defamation. In the discretion of the Board of Directors, the policy may also include coverage for any manager and any employees of the manager and may provide that such coverage is secondary to any other policy that covers the manager or any employees of the manager.

8.5. **Insurance Coverage for Theft and Embezzlement of Association Funds.** The Association shall obtain insurance covering the theft or embezzlement of funds that shall: (1) provide coverage for an amount of not less than the sum of three (3) months' regular assessments in addition to the prior calendar year's highest monthly balance on all operating and reserve funds, and (2) provide coverage for theft or embezzlement of funds by: (a) Officers and Board of Directors members of the Association, (b) employees and volunteers of the Association, (c) any

manager of the Association, (c) officers, directors, and employees of any manager of the Association, and (d) coverage for acts.

8.6. **Worker's Compensation Insurance.** The Board of Directors shall purchase and maintain in effect workers' compensation insurance for all employees of the Association to the extent that such insurance is required by law and as the Board of Directors deems appropriate.

8.7. **Certificates.** Any insurer that has issued an insurance policy to the Association shall issue a certificate of insurance to the Association and upon written request, to any Owner or Mortgagee.

8.8. **Named Insured.** The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under all property and CGL insurance policies.

8.9. **Association has the Right to Negotiate All Claims and Losses and Receive Proceeds.** Insurance proceeds for a loss under the Association's property insurance policy are payable to an Insurance Trustee if one is designated, or to the Association, and shall not be payable to a holder of a security interest. An Insurance Trustee, if any is appointed, or the Association shall hold any insurance proceeds in trust for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property, if the property is to be repaired and restored as provided for in this Declaration. After any repair or restoration is complete and if the damaged property has been completely repaired or restored, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any remaining proceeds after such action as is necessary related to the property has been paid for, shall be distributed to the Owners and lien holders, as their interests remain with regard to the Living Units. Each Owner hereby appoints the Association, or any Insurance Trustee, as attorney-in-fact for the purpose of negotiating all losses related thereto, including the collection, receipt of, and appropriate disposition of all insurance proceeds; the execution of releases of liability; and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of the Owner.

8.10. **Insurance Trustee.** In the discretion of the Board of Directors or upon written request executed by Owners holding at least 50% of the Allocated Interest, the Board of Directors shall hire and appoint an insurance trustee ("Insurance Trustee"), with whom the Association shall enter into an insurance trust agreement, for the purpose of exercising such rights under this paragraph as the Owners or Board of Directors (as the case may be) shall require.

8.11. **Owner Act Cannot Void Coverage Under Any Policy.** Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct

authorization of the Association, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

8.12. **Waiver of Subrogation against Owners and Association.** All property and CGL policies must contain a waiver of subrogation by the insurer as to any claims against the Association and the Owners and their respective agents and employees.

8.13. **Annual Insurance Report.** Not later than sixty (60) days prior to the beginning of each fiscal year, Board of Directors may obtain a written report by a reputable insurance broker, agent, or consultant (who may be the insurance provider/agent/broker used by the Association) setting forth the existing insurance obtained pursuant to the Declaration and stating whether in the opinion of such broker or consultant, the insurance complies with the requirements of the Declaration and the Act. Such report may also set forth recommendations regarding current policy provisions and for additional insurance reasonably required for the protection of the Owners and Lenders in light of the insurance then available and the prevailing practice with respect to other similar condominium projects. The Board of Directors shall be protected in relying on the written report furnished pursuant to this Subsection provided reasonable care and prudence were exercised in selecting such insurance broker, agent, or consultant. The most recent annual insurance report shall be made available to all Lenders and Owners upon request.

8.14. **Applicable Law.** This Declaration is specifically subjecting the Association to the insurance requirements required by U.C.A. §57-8a-401 through §57-8a-407, and any amendments thereto and thereafter enacted by law. It is the intent of this provision that any future changes to the insurance laws applicable to condominium associations shall apply to this Association.

IX. USE RESTRICTIONS

9.1. **Use of Common Areas.** The Common Areas shall be used only in a manner consistent with their community nature and with the use restrictions applicable to Lots and Living Units.

9.2. **Use of Lots and Living Units.** All Lots are intended to be improved with Living Units and are restricted to such use. Except as may be approved to the contrary, each Living Unit shall be used only as a single-family residence. No gainful occupation, profession, trade, or other nonresidential use shall be conducted on any Lot or Living Unit without the prior written consent of the Board and applicable governmental entities. However, the Board shall not approve commercial activities otherwise prohibited by this Section unless the Board determines that only normal residential activities would be observable outside of the Living Unit and that the

activities would not be in violation of applicable local ordinances. No Lot or Living Unit shall be used, occupied, or altered in violation of law, so as to jeopardize the support of any other Living Unit, so as to create a nuisance or interfere with the rights of any Owner, or in any way which would result in an increase in the cost of any insurance covering the Common Areas.

9.3 **Offensive or Unlawful Activities.** No noxious or offensive activities shall be carried on upon any Lot, Living Unit, or Common Area, nor shall anything be done or placed on any Lot or Common Area which interferes with or jeopardizes the quiet enjoyment of other Lots, Living Units, or the Common Areas, or which is a source of annoyance to residents. No unlawful use shall be made of a Lot or any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. No use shall be made of any Living Unit which shall cause the improvements within the Development or any part thereof to be uninsurable against loss by fire or other perils included in insurance contracts, or cause such insurance to be canceled or suspected, or cause any company issuing such insurance to refuse renewal thereof.

9.4. **Recreational Vehicles.** No boats, trailers, motorhomes, large trucks, commercial vehicles, or the like belonging to Owners or other residents of the Property shall be parked within the Development, not to exceed forty-eight (48) hours. No motor vehicle of any kind shall be repaired, constructed, or reconstructed upon any Lot, Private Street or other Common Areas, except for emergency repairs to vehicles. Any motor recreational vehicle must be kept in an enclosed garage.

9.5. **Pets.** No animals shall be kept in the Project except household pets. Such pets may not be kept or bred for any commercial purpose and shall have such care and restraint so as not to be obnoxious or offensive on account of noise, odor, or unsanitary conditions. No savage or dangerous animals shall be kept. No more than two household pet may be kept in any Unit without the written permission of the Association. No pets shall be permitted to run loose upon the Common Areas.

9.6, **Machinery and Equipment.** No machinery or equipment of any kind shall be placed, used, operated, or maintained on or adjacent to any Lot except such machinery or equipment as is usual and customary in connection with the use, maintenance, or construction of a Living Unit or appurtenant structures.

