

After Recording Return to:

3115648  
BK 7093 PG 1227

Destination Homes  
Attn: John Warnick  
67 South Main Street  
Layton Utah, 84041

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RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
09/06/2018 04:17 PM  
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DEP RT REC'D FOR LAYTON CITY

**DECLARATION OF COVENANTS,  
CONDITIONS & RESTRICTIONS**

For  
Midtown Courts Townhomes, a Planned Unit Development  
In Davis County, Utah ①

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR MIDTOWN COURTS TOWNHOMES, a Planned Unit Development (this "Declaration") is made and executed as of the last date set forth in the notarized signature below, by HDP Midtown Courts, LLC, a Delaware limited liability company (the "Declarant").

09-430-0001-3  
0062

**RECITALS:**

(A) This Declaration will take effect on the date recorded at the office of the Davis County Recorder's Office (the "Effective Date").

(B) The Declarant is the record owners of certain real property located in Davis County, Utah and more particularly set forth in Exhibit "A" (the "Property").

(C) Declarant desires to subject the Property to the terms of this Declaration. Declarant intends to develop a residential subdivision on the Property pursuant to the Community Association Act, Utah Code Sections 57-8a-101, *et. seq.* Declarant will develop and convey all of the Lots within the Subdivision subject to a general plan of development, and subject to certain protective covenants, conditions, restrictions and easements, as set forth in this Declaration, as amended from time to time, which are deemed to be covenants running with the land mutually burdening and benefitting each of the Lots within the Subdivision. Common Areas and Limited Common Areas are those areas that are depicted in the recorded Plat(s), as amended, and as described in this Declaration. The Subdivision does not constitute a cooperative.

(D) Declarant have deemed it desirable, for the efficient preservation of the values and amenities of the Property, to create an entity which possesses the powers to maintain and administer the Common Areas and Limited Common Areas (where applicable) and otherwise administer and enforce the provisions of this Declaration. For such purposes, Declarant will cause to be registered with the Utah Department of Commerce Midtown Courts Homeowners Association, Inc. (the "Association").

(E) The Association is governed by the terms of this Declaration, the Articles of Incorporation for Midtown Courts Homeowners Association, Inc. ("Articles"), and the Bylaws for Midtown Courts Homeowners Association, Inc. ("Bylaws"), which Bylaws are attached hereto as

**Exhibit “B”** and shall be recorded in Davis County Recorder’s Office contemporaneously with the recording of this Declaration.

(F) Declarant declares that the Property shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved, subject to the following easements, restrictions, covenants, conditions and equitable servitudes, all of which are for the purpose of uniformly enhancing and protecting the value, attractiveness and desirability of the Property, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Property or any portion thereof. The covenants, conditions, restrictions, reservations, easements and equitable servitudes set forth herein shall run with each Lot located on the Property, including any additions thereto, and shall be binding upon all persons having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns and shall inure to the benefit of every portion of the Property and any interest therein; and shall inure to the benefit of and be binding upon Declarant, and its successors in interest; and may be enforced by the Association and the Declarant and their successors in interest.

(G) Notwithstanding the foregoing, no provision of this Declaration shall prevent the Declarant from doing any of the following, which shall be deemed to be among Declarant’ reserved rights in addition to such rights as may be described elsewhere in this Declaration: (1) installation and completion of the Subdivision Improvements; (2) use of any Lot owned by the Declarant as a model home, or for the placement of a temporary construction or sales office; (3) installation and maintenance of signs incidental to sales or construction which are in compliance with applicable City or County ordinances; and (4) assignment of Declarant’ rights under this Declaration in whole or part.

(H) These Recitals are made a part of this Declaration.

## **COVENANTS, CONDITIONS AND RESTRICTIONS**

### **ARTICLE I** **DEFINITIONS**

1.0 Unless the context clearly requires the application of a more general meaning, the following terms, when used in the Declaration, shall have the following meanings:

(A) “Act” means the Community Association Act, Utah Code Ann. Sections 57-8a-101 *et. seq.*

(B) “Architectural Control Committee” or “ACC” shall mean the Architectural Control Committee created by this Declaration, the Bylaws, and/or Articles.

(C) “Assessment” shall mean any monetary charge, fine or fee imposed or levied against an Owner by the Association, as provided in the Governing Documents, regardless of

whether said assessment is identified as an assessment, special assessment, individual assessment, reserve assessment, capital improvement assessment, fine, late fee or other charge.

(D) "Articles" shall mean the Articles of the Association, as amended from time to time.

(E) "Association" shall mean Midtown Courts Homeowners Association, Inc., and as the context requires, the officers or directors of that Association.

(F) "Board" or "Board of Directors" shall mean the duly elected and acting Board of Directors of the Association.

(G) "Bylaws" shall mean the Bylaws of the Association, as amended from time to time, a copy of which is attached hereto as **Exhibit "B."**

(H) "City" shall mean Layton, Utah and its appropriate departments, officials and boards.

(I) "County" shall mean Davis County, Utah and its appropriate departments, officials and boards.

(J) "Common Areas" shall mean all property designated on the recorded Plat(s) or described in this Declaration as Common Area, being intended ultimately to be owned by the Association for the common use and enjoyment of all Owners, together with all improvements thereon and all of the easements appurtenant thereto, including, but not limited to: open space, detention basin (if any), private utility lines (not owned and maintained by the City/County or serving a single Dwelling), community signage, entryway private roads and visitor parking.