9.7. **Nuisances.** No rubbish or debris of any kind shall be placed upon or adjacent to any Lots, so as to render such Lot or portion thereof unsanitary, unsightly, offensive, or detrimental to other Owners. No Living Unit or Lot shall be used in such manner as to obstruct or interfere with the enjoyment of Occupants of other Living Units or Lots. Without any of the foregoing, no exterior speakers, horns, whistles, bells, or other sound devices (except security devices used exclusively for security purposes) shall be located or placed on Lots or in Living Units. Smoking in Common Areas is considered a nuisance and is expressly prohibited.

9.8. **Signs.** No signs whatsoever (including, without limitation, political signs) shall be erected or maintained on any Lot, except such signs as may be required by legal proceedings, or a "For Sale" or "For Rent" sign, to the extent permitted, and in conformance with the Rules and Regulations promulgated by the Board.

9.9. **Trash Containers and Collection.** All garbage and trash shall be placed and kept in covered containers of a type and style which shall be approved by the Board. Insofar as possible, such containers shall be maintained as not to be visible from the street view except to make them available for collection and then only for the shortest time necessary to effect such collection.

9.10. **Smoke and Carbon Monoxide Detectors.** Each Living Unit shall have an operable carbon monoxide detector and smoke detectors as required by building code. The Board may, but is not required to, enter a Living Unit to ensure that it is in compliance with this Section and Section 9.11 below. Smoking is allowed except in common and limited common areas

9.11. **Unit Heating.** Owners shall heat Units to no less than fifty-degrees (50° F) at all times to prevent pipes from freezing.

9.12. **Parking.** No parking is allowed on roadways or streets within the Project boundaries. This prohibition on parking on roadways and streets is for all vehicles, including but not limited to, automobiles, trucks, buses, tractors, camping vehicles, boats, bus trailers, snowmobiles, mobile homes, two, three or four whelled motor vehicles, or other wheeled vehicles, shall be permitted to be parked on any private street. Furthermore, the Board of Directors is authorized to adopt and implement reasonable rules and regulations pertaining to parking within the Project boundaries. The Board of Directors may hire at their discretion a third party parking enforcement company to enforce any rules and regulations.

9.13. **Renting of Living Units.** Notwithstanding anything to the contrary contained in this Declaration, the leasing or renting of any Living Unit within the Project shall be governed by this Section. An Owner may "rent" his/her Living Unit subject to the limitations and requirements of this Section. For the purposes of this Section only, the term "rent" in any grammatical form includes leasing, subletting or otherwise permitting or allowing someone other than an Owner to reside in a Living Unit in exchange for legal consideration payable to the Owner or to others at the Owner's request or direction, or allow others to reside therein alone for charitable purposes without the owner in residence. No Living Unit may be rented for a period of less than six (6) consecutive months and an Owner may not rent less than the entire Living Unit. A Living Unit may not be rented except by written agreement that requires the tenants to abide by the Governing Documents and specifically provides that a violation of any provision of the Governing Documents is a breach under the rental agreement. A copy of the rental agreement shall be provided to the Board upon request. The Board may adopt by resolution, Rules that establish the contents or exact form of rental agreements, and any other Rules deemed necessary by the Board to implement this Section. Pursuant to Rules adopted under this Section, if the Board determines that a tenant has violated a provision of the Governing Documents, after notice and an opportunity for a hearing as provided by the Act, the Board may assess fines against the Owner and/or require an Owner to terminate a rental agreement. No Owner may purchase more than one (2) Living Units within the Project. No more than twenty five percent (25%) of the Living Units can be used as rentals within the community at a given time.

9.14. **No Patio / Deck Storage.** No observable outdoor storage of any kind shall be permitted on patios, front yards, porches, etc., except for patio furniture and portable barbecue

grills in good condition which may be maintained on patios. Said patio furniture shall conform with standards set by the Architectural Committee.

X. ARCHITECTURAL CONTROLS

10.1. **Architectural Control Committee.** The Board may appoint a three (3) member Architectural Control Committee, the function of which shall be to ensure that all improvements and landscaping within the Property harmonize with existing surroundings and structures (herein the "Committee"). The Committee need not be composed of Owners. If such a Committee is not appointed, the Board shall perform the duties required of the Committee.

10.2. **Architectural Controls.** Notwithstanding any other provision to the contrary, no Owner shall make structural alterations or modifications to his Unit or to any of the Common Areas or Limited Common Areas, including but not limited to, the erection of antennas, aerials, awnings, the placement of any reflective or other materials in the windows of his Unit or other exterior attachments and signs or other advertising devices without the written approval of the Association. The Association shall not approve any alterations, decorations or modifications which would jeopardize or impair the soundness, safety or appearance of the Project. No exterior changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the Board of Directors. The Board of Directors or Committee may designate the design, color, style, model and manufacturer of any exterior improvement or alteration that is acceptable to the Board of Directors. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values. No interior structural changes whatsoever shall be commenced, erected, maintained, made or done without the prior written approval of the Board of Directors or Committee. By way of illustration, but not of limitation, the following are considered interior structural changes: moving, removing, adding, or altering walls, doorways, windows, skylights, venting, and the like. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

10.3. **Liability for Damages.** The Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it made pursuant to this Article X.

XI. ENFORCEMENT

The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, each provision of this Declaration, including the right to prevent any violation of such, and the right to recover damages and other sums for such violation(s). The Association or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Bylaws and the Rules and any respective amendments thereto. The prevailing party in any action for the enforcement of any provisions of the Governing Documents (including but not limited to litigation and the appeal thereof) shall be entitled to collect court costs and reasonable attorneys' fees. Notwithstanding the provisions of this Section, this Section shall not apply to any Non-Operational Controversy, as parties to any Non-Operational Controversy shall bear their own attorney fees and costs.

XII. DECLARANT RIGHTS

12.1. **Administrative Control of Association.** Declarant shall assume full administrative control of the Association through an appointed interim Board, which shall serve until the turnover Meeting. The Turnover Meeting shall be held at the Declarant's option and sole discretion but shall not be held later than three (3) years from the date that the last Lot to be developed upon the Property is sold. Declarant may elect to relinquish control of the Association at an earlier time by written notice to Owners and the Turnover Meeting shall be held within ninety (90) days of such notice.

12.2. **Other Rights.** In addition to any other rights, under the Governing Documents, as long as Declarant owns at least one (1) Lot within the Project, Declarant:

(a) **Sales Office.** Shall have the right to maintain a sales office and model 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 office 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, at reasonable locations on the Project, including without limitation, the Common Area.

(c) **Declarant Exemption.** Unless specifically and expressly bound by a provision of the Governing Documents, Declarant shall be exempt from the provisions of the Governing Documents.

12.3. Easements Reserved to Declarant.

(a) The reservation to Declarant, its successors and assigns, of non-exclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Plat as "Public Utility Easement," or otherwise designated as an easement area over any road or Common Area on the Project, and over those strips of land running along the front, rear, side and other Lot lines of each Lot shown on the Plat.

(b) An easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Project 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, or in the area or on the area in which the same is located.

(c) Easement granting the privilege of entering upon the Common Areas for such purposes and making openings and excavations thereon, which openings and excavations shall be restored in a reasonable period of time, and for such alterations of the contour of the land as may be necessary or desirable to affect such purposes.

(d) The reservation to the Declarant and its successors and assigns, of a non-exclusive easement and right-of-way in, through, over and across the Common Area for the purpose of the storage of building supplies and materials, and for all other purposes

reasonably related to the completion of construction and development of the Project and the provision of utility services, and related services and facilities

(e) The Declarant 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 "open space" and storm water management reservation, to public use all as shown on the Plat. No road, street, avenue, alley, right of way or easement shall be laid out or constructed through or across any Lot or Lots in the Project except as set forth in this Declaration, or as laid down and shown on the Plat, without the prior written approval of the Board.

(f) Declarant further reserves unto itself and its successors and assigns, the right at or after the time of grading of any street or any part thereof for any purpose, to enter upon any abutting Lot and grade a portion of such Lot adjacent to such street, provided such grading does not materially interfere with the use or occupancy of any structure built on such Lot, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

XIII. RIGHTS OF FIRST MORTGAGEE

Notwithstanding anything contrary contained herein, the following provisions apply:

13.1. **Rights of First Refusal.** Any "right of first refusal" which may be granted herein shall not impair the rights of the first Mortgagee of a Lot to: (1) foreclose or take title to a Lot pursuant to the remedies provided in the Mortgage; (b) accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor; or (c) sell or lease a Lot acquired by a Mortgagee.

13.2. **Title in Mortgagee.** Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage will not be liable for such Lot's Assessments or charges which accrue prior to the acquisition of title of such Lot by the Mortgagee. However, such first Mortgagee shall be responsible for Assessments or charges levied while it holds title to the Lot.

13.3. **Notice of Default by Lot Owner.** In the event an Owner neglects for a period of sixty (60) days or more to cure any failure on his part to perform his obligations under this Declaration or other Governing Documents, the Association, upon written request from the Mortgagee, shall give written notice of such fact to the Mortgagee covering such Owner's Lot.

13.4. **Abandonment, Termination, Etc.** Unless all of the holders of first Mortgages on the individual Lots have given their prior written approval, neither the Association nor the Owners acting as a group shall be entitled by act, omission or otherwise to abandon or terminate the Project.

13.5. **No Priority.** No provision herein is intended, nor shall it be construed, to give any Lot Owner, or any other party, priority over any rights of the first Mortgagee of a Lot pursuant to its Mortgage in the case of a distribution to such Lot Owner of insurance proceeds or

condemnation awards for losses to or a taking of Common Areas.

XIV. RIGHT OF ENTRY

The Association acting through the Board or its duly authorized agent shall have the right at all times upon reasonable notice of at least 48 hours to enter upon or into any Lot or Living Unit, without trespass, and regardless of whether or not the Lot Owner or Occupant thereof is present at the time, to abate any infractions, to fulfill its responsibilities, to exercise its rights, to make repairs or correct any violation of any of the Declaration or Rules, and in connection therewith shall have the further right to assess all costs incurred against the Owner, such Assessment to be secured by a lien provided in Article V. Notice shall not be necessary in case of an emergency originating in or threatening such Living Unit or any other part of the Project, including the sound or sight of running water in a Living Unit, the smell or sight of smoke in a Living Unit, abnormal or excessive noises; and foul smell. Owners shall also maintain up-to-date emergency contact information records with the Association, including any local representative an Owner may have. Owners shall be responsible for any costs incurred by the Association as a result of entering a Living Unit under this Section and shall indemnify and hold harmless the Association for all damages related to such entry, except for such damages resulting from recklessness or bad faith.

XV. MISCELLANEOUS

15.1. **Notices.** Any notice required or permitted to be given to any Owner or Member according to the provisions of this Declaration shall be deemed to have been properly furnished if personally delivered, emailed, or if mailed, postage prepaid, to the person who appears as a Member or Owner, at the latest email or mailing address for such person appearing in the records of the Association at the time of mailing. If no mailing address has been provided, the Lot owned by said Owner shall be used for notice purposes.

15.2. **Amendment.** Except as otherwise provided herein, this Declaration and/or the Plat may be amended only upon the affirmative vote of at least sixty-seven percent (67%) of the Lot Owners. Amendments to the Declaration shall be proposed by either a majority of the Board or by at least thirty percent (30%) of the Lot Owners. The proposed amendment must be reduced to writing and must be included in the notice of any meeting at which action is to be taken thereon. Any amendment(s) shall be effective upon recordation in the office of the recorder of Davis County, State of Utah. In such instrument the Board and/or president of the Association shall certify that the vote required by this Section for amendment has occurred. If a Lot is owned by more than one Owner, the signature of any one Owner shall be sufficient to constitute approval for that Lot under this Section. If a Lot is owned by an entity or trust, the signature of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Lot under this Section. No acknowledgment of any signature shall be required.

(a) **Declarant's Right to Amend.** Notwithstanding anything in this Declaration, so long as the Declarant owns any Lot within the Association, the Declarant shall have the unilateral right to amend the Declaration.

15.3. **Consent in Lieu of Voting.** In any case in which this Declaration requires authorization or approval of a transaction the assent or affirmative vote of a stated percentage of the

votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast at least the stated percentage of all membership votes outstanding in the Association. The following additional provisions shall govern any application of this Section 15.3:

(a) All necessary consents must be obtained prior to the expiration of ninety (90) days after the first consent is given by any Member.

(b) The total number of votes required for authorization or approval under this Section 15.3 shall be determined as of the date on which the last consent is signed.

(c) Except as provided in the following sentence, any change in ownership of a Lot which occurs after consent has been obtained from the Owner thereof shall not be considered or taken into account for any purpose.

15.4. **Dissolution.** Subject to the restrictions set forth in Article XIII of this Declaration pertaining to Mortgagee protection, the Association may be dissolved by the affirmative assent in writing from 90% of the Lot Owners. Upon dissolution of the Association, all of its agency or authority to be used for purposes similar to those provided for in the Articles of Incorporation or this Declaration. In the event such dedication or transfer is not made or is not accepted, the Association's assets shall be transferred to a nonprofit corporation, trust, or other entity to be used for such similar purposes, and each Owner shall continue to be obligated to make assessment payments for the maintenance and upkeep of the Common Areas, common access roadways, curbs, gutters, and sidewalks on a pro rata basis which conforms substantially with the assessments procedure, terms and conditions set forth in Article V of this Declaration.