(K) "Common Expenses" means any and all costs, expenses and liabilities incurred by or on behalf of the Association, including, without limitation, costs, expenses and liabilities for (A) managing, operating, insuring, improving, repairing, replacing and maintaining the Common Areas and Limited Common Areas; (B) providing facilities, services and other benefits to Owners as set forth in this Declaration; (C) administering and enforcing the covenants, conditions, restrictions, reservations and easements created hereby; (D) levying, collecting and enforcing the assessments, charges, fines, penalties and liens imposed pursuant hereto; (E) operating the Association; and (F) creating reserves for any such costs, expenses and liability as required by this Declaration or the Act.

(L) "Declarant" shall mean and refer to HDP Midtown Courts, LLC, and its successors and assigns.

(M) "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions for Midtown Courts Townhomes, a Planned Unit Development, together with any subsequent amendments or additions through supplemental declarations.

(N) "Dwelling" shall mean the single-family residence built or to be built within the Lot, together with all Improvements located on or with respect to the Lot concerned that are used in connection with such residence such as appliances, electrical receptacles and outlets, air conditioning compressors and other air conditioning apparatus, furnaces, stoves, fixtures, etc. serving that Dwelling shall be considered part of the Dwelling. All pipes, wires, conduits, or other public utility lines or installations constituting a part of the Dwelling or serving only the Dwelling shall be part of the Dwelling, whether or not such item is located within the private area on the Plat.

(O) "Governing Documents" shall mean this Declaration, Bylaws, Articles, Rules, and any other documents or agreements binding upon an Owner.

(P) "Improvement" shall mean all structures and appurtenances of every type and kind, including but not limited to buildings, Dwellings, garages, walkways, retaining walls, driveways, fences, landscaping, decks, stairs, poles, lighting, signs, satellite dishes or other antennas, and any mechanical equipment located on the exterior of any building.

(Q) "Limited Common Area" shall mean all property designated on the recorded Plat Map(s), or as described in this Declaration as Limited Common Area, being intended ultimately to be owned by the Association but for the exclusive use and enjoyment of one or more appurtenant Lots but fewer than all of the Lots, including but not limited to front yards, driveways, portions of sidewalks and patio/deck areas.

(R) "Lot" shall mean any numbered building Lot shown on any official and recorded Plat(s), including the Dwelling and all Improvements located thereon.

(S) "Manager" shall mean any entity or person engaged by the Board of Directors to manage the Project.

(T) "Member" shall mean and refer to every person who holds membership in the Association, including an Owner and the Declarant as set forth herein.

(U) "Owner" shall mean and refer to the person who is the Owner of record (in the office of the County Recorder of Davis County, Utah) of a fee simple or an undivided interest in any Lot. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term "Owner" shall not mean or include a mortgagee or a beneficiary of trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

(V) "Party Wall" shall have the meaning set forth in the Declaration.

(W) "Person" shall mean a natural person or any legal entity with a right to hold title to

real property in its own name in the State of Utah.

(X) "Plat(s)" shall mean an official and recorded plat of Midtown Courts Townhomes, including all subsequent phases, if any, when recorded, as approved by the City and recorded in the office of the Davis Recorder, as it may be amended from time to time.

(Y) "Property" shall have the meaning set forth in the recitals.

(Z) "Rules" mean any instrument adopted by the Board for the regulation and management of the Association as provided in the Governing Documents.

(AA) "Subdivision" or "Project" shall mean all phases of Midtown Courts Townhomes and all Lots, and other property within the Subdivision, as shown on the Plat(s) and any future Plat(s) covering the Property.

(BB) "Subdivision Improvements" shall mean all improvements to be installed outside the boundaries of Lots or within easements as identified on the Plats that are necessary to provide public road access and/or private road access and utility service to the Lots, and including other construction work required to comply with any conditions of City or County or other governmental agencies to the approval of the Subdivision or any Plat(s) thereof.

## ARTICLE II EASEMENTS

2.1 Easement Concerning Common Area. Each Owner shall have a nonexclusive right and easement of use and enjoyment in and to the Common Area. Such right and easement shall be appurtenant to and shall pass with title to each Lot and in no event shall be separated therefrom, or encumbered, pledged, assigned or otherwise alienated by an Owner. Any Owner may temporarily delegate the right and easement of use and enjoyment described herein to any family member, household guest, tenant, lessee, contract purchaser, or other person who resides on such Owner's Lot. Notwithstanding the foregoing, no Owner shall have any right or interest in any easements forming a portion of the Common Area except for the necessary parking, access, and utility easements for use in common with others.

2.2 Easement Concerning Limited Common Area. The Association shall have a non-exclusive easement for any utility or any required maintenance in and through the Limited Common Area. With the exception of the rights and easements granted to the Association, the Owner(s) of a Lot shall have the exclusive use of all Limited Common Area appurtenant to their Lot.

2.3 Limitation on Easement. An Owner's right and easement of use and enjoyment concerning the Common Area shall be subject to the following:

(a) The right of the Association to govern by Rules the use of the Common Area for the Owners so as to provide for the enjoyment of said Common Areas by every Owner in a manner consistent with the preservation of quiet enjoyment of the Lots by every Owner, including the right of the Association to impose reasonable limitations on the number of guests per Owner who at any given time are permitted to use the Common Area;

(b) The right of the Association to suspend an Owner's right to the use of the Common Areas, or any amenities included therein, for any period during which an Owner is in violation of the terms and conditions of the Governing Documents or delinquent in the payment of a levied assessment or fee.

(c) The right of the City, County, and any other governmental or quasi-governmental body having jurisdiction over the Property, to enjoy access and rights of ingress and egress over and across any street, parking area, walkway, or open area contained within the Common Areas for the purpose of providing police and fire protection, utility access/installation, and providing any other governmental or municipal service.