15.5. **Interpretation and Severability.** The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is constructed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any party thereof, and any gender shall include the other gender. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

15.6. **Covenants to Run with Land.** This Declaration and all provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of the Association and all parties who hereafter acquire any interest in a Lot or in the Common Areas shall be subject to the terms of this Declaration and the provisions of any Rules, agreements, instruments, and determinations contemplated by this Declaration; and failure to comply with any of the foregoing shall be grounds for an action by the Association or an aggrieved Owner for the recovery of damages, or for injunctive relief, or both. By acquiring any interest in a Lot or in the Common Areas, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

15.7. **No Waiver.** Failure by the Association or by any Owner to enforce any Restriction or provision herein contained, or contained in the Bylaws or the Rules, in any certain instance or on any particular occasion shall not be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction or provision.

15.8. **Security.** The Association shall in no way be considered an insurer or guarantor of security within or relating to the Property, including any Common Area in which the Association may have an obligation to maintain, and the Association shall not be held liable for any loss or damage by reason of any failure to provide adequate security or any ineffectiveness of security measures undertaken. Owner or Occupant agree by purchasing a Lot in this Association that Association, and the Board, are not insurers of the safety or well-being of Owners or Occupants or of their personal property, and that each Owner or Occupant assumes all risks for loss or damage to persons, the Lots, the Common Areas, and to the contents of improvements located thereon to the extent not insured by the Association. EACH OWNER AND OCCUPANT UNDERSTANDS AND ACKNOWLEDGES THAT THE ASSOCIATION AND THE BOARD HAVE NOT MADE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND AND THAT EACH OWNER OR OCCUPANT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, RELATIVE TO THE SECURITY OF THE TOWNHOME PROJECT.

15.9. **Effective Date.** The Declaration and any amendment hereof shall take effect upon its being filed for record in the office of the County Recorder of Davis County, Utah.

[Certification on Next Page]

CERTIFICATION

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by its duly authorized president and secretary.

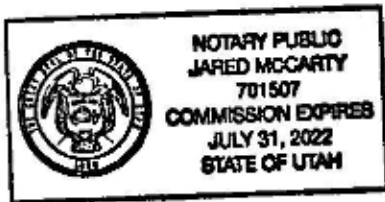
IN WITNESS WHEREOF, this amendment is hereby executed this 30th day of November in 2020.

5th and Orchard Townhomes, LLC

By [Signature]
President of Brighton Development Utah, LLC, Manager

State of Utah)
 ss.
County of DAVIS)

On the 30th day of NOVEMBER 2020, personally appeared before me PATRICK SCOTT who by me being duly sworn, did say that he is the President of Brighton Development Utah, LLC, Manager of 5th and Orchard Townhomes, LLC, and that the foregoing instrument is signed and executed by authority of the consent of its members.



Notary Public [Signature]
Residing in 45 E CENTER ST NSL, UT 84057

My commission expires:
JULY 31, 2022

EXHIBIT A
LEGAL DESCRIPTION

BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF 500 SOUTH STREET AND THE WEST LINE OF ORCHARD DRIVE (400 EAST STREET), SAID POINT BEING NORTH 89°38'33" EAST 67.96 FEET ALONG THE SECTION LINE TO THE CENTER LINE OF ORCHARD DRIVE AND SOUTH 00°11'23" EAST 516.71 FEET ALONG SAID CENTER LINE TO THE MONUMENT AT THE INTERSECTION OF SAID 500 SOUTH STREET AND ORCHARD DRIVE AND SOUTH 89°44'04" WEST 33.00 FEET ALONG THE CENTER LINE OF 500 SOUTH STREET AND SOUTH 00°11'26" EAST 33.00 FEET FROM THE NORTHWEST CORNER OF SECTION 29, TOWNSHIP 2 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, DAVIS COUNTY, UTAH, SAID POINT BEING EAST 49.50 FEET FROM THE NORTHEAST CORNER OF BLOCK 39, NORTH MILL CREEK PLAT, BOUNTIFUL TOWNSITE SURVEY, BY RECORD, AND RUNNING THENCE SOUTH 00°11'26" EAST 315.52 FEET (SOUTH 313.50 FEET, BY RECORD) ALONG THE WEST LINE OF ORCHARD DRIVE; THENCE NORTH 89°56'15" WEST 299.41 FEET (NORTH 89°34' WEST 286.40 FEET, BY RECORD) TO A FENCE LINE; THENCE NORTH 01°04'00" WEST 174.52 FEET (NORTH 168.48 FEET, BY RECORD) ALONG SAID FENCE LINE; THENCE NORTH 01°32'04" EAST 139.36 FEET (NORTH 01°48' EAST 143.85 FEET, BY RECORD) TO THE SOUTH LINE OF 500 SOUTH STREET; THENCE NORTH 89°44'04" EAST 297.88 FEET (EAST 305.20 FEET, BY RECORD) ALONG SAID SOUTH LINE TO THE WEST LINE OF ORCHARD DRIVE AND TO THE POINT OF BEGINNING.

WHOLE PARCEL CONTAINS 2.170 ACRES.

**BYLAWS
OF THE
5th and Orchard Townhomes Planned Unit Development HOA,
INC.,
A UTAH NONPROFIT CORPORATION
Bountiful, Davis County, Utah**

THESE BYLAWS OF 5th and Orchard Townhomes Planned Unit Development HOA, INC. ("Bylaws") are made effective when recorded with the Davis County Recorder's Office by 5th and Orchard Townhomes PUD HOA, INC. ("Association") pursuant to the Utah Community Association Act and the Utah Revised Nonprofit Corporation Act (referred collectively as "the Acts").

RECITALS

1. These Bylaws are adopted in order to complement the Declaration and to eliminate ambiguity, to further define the rights of the Association and the Owners, to provide for the ability to more effectively govern and operate the Association, and to further the Association's efforts to safely, efficiently, and economically provide a quality living environment desired at the Project.
2. All present and future Lot Owners, tenants, guests, or any other persons who enter the Project are subject to these Bylaws. The mere acquisition or rental of any of the Lots or parts thereof, or the mere act of occupancy or use of any said Lots or part thereof or the Common Areas will signify that these Bylaws are accepted, ratified, and will be complied with by said persons.

**ARTICLE I
DEFINITIONS**

1.1 **Definitions.** Except as otherwise provided herein or as may be required by the context, all terms defined in the Declaration shall have the same meanings when used in these Bylaws.