2.4 Reservation of Access and Utility Easements. Declarant hereby reserve an easement for access and utilities (including but not limited to: electrical, gas, communication, phone, internet, cable, sewer, drainage and water facilities) over, under, along, across and through the Property, together with the right to grant to a City and County, or any other appropriate governmental agency, public utility or other utility corporation or association, easements for such purposes over, under, across, along and through the Property upon the usual terms and conditions required by the grantee thereof for such easement rights, provided, however, that such easement rights must be exercised in such manner as not to interfere unreasonably with the use of the Property by the Owners and the Association and those claiming by, through or under the Owners or the Association; and in connection with the installation, maintenance or repair of any facilities as provided for in any of such easements, the Property shall be promptly restored by and at the expense of the person owning and exercising such easement rights to the approximate condition of the Property immediately prior to the exercise thereof. Each Owner in accepting the deed to a Lot expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way.

2.5 Easements for Encroachments. If any part of the Common Areas as improved by Declarant now or hereafter encroaches upon any Lot or if any structure constructed by Declarant on any Lot now or hereafter encroaches upon any other Lot or upon any portion of the Common Area, a valid easement for such encroachment and the maintenance thereof, so long as it continues, shall exist. If any structure on any Lot shall be partially or totally destroyed and then rebuilt in a manner intended to duplicate the structure so destroyed, minor encroachments of such structure upon any other Lot or upon any portion of the Common Area due to such reconstruction shall be

permitted; and valid easements for such encroachments and the maintenance thereof, so long as they continue, shall exist.

2.6 Easements for Construction and Development Activities. Declarant reserve easements and rights of ingress and egress over, under, along, across and through the Property and the right to make such noise, dust and other disturbance as may be reasonably incident to or necessary for the (a) construction of Dwellings on Lots, (b) to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising signs on the Common Area with respect to the sales of Lots, or other property in the Project, (c) improvement of the Common Area, and construction, installation and maintenance thereon of roadways, walkways, buildings, structures, landscaping, and other facilities designed for the use and enjoyment of some or all of the Owners, and (d) construction, installation and maintenance on lands within, adjacent to, or serving the Property of roadways, walkways, and other facilities, planned for dedication to appropriate governmental authorities.

2.7 Easement in Favor of Association. The Lots, Common Area and Limited Common Area are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

(a) For inspection during reasonable hours of the Lots, Common Area and Limited Common in order to verify the performance by Owners or other persons of all items of maintenance and repair for which they are responsible;

(b) For inspection, maintenance, repair and replacement of portions of the Common Area;

(c) For correction of emergency conditions on one or more Lots or on portions of the Common Area and Limited Common Area;

(d) For the purpose of enabling the Association, the Architectural Control Committee or any other committees appointed by the Association to exercise and discharge during reasonable hours their respective rights, powers and duties;

(e) For inspection during reasonable hours of the Lots, Common Area and Limited Common in order to verify that the Owners and occupants, and their guests, tenants and invitees, are complying with the provisions of the Governing Documents.

2.8 Landscaping Easement. The Association shall have an easement and related access rights in order to maintain the landscaping and snow removal, as set forth in this Declaration.

2.9 Income Generated from Service Providers. Declarant, as owner of the real property at the time it is annexed into the Subdivision through recordation of a plat, which includes the dedication of certain utility easements to the City or County, may negotiate terms with service

providers that desire to install infrastructure to provide services to owners in the Subdivision. During the Declarant' Control Period, any income gained from these negotiations with service providers by Declarant may be retained by the Declarant.

2.10 Reciprocal Easements on Lots with Adjoining Limited Common Areas. Lots 13-24 share a common driveway, with each Lot possessing equal, reciprocal easement and access rights to the common driveway.

**ARTICLE III**  
**COMMON AREAS, LIMITED COMMON AREAS, DWELLING**  
**& PARTY WALL MAINTENANCE**

3.1 Common Areas. The Common Areas consist of areas designated as Common Areas on the recorded Plat(s) or described in this Declaration, including any structures related to the operation or maintenance of the Common Areas, together with any rights of way and utilities, as shown on the recorded Plat(s). Notwithstanding anything contained in this Declaration to the contrary, all Common Areas appurtenant to each recorded Plat of the Project shall be conveyed to the Association upon recordation of a Plat depicting such Common Areas, reserving all easements as set forth in this Declaration.

(a) Except as otherwise provided in this Declaration, the Association, or its duly designated agent, shall maintain all Common Areas, including, without limitation, the Improvements and landscaping located thereon in good order and repair and shall otherwise manage and operate all Common Areas as it deems necessary and appropriate. The Association shall have the authority to assess its members for the costs of said maintenance in accordance with the terms of this Declaration.

3.2 Limited Common Areas. The Association shall maintain, repair and replace all Limited Common Areas.

3.3 Landscaping. The Association shall contract with a third party to perform general landscaping maintenance within Subdivision, which generally includes mowing, edging, and blowing and leaf disposal. The Association may adopt Rules to add further detail with regard specific landscape maintenance services provided by the Association and those responsibilities of Owners concerning such items including, but not limited to: gardens, flowerbeds, bushes, trees, and other landscaping elements.

3.4 Snow Removal. The Association shall make reasonable and prudent efforts to contract with a third party for the removal of snow from sidewalks, driveways and Common Areas within the Subdivision. Owners shall be responsible for removing snow from entryways, porches, patio areas, and other applicable areas on their Lot. Owners shall be responsible and take reasonable precautions with respect to ice and ice accumulation. The work of removing snow will



be delegated to a third party, who will utilize its discretion in the frequency of the snow removal and the amount of accumulation meriting removal. The Association shall not be responsible or liable for said third party's discretion and removal of snow.

3.5 General Rules of Law to Apply to Party Walls. Each wall which is built as a part of the original construction of a Dwelling within the Project and placed on the dividing line between two Dwellings shall constitute a Party Wall, and, to the extent not inconsistent with the provisions of the Act, the general rules of law regarding Party Walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

3.6 Party Wall Maintenance. Each Dwelling that shares one or more Party Wall(s), will also share elements of a common roof, a common exterior wall, or other common exterior elements with adjacent Dwelling(s). The Owners acknowledge that certain repairs or maintenance to Dwellings with a Party Wall(s) may become necessary, which repairs or maintenance may not be able to be performed on one Dwelling only.

3.7 Party Wall Insurance. The existence of Party Walls within the Project will require blanket property insurance coverage as required by the Governing Documents and/or Act on all attached Dwellings.

3.8 Association Maintenance of Dwellings. The Association shall maintain, repair and replace the roofs, rain gutters and downspouts on the Dwellings, and the normal wear and tear on exterior wall finishes of the Dwellings. All necessary structural repairs of exterior walls will be the responsibility of the affected Owners. Exterior wall maintenance by the Association does not include: doors, doorframes, garage doors, windows, window frames, window wells, skylights, patio doors, or glass of any kind. All other components or Improvements within the Lot, including the Dwelling that are not specifically assigned to the Association herein shall be maintained by Owners.

#### ARTICLE IV OWNERS' MAINTENANCE OBLIGATIONS

4.1 Duty to Maintain. It is the obligation of each Owner to maintain his Lot, Dwelling and Improvements located thereon (**subject to Article 3.8**) in a clean and sanitary condition, free of pests and rodents, and uncluttered at all times in order to preserve and enhance the enjoyment of the Project.

4.2 Repairs by Association. In the event that an Owner permits his Lot or Improvements to fall into a state of disrepair that is dangerous, unsafe, unsanitary or unsightly condition or fails to comply with any other covenant or restriction in violation of this Declaration, the Association may give written notice to the Owner describing the condition complained of and demand that the Owner correct the condition within 15 days. If the Owner fails to take corrective action, the Association shall have the right, but not the obligation, to enter upon the offending Owner's Lot and take corrective action to abate the condition. All costs of abatement shall be

charged to the Owner, who agrees to promptly pay the reasonable costs of any work performed under this provision, plus 15%. In addition, each Owner hereby grants to the Association a lien on the Lot and any improvements to secure repayment of any sums advanced pursuant to this section, which lien may be foreclosed at any time by the Association in the manner prescribed in Utah for the foreclosure of mortgages. Alternatively, without requiring foreclosure, the Association may seek collection of sums advanced directly from the Owner of the Lot in question. Unpaid amounts will bear interest from the date advanced at the lawful judgment rate under applicable state law.

4.3 Alterations of Exterior Appearance. The Owners will maintain their Lots and Improvements in substantially the same condition and appearance as that approved by the Board. No subsequent exterior alterations, improvements or remodeling, whether structural or changes in landscaping, paint color or materials will be made without the advance consent of the Board. Declarant shall be exempt from this provision.

4.4 Repair Following Damage. In the event of casualty loss or damage to the improvements, the Owner will be entitled to reconstruct the Improvements as they existed prior to the damage or loss without review by the Board, provided however that alterations or deviations from the original approved plans will require review. Nothing in this Declaration is intended to prevent an Owner who has suffered property damage or loss from taking temporary measures to secure the property and prevent injury or dangerous conditions following loss or damage, before re-construction begins. Such temporary measures may be taken without the consent or approval of the Board, provided that any such measure must be of a temporary nature, and repair or reconstruction must begin as soon as circumstances will permit. Unless delayed by City/County approval or insurance carrier approval, no damaged structure will be permitted to remain on any Lot for more than 90 days without repairs commencing and any damaged structure which does remain unrepaired after 90 days following the occurrence of damage is deemed a nuisance which may be abated by the Association.

## ARTICLE V MEMBERSHIP

5.1 Membership in the Association shall at all times consist exclusively of the Owners. Each Owner shall be a member of the Association so long as such Owner has an ownership interest in a Lot and such membership shall automatically terminate when the Owner cease to have an ownership interest in the Lot. Upon the transfer of an ownership interest in a Lot the new Owner succeeding to such ownership interest shall likewise succeed to such membership in the Association. If titled ownership to a Lot is held by more than one Person, the membership appurtenant to that Lot shall be shared by all such Person in the same proportional interest and by the same type of tenancy in which title to the Lot is held. Notwithstanding the foregoing, the Declarant shall also be granted voting rights as a Class "B" Member, as defined below.

**ARTICLE VI**  
**VOTING**

6.1 The Association shall have two (2) classes of voting membership, Class "A" and Class "B", as follows:

(a) Class "A". Class "A" Members shall be all Owners with the exception of Class "B" membership, if any. Class "A" membership shall be entitled to one (1) equal vote for each Lot in which they are an Owner. Since an Owner may be more than one Person, if only one of such Person(s) is present at the meeting of the Association that Person shall be entitled to cast all votes appertaining to that Lot. But if more than one of such Person(s) is present, the votes appertaining to that Lot shall be cast only in accordance with the agreement of a majority of them, and such consent shall be conclusively presumed if any one of them purports to cast the votes appertaining to that Lot without protest being made forthwith by any of the others to the person presiding over the meeting. The votes appurtenant to any one Lot may not be divided between Owners of such Lot or with respect to matters before the Association, and all such votes appurtenant to any one Lot shall be voted in one block. If the vote of a majority of the owners of a Lot cannot be determined, no vote shall be cast in relation to such Lot.