**ARTICLES II
MEMBERS**

2.1 **Annual Meetings.** The annual meeting of the Members shall be held each year during the month of January on a day and at a time established by the Board. The purpose of the annual meeting shall be electing Directors and transacting such other business as may come before the meeting. If the election of Directors cannot be held on the day designated herein for the annual meeting of the Members, or at any adjournment thereof, the Board shall cause the election to be held either at a special meeting of the Members to be convened as soon thereafter as may be convenient or at the next annual meeting of the Members. The Board may from time to time by resolution change the date and time for the annual meeting of the Members.

2.2 **Special Meetings.** Special meetings of the Members may be called by a majority of the Board, the President, or upon the written request of Members holding not less than thirty-five percent (35%) of the

Association's voting interests. Any written request for a special meeting presented by the Members shall be delivered to the President and shall include the original signature of each Member affirmatively supporting such request along with a complete statement of the purpose of the meeting on each page containing signatures. The President shall then call, provide notice of, and conduct the special meeting within sixty (60) days of receipt of the request.

2.3 Place of Meetings. The Board may designate any place in Davis County reasonably convenient for the Members of the Association for any annual or special meeting.

2.4 Notice of Meetings. The Board shall cause written or printed notice of the date, time, and place (and in the case of a special meeting, the purpose or purposes) for all meetings of the Members. Such written or printed notice shall be delivered to each Member of record entitled to vote at such meeting not more than sixty (60) nor less than ten (10) days prior to the meeting. Such notice may be hand-delivered, mailed, or emailed. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail addressed to the Member at the Member's address registered with the Association, with first-class postage thereon prepaid. Each Member shall register with the Association such Member's current mailing address for purposes of notice hereunder. Such registered address may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, a Member's Lot address shall be deemed to be the Member's registered address. If emailed, such notice shall be deemed to be delivered when sent to the Member at the Member's email address registered with the Association. All Members shall register a mailing and email address with the Association.

2.5 Voting. The Association shall initially have the following two classes of votes:

(a) **Class A.** Class A Members shall be all Owners other than the Declarant until the Class B membership ceases. Class A Members shall be entitled to one vote for each Lot in which the interest required for membership in the Association is held. In no event, however, shall more than one Class A vote exist with respect to any Lot.

(b) **Class B.** The Class B Member shall be the Declarant. The Class B Member shall be entitled to 2 votes for every Lot owned by Declarant plus 2 votes for every class A vote. The Class B Membership shall automatically cease and be converted to a Class A membership upon the sale of the last lot.

2.5 Qualified Voters. A Member shall be deemed to be in "good standing" and "entitled to vote" at any meeting of the Association if he or she is in full compliance with all of the terms, covenants, conditions of the Declaration, or these Bylaws, and shall have fully paid his or her share of any assessments (together with any interest and/or late fees) prior to the commencement of the meeting.

2.6 Record Date for Notice Purposes. The Board may designate a record date, which shall not be more than sixty (60) nor less than ten (10) days prior to the meeting, for the purpose of determining Members entitled to notice of any meeting of the Members. If no record date is designated, the last date on which a notice of the meeting is mailed or delivered shall be deemed to be the record date for determining Members entitled to notice. The persons or entities appearing in the records of the Association on such record date as the Owner(s) of Lots in the Property shall be deemed to be the Members of record entitled to notice of the meeting of the Members.

2.7 Quorum. At any meeting of the Members, the presence of Members and holders of proxies entitled to cast more than twenty-five percent (25%) of the voting interests of the Association shall constitute a

quorum for the transaction of business. If however, such quorum shall not be present or represented at any meeting, the Board shall have power to adjourn the meeting and reschedule for a time no earlier than twenty four (24) hours, nor later than thirty (30) days after the set time for the original meeting. Notice of such rescheduled meeting shall not be required except an oral announcement at the meeting to be rescheduled. The presence of Members and holders of proxies entitled to cast more than ten percent (10%) of the voting interests of the Association shall constitute a quorum for the transaction of business at the rescheduled meeting.

2.8 Proxies. At each meeting of the Members, each Member entitled to vote shall be allowed to vote in person or by proxy; provided however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been executed by the Member or by the Member's attorney when duly authorized in writing. If a Lot is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) owner of such Lot or the Members' attorney when duly authorized in writing. Such instrument authorizing a proxy to act shall be dated, set forth the specific matters or issues upon which the proxy is authorized to act, and may allow the proxy to vote on any issue arising at any particular meeting or meetings. Such instrument shall be delivered at the beginning of the meeting to the Secretary of the Association or to such other officer or person who may be acting as secretary of the meeting. The secretary of the meeting shall enter a record of all such proxies in the minutes of the meeting.

2.9 Votes. With respect to each matter submitted to a vote of the Members, each Member entitled to vote at the meeting shall have the right to cast, in person or by proxy, one (1) vote per Lot owned by the Owner, as shown in the Declaration. The affirmative vote of a majority of the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by the Members, unless a greater proportion is required by the Articles, these Bylaws, the Declaration, or the Act. The election of Directors may be by secret ballot. When more than one (1) Person owns an interest in a Lot, any Person who is the owner may exercise the vote for such Lot on behalf of all Co-Owners of the Lot. In the event of two (2) conflicting votes by Co-Owners of one (1) Lot, no vote shall be counted for that Lot. In no event shall fractional votes be exercised in respect to any Lot.

2.10 Waiver of Irregularities. All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, in the form of proxies and the method of ascertaining Members present, and in the decision and votes of the Board or of the Owners shall be deemed waived if no objection is made either at the meeting or within thirty (30) days of the date of the meeting, or within thirty (30) days of notice of any decision by the Board.

ARTICLE III BOARD OF DIRECTORS

3.1 General Powers. The property, affairs, and business of the Association shall be managed by the Board. The Board may exercise all of the powers of the Association, whether derived from the Acts, the Declaration or these Bylaws, except such powers that the Articles, these Bylaws, the Declaration, or the Acts vest solely in the Members.

3.2 Number, Tenure, and Qualifications. The property, business, and affairs of the Association shall be governed by a Board of Directors composed of three (3) persons, all of whom must be an Owner or the spouse of an Owner of a Lot. After the Turnover Meeting, Directors vacancies, for any reason other than removal by vote of the Association, shall be filled by vote of a majority of the remaining Directors. An officer or employee of a corporation, or the trustee of a trust, or personal representative of an estate, or an

employee of the trust or estate, may serve on the Board, if the corporation, trust, or estate owns a Lot and so designates. No two Directors may reside in the same Unit, be the spouse of one another, or be business partners if the business is related to their ownership of a Lot. At each annual meeting, the Members shall elect for terms of two (2) years each the appropriate number of Directors to fill vacancies by expiring terms of Directors. Director terms shall be staggered so that in 1 year there is 1 seat up for election and the following year there are 2 seats up for election.

3.3. Regular Meetings. The Board shall hold regular meetings at least quarterly. The Board may designate any place in Davis County as the place of meeting for any regular meeting called by the Board. Meetings may also be held with Directors appearing telephonically so long as any Director appearing telephonically consents to such appearance.

3.4 Special Meetings. Special meetings of the Board may be called by the President, Vice President, or a majority of the Directors on at least three (3) days prior notice to each Director. The person or persons authorized to call special meetings of the Board may fix any place, within Davis County, as the place for holding the meeting. Notice shall be given personally, by regular U.S. mail at such Director's registered address, by telephone, or by email. If mailed, such notice shall be deemed to be delivered when deposited in the U.S. mail so addressed, with first-class postage thereon prepaid. Any Director may waive notice of a meeting. Special Meetings may also be held with Directors appearing telephonically so long as any Director appearing telephonically consents to such appearance.

3.5 Quorum and Manner of Action. A majority of the then authorized number of Directors shall constitute a quorum for the transaction of business at any meeting of the Board. The act of a majority of the Directors present at any meeting at which a quorum is present and for which proper notice was provided to the Directors shall be the act of the Board. The Directors shall act only as the Board, and individual Directors shall have no powers as such.

3.6 Compensation. No Director shall receive compensation for any services that such member may render to the Association as a Director; provided, however, that a Director may be reimbursed for expenses incurred in performance of such duties as a Director to the extent such expenses are approved by a majority of the other Directors.

3.7 Resignation and Removal. A Director may resign at any time by delivering a written resignation to either the President or the Secretary. Unless otherwise specified therein, such resignation shall take effect upon delivery. A Director may be removed at any time, with or without cause, at a special meeting of the Members duly called for such purpose upon the affirmative vote of at least fifty-one percent (51%) of the entire voting interests of the Association. A Director may also be removed by the affirmative vote of a majority of the other Directors if he or she, in any twelve (12) month period, misses either three (3) consecutive or at least sixty-seven percent (67%) of the regularly scheduled Board meetings.

3.8 Vacancies and Newly Created Board Memberships. If vacancies shall occur on the Board by reason of the death, resignation, disqualification, or Board removal as provided in Section 3.7 of a Director, the Directors then in office shall continue to act, and such vacancies shall be filled by a majority vote of the Directors then in office, though less than a quorum. Any vacancy in the Board occurring by reason of removal of a Director by the members, as provided in Section 3.7, may be filled by election by the members at the meeting at which such Director is removed. Any Director elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his predecessor.

3.9 Informal Action by Directors. Any action that is required or permitted to be taken at a meeting of the Board may be taken without a meeting if written consent of such is so provided by all of the Directors.

3.10 Powers and Duties. The Board shall have all of the powers and duties necessary for the administration of the affairs of the Association, except such powers and duties as by law or by these Bylaws are given to the Members. The powers and duties to be exercised by the Board shall include, but shall not be limited to, the following:

- (a) Operation, care, upkeep, maintenance, repair, and replacement of the Common Areas, including without limitation as specified in the Declaration.
- (b) Determination of the amounts required for operation, maintenance, and other affairs of the Association, and the making of such expenditures.
- (c) Adoption of a budget for the Association, and assessment and collection of the Common Expenses through the Association.
- (d) Employment and dismissal of such personnel as necessary for the efficient maintenance, upkeep, and repair of the Common Areas.
- (e) Contracting with legal, accounting, management, or other personnel for reasonable compensation to perform such services as may be required for the proper administration of the Association.
- (f) Opening of bank accounts on behalf of the Association and designating the signatories required therefore.
- (g) Preparing or causing to be prepared and filed any required income tax returns or forms for the Association.
- (h) Obtaining insurance or bonds pursuant to the provisions of these Bylaws, the Declaration, or the Acts.
- (i) Making additions and improvements to, or alterations of, the Common Areas.
- (j) Designating and/or appointing committees.
- (k) Enforcement by legal means of the provisions of the Act, the Declaration, these Bylaws, and any rules adopted by the Board.
- (l) The filing of an annual report and any amendment in accordance with Utah law.
- (m) Entering into contracts, deeds, leases, and/or other written instruments or documents and to authorize the execution and delivery thereof by the appropriate officers.
- (n) Bringing, prosecuting and settling litigation for itself, the Association and the Project.
- (o) Create, amend, and adopt rules for the Association so long as such rules do not contradict the Declaration or Bylaws.

(p) Doing all other acts necessary for the operation and maintenance of the Project and the performance of its duties as agent for the Association, including the maintenance and repair of Common Areas if necessary to protect or preserve the Project.

ARTICLE IV OFFICERS

4.1 **Officers.** The officers of the Association shall be a President, Vice President, a Secretary, a Treasurer. Except for Officers appointed by the Declarant, Officers must be Members in good standing.

4.2 **Election Tenure and Qualifications.** The officers of the Association shall be chosen by the Board annually at the first regular meeting of the Board following the annual meeting of the members. In the event of failure to choose officers at such regular meeting of the Board, officers may be chosen at any regular or special meeting of the Board. Each such officer (whether chosen at a regular meeting of the Board or otherwise) shall hold such office until the next ensuing regular meeting of the Board and until a successor has been chosen and qualified, or until such officer's death, or until resignation, disqualification, or removal in the manner provided in these Bylaws, whichever first occurs. A person may hold more than one (1) office, except that the President may not also be the Secretary. The President, Vice President, Secretary, and Treasurer must be and remain Directors of the Association during the entire term of their respective offices.

4.3 **Subordinate Officers.** The Board may from time to time appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board may from time to time determine. Subordinate officers need not be Directors of the Association.

4.4 **Resignation and Removal.** Any officer may resign at any time by delivering a written resignation to any member of the Board or to the Manager. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be removed and replaced upon the affirmative vote of a majority of the Board at any time, with or without cause.

4.5 **Vacancies and Newly Created Offices.** If any vacancy shall occur in any office by reason of death, resignation, removal, disqualification or any other cause, or if a new office shall be created, such vacancies or newly created offices may be filled by the Board at any regular or special meeting.