(b) Class "B". The Class "B" Member shall be Declarant. In all matters requiring a vote, the Class "B" membership shall receive one hundred (100) votes for each recorded Lot owned by Declarant. The Class "B" membership shall also be entitled to appoint the members of the Board and Association during the Class "B" Control Period.

**ARTICLE VII**  
**CONTROL PERIOD**

7.1 The Class "B" Control Period runs until ninety (90) days after the first to occur of the following:

- (a) When the total number of votes for the Class B Member is less than the total number of votes for the Class A Members; or
- (b) When, at its discretion, the Class B Member so determines.

7.2 Notwithstanding anything to the contrary in this Declaration, Declarant may exercise its discretionary termination of control in whole or in part as to any portion of the Subdivision at its sole election and determination. In doing so as to a portion of the Subdivision, it does not waive any reversionary or remaining control as to all other portions of the Subdivision, the control of which is not expressly terminated by Declarant.

**ARTICLE VIII**  
**HOMEOWNER ASSOCIATION**

8.1 Organization. The Association has been created to effectively enforce the Governing Documents and shall operate as a non-profit corporation. The Association shall be comprised of the Owners within the Project, and is established for the benefit of the Owners and the enforcement of the Governing Documents. Membership in the Association is deemed an appurtenance to the Lot, and is transferable only in conjunction with the transfer of the title to the Lot. The Association shall serve as the organizational body for all Owners.

8.2 Enforcement Powers. The Association shall have all powers granted to it by the Governing Documents and the Act to enforce these covenants and restrictions by actions in law or equity brought in the name of the Association, and the power to retain professional services needed to the enforcement of the Governing Documents and to incur expenses for that purpose, including but not limited to: (1) record, lien, foreclose and other enforcement and collection actions against an Owner and their Lot; (2) initiate legal or similar proceedings; (3) impose fines; (4) collect any rents directly from tenant for past due assessments; (5) terminate an Owners' right to receive utility service paid as a common expense (with the exception of water, sewer, power and natural gas); (6) terminate an Owner's right to utilize Common Area and/or amenities; and (7) any other action or remedy allowed by the Governing Documents or Utah law.

(a) The Association shall have the exclusive right to initiate enforcement actions in the name of the Association. The Association may appear and represent the interest of the Project at all public meetings concerning zoning, variances, or other matters of general application and interest to the Owners.

(b) The Association shall have the authority to initiate and compromise claims and litigation on behalf of the Association resulting from the enforcement of the Governing Documents. In the event that the Association initiates legal action against a specific Owner or Owners to enforce these Governing Document, whether or not such action results in the commencement of a formal legal proceeding, the Association shall have the right to assess the costs of such litigation, dispute, or enforcement action, including reasonable attorney fees, against the Owner(s) or Lot(s) in question and collect those assessment in any manner authorized in the Governing Documents or Utah law.

(c) The Board shall be afforded discretion to utilize its reasonable judgment to determine whether and how to: impose fines, record liens, pursue legal action; otherwise enforce the Governing Documents; or when and how to settle or compromise claims.

8.3 Assessments. Assessments will be made to meet the anticipated and recurring costs, expenses and Common Expenses of the Association. The Association has the power to levy assessments against each Lot as necessary to carry out its functions. Assessments shall be levied against all Lots in the Property, whether vacant or improved. Each Owner shall by acquiring or in

any way becoming vested with his/her interest in a Lot, be deemed to covenant and agree to pay to the Association the assessments described in these covenants, together with late payment fees, interest and costs of collection (including reasonable attorney fees), if and when applicable.

(a) All such amounts shall be, constitute and remain: (a) a charge and continuing lien upon the Lot with respect to which such assessment is made until fully paid; and (b) the personal, joint and several obligations of the Owner or Owners of such Lot at the time the assessment fails due. No Owner may exempt himself or his Lot from liability for payment of assessments by waiver of his rights in 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 unpaid assessments, late payment fees, interest and costs of collection (including reasonable attorney 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 therefor.

(b) Special Assessment. The Association may levy special assessments for the purpose of defraying, in whole or in part: (a) any expense or expenses not reasonably capable of being fully paid with funds generated by monthly assessments; or (b) the cost of any construction, reconstruction, or unexpectedly required repairs or replacement of the Common Areas.

(c) Individual Assessment. The Association may levy individual assessments on every Lot, Owner or occupant that shall cause any damage to the Project or otherwise causes the Association to incur any individual expense for maintenance, repairs, or enforcement action taken under the provisions of the Governing Documents. The amount of any such individual assessments shall be determined by the cost of such repairs, maintenance or enforcement action, including all overhead and administrative costs (including reasonable attorney fees), and shall be allocated among the affected Owner(s) or Lot(s) according to the cause of damage, maintenance, repair work or enforcement action, as the case may be, which individual assessment may be levied in advance of the performance of work.

(d) Reserve Fund. The Association may levy a reserve fund assessment, as set forth in this article.

(e) The Association may levy other assessments or fees, as authorized by the Governing Documents.

8.4 Budget. The Board is authorized and required to adopt a budget annually, which shall be presented to the Owners at a meeting of members.

(a) The Board may revise the approved budget from time to time as necessary to accurately reflect actual and/or anticipated expenses that are materially greater than

previously budget.

(b) The budget shall estimate and include the total amount for the Common Expenses, shall contain an appropriate amount for reserves, and may include an amount for other contingencies. The budget shall also be broken down into reasonably detailed expense and income categories.

(c) Unless otherwise established by the Board, regular Assessments shall be paid in equal monthly installments.

8.5 Reserve Fund Analysis. Following the Class B Period, the Board shall cause a reserve analysis to be conducted no less frequently than every six (6) years to analyze the cost of repairing, replacing or restoring Common Area that have a useful life of three years or more and a remaining useful life of less than 30 years. This reserve analysis should be reviewed no less frequently than every three (3) years and updated if necessary. The Board may conduct a reserve analysis itself or may engage a reliable person or organization, as determined by the Board, to conduct the reserve analysis.

8.6 Reserve Fund Account Creation. The Board shall create a reserve fund account that is separate and distinct from the Association's general account, which account shall be funded from the reserve fund assessments. The amount of the reserve fund assessment shall be a separate line item in the approved budget. The Board shall cause an assessment to be made against all Owners in an amount sufficient, within the Board's discretion, to fund the reserve account.

8.7 Reinvestment Fee. The Board shall have power to levy a one-time reinvestment fee when a change in ownership of a Lot occurs in the amount of one half of one percent (1/2%) of the sales price, unless a lesser amount is determined by the Board. The Declarant shall not be subject to the Reinvestment Fee.

8.8 Date of Commencement of Assessments. Assessments provided for herein shall commence as to each Lot on the first day of the first month following the effective date of the first budget. Assessments shall be due and payable in a manner and on a schedule, as the Board may provide. Notwithstanding, Assessments for those Lots owned by Declarant or their assigns, successors, subsidiaries, related construction entities, or other entities established by Declarant, or Declarant' members, for the purpose of constructing Dwellings on the Lot (collectively "Declarant' Related Entities") shall not commence until the completed Dwelling is conveyed to an Owner that is not the Declarant or a Declarant' Related Entity. No amendment of this Declaration changing the allocation assessments with regard to Declarant or Declarant Related Entities shall be valid without the consent of the Declarant.

8.9 Fines. Following notice as required by the Act, the Association shall have the power to assess a fine against an Owner (or their Lot) for a violation of the terms and conditions of the Governing Documents in an amount set by the Board.

8.10 Hearing Process. The Board shall have authority to create a reasonable hearing process, consistent with the Act, applicable when the Association takes an adverse action related to any particular Owner(s).

8.11 Association Rules. The Board from time to time and subject to the provisions of the Governing Documents, may adopt, amend, repeal and enforce Rules governing: (a) the use of the Common Areas; (b) the use of any facilities owned by the Association; (c) the collection and disposal of refuse; (d) the maintenance of animals in the Project; (e) collection policies and procedures; and (f) other matters concerning the use and enjoyment of the Property and the conduct of residents, as deemed necessary by the Board. The Rules may supplement, clarify and add detail to issues addressed in Governing Documents. However, the Rules may not contradict the Governing Documents.

- (a) During the Class B Period, Declarant shall be exempt from the rule making procedure required by Utah Code § 57-8a- 217.

8.12 Statement of Account & Payoff Information. Upon a written request from an Owner that the Association provide the Owner with a statement of his/her account, the Association may charge a fee, not to exceed \$10.00, for providing such statements. In addition, when a request is made to the Association to provide payoff information needed in connection with the financing, refinancing, or closing of a Lot Owner's sale of his/her Lot, the Association may charge a fee not to exceed \$50.00.

8.13 Availability of Documents. The Association shall make appropriate documents available to Owners (and their lenders, insurers and/or authorized agents) consistent with the Act and the Utah Revised Non-Profit Act. The Board may adopt a record retention policy to govern its record retention procedures.

8.14 Indemnity of Association Board and Officers. The Association will indemnify the officers, agents and Board of the Association against any and all claims arising against them personally which are a result of the good faith exercise of the powers, duties and responsibilities of their office under the Governing Documents.

8.15 Election, Notice of Election, Notice of Meeting and Special Meetings. Election procedures and notice of any meeting shall be conducted as set forth in the Articles of Incorporation and Bylaws of the Association.

8.16 Number of Board, Term of Office. The appointment, election and term of the Members of the Board are set forth in the Bylaws and Articles. Members of the Board of Directors may serve consecutive terms, and may also serve as officers of the Association.

8.17 Independent Accountant/Bookkeeper. The Association may retain the services of

an independent accountant or bookkeeper to assist the Board of Directors and officers to maintain accurate financial records of the Association.

**ARTICLE IX**  
**NONPAYMENT OF ASSESSMENTS & THE APPOINTMENT OF TRUSTEE**

9.1 Delinquent Assessment. Any assessment not timely paid shall be delinquent, and the Association may invoke any and all remedies to recover said delinquent assessments including by: suit, judgment, lien, foreclosure, or other remedy authorized by the Governing Documents or the Act.

9.2 Due Date, Charges & Interest. Unless otherwise established by the Board, monthly assessments shall be due and payable on the first of each month and late if not received by the 10<sup>th</sup> of each month. The Board may charge a late fee in an amount set by the Board, but not to exceed 10% of the assessment amount due. Thereafter, the Association may charge \$3 per day for each day payment continues delinquent. In addition to late fees, interest shall accrue on all unpaid balances, including prior, unpaid interest and attorney fees (resulting in compounding interest), late fees, and assessments at 18% per annum or 1.5% per month. The Board may also impose other reasonable charges imposed by a Manager related to collections.

9.3 Lien. Upon recording of a notice of lien on any Lot, there shall exist a perfected lien for unpaid assessments prior to all other liens, except: (1) all taxes, bonds, assessments, and other levies which by law would be superior thereto; and (2) the lien or charge of any first or second mortgage of record made in good faith and for value recorded prior to a recorded notice of lien by the Association.

9.4 Foreclosure. The Association shall have the power to bid for the Lot at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be charged or levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged had such Lot not been acquired by the Association as a result of foreclosure. Suit to recover a money judgment for unpaid assessments and attorney fees shall be maintainable without foreclosing or waiving the lien securing the same.