4.6 **The President.** The President shall preside at meetings of the Board and at meetings of the Members. At the meetings, the President shall have all authority typically granted to the person presiding over the meeting including but not limited to: (1) the right to control the order of the meeting, (2) the right to arrange for the removal of any disruptive Member or person, (3) the right to impose and enforce reasonable rules and procedures related to the meeting such as those found in "Robert's Rules of Order" or "The Modern Rules of Order." The President shall sign on behalf of the Association all conveyances, documents, and contracts, and shall do and perform all other acts and things as required by the Board.

4.7 **The Vice President.** The Vice President shall perform all duties of the President when the President is absent or unable or refuses to act at any meeting of the Board or Members. The Vice President shall

perform such other duties as required by the Board.

4.8 The Secretary. The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, rules, or any resolution the Board may require such person to keep. The Secretary shall also act in the place and stead of the Vice President in the event of the President's and Vice President's absence or inability or refusal to act.

4.9 The Treasurer. The Treasurer shall have the custody and control of the funds of the Association, subject to the action of the Board, and when requested by the President, shall report the state of the finances of the Association at each meeting of the members and at any meeting of the Board. The Treasurer shall perform such other duties as required by the Board.

4.10 Compensation. No officer shall receive compensation for any services rendered to the Association as an officer, provided, however, that an officer may be reimbursed for expenses incurred in performance of such duties as an officer to the extent such expenses are approved by the Board.

ARTICLE V COMMITTEES

5.1 Designation of Committees. The Board may from time to time by resolution designate such committees as it may deem appropriate in carrying out its duties, responsibilities, functions, and powers. No member of such committee shall receive compensation for services rendered to the Association as a member of the committee; provided, however, that the committee member may be reimbursed for expenses incurred in performance of such duties as a committee member to the extent that such expenses are approved by the Board. A committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Board in a written resolution. The Board may terminate any committee at any time.

5.2 Proceeding of Committees. Each committee designated hereunder by the Board may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may from time to time determine. Each such committee shall keep a record of its proceedings and shall regularly report such proceedings to the Board.

5.3 Quorum and Manner of Acting. At each meeting of any committee designated hereunder by the Board, the presence of members constituting at least a majority of the authorized membership of such committee (but in no event less than two (2) members) shall constitute a quorum for the transaction of business, and the act of a majority of the members present at any meeting at which a quorum is present shall be the act of such committee. The members of any committee designated by the Board hereunder shall act only as a committee, and the individual members thereof shall have no powers as such. A committee may only exercise the authority granted by the Board.

5.4 Resignation and Removal. Any member of any committee designated hereunder by the Board may resign at any time by delivering a written resignation to the President, the Board, or the presiding officer of such committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board may at any time, with or without cause, remove any member of any committee designated by the Board previously.

5.5 Vacancies. If any vacancy shall occur in any committee designated by the Board due to disqualification, death, resignation, removal, or otherwise, the remaining members shall, until the filling of such vacancy by the Board, constitute the then total authorized membership of the committee and,

provided that two (2) or more members are remaining, may continue to act. Such vacancy may be filled at any meeting of the Board.

ARTICLE VI INDEMNIFICATION

6.1 Indemnification. No Director, officer, or committee member shall be personally liable for any obligations of the Association or for any duties or obligations arising out of any acts or conduct of said Director, officer, or committee member performed for or on behalf of the Association. The Association shall and does hereby indemnify and hold harmless each person who shall serve at any time as a Director, officer, or committee member of the Association, as well as such person's heirs and administrators, from and against any and all claims, judgments and liabilities to which such persons shall become subject, by reason of that Director, officer, or committee member having reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him as such Director, officer, or committee member, and shall reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability; provided that no such person shall be indemnified against or be reimbursed for or be defended against any expense or liability incurred in connection with any claim or action arising out of such person's intentional or reckless misconduct. The rights accruing to any person under the foregoing provisions of this Section shall not exclude any other right to which such person may lawfully be entitled, nor shall anything herein contained restrict the right of the Association to indemnify or reimburse such person in any proper case, even though not specifically provided for herein or otherwise permitted. The Association, its Directors, officers, committee members, employees, and agents shall be fully protected in taking any action or making any payment or in refusing so to do in reliance upon the advice of counsel.

6.2 Other Indemnification. The indemnification herein provided shall not be deemed exclusive of any other right to indemnification to which any person seeking indemnification may be under any bylaw, agreement, vote of disinterested Directors or otherwise, both as to action taken in any official capacity and as to action taken in any other capacity while holding such office. It is the intent hereof that all Directors and officers be and hereby are indemnified to the fullest extent permitted by the laws of the State of Utah and these Bylaws. The indemnification herein provided shall continue as to any person who has ceased to be a Director, officer or employee and shall inure to the benefit of the heirs, executors and administrators of any such person.

6.3 Insurance. The Board, in its discretion, may direct that the Association purchase and maintain insurance on behalf of any person who is or was a Director, officer, committee member, or employee of the Association or is or was serving at the request of the Association as a Director, committee member, officer, employee or agent of another association, corporation, partnership, joint venture, trust or other enterprise against any liability asserted against, and incurred by, such person in any such capacity or arising out of such person's status as such, whether or not the Association would have the power to indemnify such person against liability under the provisions of this Article VI.

6.4 Settlement by Association. The right of any person to be indemnified shall be subject always to the right of the Association by the Board, in lieu of such indemnity, to settle any such claim, action, suit, or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

ARTICLE VII RECORDS AND AUDITS

7.1 General Records. The Association shall keep detailed records of the actions of the Board and the Manager, minutes of the meetings of the Board and minutes of the meetings of the Association. The Association shall maintain copies of the Declaration, Bylaws, Articles, and rules and regulations concerning the Property, amendments or supplements to such documents, and the books, records, financial statements, and current operating budget of the Association. The Association shall also maintain a list of Owners entitled to vote at meetings of the Association.

7.2 Financial Records. The Board or its designee shall keep financial records sufficient for proper accounting purposes.

7.3 Assessment Roll. The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each Lot. Such account shall designate the name and address of the Member(s), the amount of each assessment against such Members, the dates and amounts in which the assessment comes due, the amounts paid upon the account, and the balance due on the assessments.

7.4 Reports and Audits. An annual financial statement consisting of a balance sheet and income and expense statement for the preceding fiscal year shall be rendered by the Board to all Members. Upon request of sixty-seven percent (67%) of the Members, the Members may, at the expense of the Association, obtain an audit or review of the books and records pertaining to the Association and furnish copies thereof to the Members. Any Member at his/her own expense may obtain an audit or review of the books and records pertaining to the Association with a certified and licensed public accountant.

7.5 Notice of Sale, Mortgage, Rental, or Lease. Immediately upon the sale of any Lot, the Member shall promptly inform the Association's Secretary or Manager of the name and address of said purchaser.