9.5 Other Remedies. All rights and remedies of the Association shall be cumulative and the exercise of one right or remedy shall not preclude the exercise of any other right or remedy. The "One Action Rule" shall not be a defense to the enforcement of all rights and remedies of the Association. The Association may elect to bring an action to recover for a delinquent Assessment against the Owner or other obligee personally. Any attorney fees or costs incurred in these efforts shall also be assessed against the Owner(s), their Lot(s), and/or other obligees jointly and severally.

9.6 Payment by Tenant. The Association shall be entitled to demand and collect from



a tenant of any Lot, the amount of any assessment that is more than sixty (60) days past due.

9.7 Attorney Fees. In addition to the recovery of costs and attorney fees as provided herein, the Association shall be entitled to recover all reasonable attorney fees and costs incurred as a result of an Owner breach of the Governing Documents, including meetings, research, memoranda, monitoring and other legal work incurred in response to an Owner breach or violation of the Governing Documents. These fees may be collected by special or individual assessment against the subject Owner(s) or Lot(s).

9.8 Appointment of Trustee. The Declarant hereby convey and warrant pursuant to U.C.A. Sections 57-1-20 and 57-8a-402 to Burt R. Willie, Esq., a licensed member of the Utah State Bar, with power of sale, the Lot and all Improvements to the lot for the purpose of securing payment of assessments under the terms of this Declaration.

**ARTICLE X**  
**SUBORDINATION OF LIEN TO INSTITUTIONAL**  
**FIRST AND SECOND MORTGAGES**

10.1 The lien of assessments, including interest, late charges (subject to the limitations of Utah law), and costs (including attorney fees) provided for herein, shall be subordinate to the lien of any institutional first or second mortgage of record made in good faith and for value, recorded prior to a recorded notice of lien by the Association. The sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to foreclosure of a prior, recorded institutional first or second mortgage shall extinguish the lien of such assessments as to payments that became due prior to such sale or transfer; provided, that to the extent there are any proceeds of the sale on foreclosure of such mortgage or by exercise of such power of sale in excess of all amounts necessary to satisfy all indebtedness secured by and owed to the holder of such mortgage, the lien shall apply to such excess. No sale or transfer shall relieve such Lot from lien rights for any assessments thereafter becoming due. Where the mortgagee holding an institutional first or second mortgage of record or other purchaser of a Lot obtains title pursuant to remedies under the mortgage, its successors and assigns shall not be liable for the share of the assessments by the Association chargeable to such Lot that became due prior to the acquisition of title to such Lot by such acquirer. No foreclosure, sale or transfer shall relieve any Owner who was the Owner prior to such foreclosure, sale or transfer from personal liability for any assessments due and owing prior to such foreclosure, sale or transfer.

**ARTICLE XI**  
**USE LIMITATIONS & RESTRICTIONS**

11.1 Single Family. All Lots shall be used only for single-family residential purposes. "Single Family" shall mean one household of persons related to each other by blood, marriage, or adoption, or one group of not more than one unrelated individual per bedroom.

11.2 Zoning Regulations. The lawfully enacted zoning regulations of the City and/or County, and any building, fire, and health codes are in full force and effect in the Project. No Lot may be occupied in a manner that is in violation of any statute, law or ordinance.

11.3 Acceptable Business Uses. No portion of the Subdivision may be used for any commercial business use. Notwithstanding, nothing in this provision is intended to prevent (a) the Declarant, or other builders, from using one or more Lots for purposes of a construction office or sales office during the actual period of construction of the Subdivision Improvements or until 100% of the Lots are sold in the Subdivision, whichever occurs later; or (b) the use by any Owner of his Lot for a home occupation pursuant to City or County ordinance. Businesses, professions or trades may not: require heavy equipment, create a nuisance within the Project, or unreasonably increase the traffic flow to the Project.

11.4 No Noxious or Offensive Activity. No noxious or offensive activity shall be carried out on any Lot or the Project, including the creation of loud or offensive noises or odors that detract from the reasonable enjoyment of nearby Lots. No Owner or occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule or regulation of any local, county, state or federal body.

11.5 No Hazardous Activity. No activity may be conducted on any Lot that is, or would be considered by a reasonable person to be unreasonably dangerous or hazardous, which would cause the cancellation of conventional homeowners' insurance policy. This includes, without limitation, the storage of caustic, toxic, flammable, explosive or hazardous materials in excess of those reasonable and customary for household uses, the discharge of firearms or fireworks, and setting open fires (other than property supervised and contained).

11.6 No Unsightliness. No unsightliness is permitted on any Lot. This shall include, without limitation, the open storage of any building materials (except during construction of an Improvement); open storage or parking of construction equipment; open storage or parking of vehicles, trailers or other pieces of equipment that are unusable, in poor condition or unsightly; accumulations of lawn or tree clippings or trimmings; accumulations of construction debris or waste; and the storage or accumulation of any other material that is unsightly.

11.7 No Annoying Lights. No outdoor lighting shall be permitted except for lighting that is designed to aim downward and reasonably limit the field of light to the confines of the Lot on which it is installed. This shall not apply to street lighting maintained by the City and/or County. Holiday or seasonal decorative lights, that otherwise comply with the terms of the Governing Documents, are permitted.

11.8 No Annoying Sounds. No speakers, wind bells, windchimes, or other noise making devices may be used or maintained on any Lot which creates noise that might reasonably be expected to be unreasonably or annoyingly loud to adjoining Lots, except for security or fire alarms.