7.6 Availability of Records. The Association shall make available to Members for inspection, current copies of the Declaration, Bylaws, Articles and rules and regulations concerning the Property, amendments or supplements to such documents, and the books, records, most recent reserve study, financial statements, and current operating budget of the Association. Upon written request, the Association shall make such documents, information and records available to such persons for duplication during reasonable hours. The Association may charge a reasonable fee for furnishing copies of such documents, information, or records.

7.7 Records Not Subject to Inspection. Records kept by or on behalf of the Association may be withheld from examination and duplication to the extent the records concern:

- (a) Personnel matters relating to a specific identified person or a person's medical records.
- (b) Contracts, leases, and other business transactions that are currently under negotiation to purchase or provide goods or services.
- (c) Communications with legal counsel that relate to matters specified in subsections a. and b. of this Section, or current, pending, or threatened litigation.
- (d) Documents concerning existing or potential litigation, mediation, arbitration, or administrative proceedings.
- (e) Disclosure of information in violation of law.

(f) Documents concerning existing or potential matters involving federal, state or local administrative or other formal proceedings before a governmental tribunal for enforcement of the Declaration, Bylaws or rules and regulations.

(g) Documents, correspondence, or management, or Board reports compiled for or on behalf of the Association or the Board by its agents or committees for consideration by the Board in executive session.

(h) Documents, correspondence, or other matters considered by the Board in executive session.

(i) Files of individual Owners, other than those of a requesting Member of an individual Member, including any individual Member's file kept by or on behalf of the Association.

ARTICLE VIII RULES

8.1 **Rules.** The Board may adopt rules, regulations, and resolutions governing the conduct of persons and the operation and use of the Common Areas. The rules, regulations, and resolutions, which shall not be inconsistent with the Declaration or these Bylaws, may be amended or modified from time to time by the Board, as it may deem necessary or appropriate in order to assure the continued peaceful and orderly use and enjoyment of the Association Members. A copy of any rules, regulations, or resolutions initially adopted and each amendment, modification, or revocation thereof shall be delivered by the secretary promptly to each member and shall be binding upon all Members and occupants of all Lots from the date of delivery.

8.2 **Abatement and Enjoining of Violations.** The violation of any provision of the Declaration or these Bylaws or rules and regulations, or of any decision of the Association made pursuant to such documents, shall give the Board, acting on behalf of the Association, the right, in addition to any other rights set forth in these Bylaws, to pursue any remedies available at law after giving notice and an opportunity to be heard to enjoin, abate, or remedy such thing or condition.

ARTICLE IX AMENDMENTS

9.1 **How Proposed.** Amendments to these Bylaws shall be proposed by either a majority of the Board or by Owners holding at least thirty-five percent (35%) of the voting interests of the Association. The proposed amendment must be reduced to writing and must be included in the notice of any meeting at which action is to be taken thereon.

9.2 **Adoption.** Amendments may be approved by the Association at a duly constituted meeting or by written ballot in lieu of a meeting for such purpose. These Bylaws may be amended, altered, or repealed and new Bylaws may be adopted by the Owners upon the affirmative vote of more than fifty percent (50%) of the voting interests of the Association.

9.3 **Execution and Recording.** An amendment shall not be effective unless and until certified by the President of the Association as being adopted in accordance with these Bylaws, acknowledged, and recorded with the Recorder's Office of Salt Lake County. In such instrument the President shall certify that the vote required by this Section for amendment has occurred.

**ARTICLE X
MISCELLANEOUS PROVISIONS**

10.1 **Waiver.** No restriction, condition, obligation, or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur.

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

10.3 **Conflicts.** These Bylaws are intended to comply with the Declaration. In case of any irreconcilable conflict, the Declaration shall control over these Bylaws.

EXECUTED this 30th day of November, 2020.

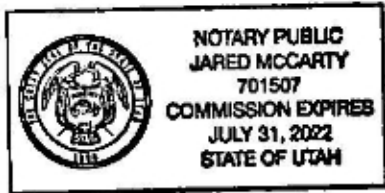
5th & Orchard Townhomes Planned Unit Development HOA , INC.

BY: _____

TITLE: President

STATE OF UTAH)
) SS:
COUNTY OF Davis)

On the 30th day of NOVEMBER 2020, personally appeared before me
PATRICK SCOTT Who by me being duly sworn, did say that he/she is the President of 5th
and Orchard Townhomes Planned Unit Development HOA, Inc. and that the foregoing instrument was
approved by at least a majority of the total votes of the Association.



[Signature]
Notary Public

BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF 500 SOUTH STREET AND THE WEST LINE OF ORCHARD DRIVE (400 EAST STREET), SAID POINT BEING NORTH 89°38'33" EAST 67.96 FEET ALONG THE SECTION LINE TO THE CENTER LINE OF ORCHARD DRIVE AND SOUTH 00°11'23" EAST 516.71 FEET ALONG SAID CENTER LINE TO THE MONUMENT AT THE INTERSECTION OF SAID 500 SOUTH STREET AND ORCHARD DRIVE AND SOUTH 89°44'04" WEST 33.00 FEET ALONG THE CENTER LINE OF 500 SOUTH STREET AND SOUTH 00°11'26" EAST 33.00 FEET FROM THE NORTHWEST CORNER OF SECTION 29, TOWNSHIP 2 NORTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, DAVIS COUNTY, UTAH, SAID POINT BEING EAST 49.50 FEET FROM THE NORTHEAST CORNER OF BLOCK 39, NORTH MILL CREEK PLAT, BOUNTIFUL TOWNSITE SURVEY, BY RECORD, AND RUNNING THENCE SOUTH 00°11'26" EAST 315.52 FEET (SOUTH 313.50 FEET, BY RECORD) ALONG THE WEST LINE OF ORCHARD DRIVE; THENCE NORTH 89°56'15" WEST 299.41 FEET (NORTH 89°34' WEST 286.40 FEET, BY RECORD) TO A FENCE LINE; THENCE NORTH 01°04'00" WEST 174.52 FEET (NORTH 168.48 FEET, BY RECORD) ALONG SAID FENCE LINE; THENCE NORTH 01°32'04" EAST 139.36 FEET (NORTH 01°48' EAST 143.85 FEET, BY RECORD) TO THE SOUTH LINE OF 500 SOUTH STREET; THENCE NORTH 89°44'04" EAST 297.88 FEET (EAST 305.20 FEET, BY RECORD) ALONG SAID SOUTH LINE TO THE WEST LINE OF ORCHARD DRIVE AND TO THE POINT OF BEGINNING.

WHOLE PARCEL CONTAINS 2.170 ACRES.