11.9 Signs. No signs whatsoever (including, without limitation, political signs) shall be erected or maintained on any Lot, except:

- (i) Such signs as may be required by legal proceedings.
- (ii) Construction identification signs 2 feet by 3 feet or less for each Dwelling,
- (iii) A "For Sale" or "For Rent" sign, not more than 2 feet by 3 feet, and consistent with other requirements adopted by the Board.

11.10 Trash Containers and Collection. All garbage, trash and recycling shall be placed and kept in covered containers as provided by the local collection agencies. Insofar as possible, such containers shall be maintained as not to be visible from neighboring Lots. Containers shall be returned to their hidden location no later than the end of the pick-up day.

11.11 Pets. No animals other than household pets up to a maximum of two (2) shall be kept or allowed within the Subdivision. Whenever a pet is allowed to leave a Dwelling, it shall be kept on a leash or in a cage. No animals may be bred for commercial purposes. There shall be no exterior structure for the care, housing or confinement of such pets. It is prohibited to leave unattended pet food outside of the Dwelling because this attracts insects, mice, rats and other undesirable creatures. All pets shall be kept on a leash or within an approved fenced area on the Owner's Lot. Pet owners will pick up any droppings by their pets and dispose of them in their respective trash cans. Anyone wishing to report a violation of the above rules should attempt to photograph or find a witness to observe the violation and to identify the animal. For repeated violations, the owner will be required to remove the pet from Subdivision. If a pet damages or destroys the property of another, the pet owner will be required to repair or replace the damaged property. Any Owner or other resident within the Subdivision who violates this provision shall be subject to such penalties, fines, and/or legal action. The Association may adopt further rules and policies for management of pets in the Subdivision, including procedures for approval of service/assistance animals.

11.12 Vehicles & Recreational Vehicles. No boats, trailers, recreational vehicles, large trucks and commercial vehicles shall be parked within the Subdivision, unless such vehicles fit within the Owner's garage. Temporary parking for recreational vehicles, trailers and boats, not to exceed forty-eight (48) hours for loading/unloading, shall be allowed. No vehicle of any kind shall be repaired, constructed or reconstructed within the Subdivision (outside of an Owner's garage), except that these restrictions shall not apply to emergency repairs to vehicles. Non-commercial, passenger vehicles must be kept in an enclosed garage or within the confines of the Owner's driveway. If such vehicles are too large for the garage or hang over the driveways onto the yard or sidewalk, such vehicles shall not be allowed. The Association reserves the right to adopt Rules relating to the parking of vehicles within the Project including, without limitation: (1) the right to immediately remove or cause to be removed any vehicles that are improperly parked, (2) restrictions on the time period and duration that any guest or visitor parking may be utilized; (3) restrictions or bans on vehicles without Department of Transportation compliant mufflers and exhaust systems, and (4) the assessment of fines to Owners and occupants who violate such Rules.

11.13 Firearms, Incendiary Devices and Graffiti. The use of firearms, incendiary devices, or graffiti within the Project is prohibited. The term firearms include, but is not limited to: all guns, pistols, handguns, rifles, automatic weapons, semi-automatic weapons, BB guns, air-soft guns, pellet guns, sling shots, wrist-rockets, blow-dart guns, and other firearms of all types, regardless of size. Notwithstanding, this provision is not intended to regulate the ownership of firearms, or the carrying of a firearm to and from an Owner's Dwelling, as otherwise authorized by Utah law.

11.14 Temporary Structures. No Owner or resident shall place upon any part of the Project any temporary structures including, but not limited to tents, trailers, or sheds, without the prior written consent of the Board of Directors.

11.15 Machinery and Equipment. No machinery or equipment of any kind shall be placed, used, operated or maintained in 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 Dwelling.

11.16 No Re-Subdivision. No Lot may be re-subdivided.

11.17 Combination of Lots. No Lot may be combined with another Lot without the consent of the Architectural Control Committee.

11.18 Miscellaneous

(a) Explosives or articles deemed extra hazardous to life shall not be brought onto or stored anywhere in Project.

(b) Seasonal lights and decorations must be removed within 30 days after the holiday date.

(c) Between 10:00 p.m. and 7:00 a.m. all noise shall be held to a minimum.

(d) Open-flame outdoor stoves, chimneys, portable or non-portable fire pits, tiki-torches, or anything with an open flame are not permitted in the Project.

(e) Smoking materials, such as cigarette butts, cigar ends, etc. must be properly disposed of by the smoker in a proper receptacle. Any smoking must be 25 feet away from other Dwellings. Smokers are required to obey the Utah Clean Air Act regarding smoking.

**ARTICLE XII**  
**RENTAL/LEASE RESTRICTIONS**

12.1 No Short Term or Nightly Rentals. Daily, nightly, weekly or monthly occupation is prohibited (whether pay or not), and Dwellings shall not be advertised or listed for short term rental on such sites as Airbnb, VRBO, HomeAway, Flipkey, Wimdu, House Trip and similar international, national or local providers.

12.2 Long Term Leasing. Any occupancy by tenant(s) for longer than six months shall be considered a long-term lease. Any long-term lease shall be in writing, shall be for an initial term of at least six months, and shall provide as a term of the agreement that the occupant shall comply with the Governing Documents, and that any failure to comply shall be a default under the lease. If a lease does not include these provisions, they shall nonetheless be deemed to be part of the lease and binding on the Owner and the occupant.

(a) An Owner shall provide the Board with information identifying the occupants, vehicles, phone numbers, and other applicable contact information.

(b) A copy of any lease agreement shall be delivered to the Association upon request.

(c) Long Term Leasing shall be limited to no more than 50% of the total Dwellings. As 100% of the Owners are approving this restriction at the time of this recording, no exceptions shall be given to exceed the 50% total.

(d) The Owner(s) of a Dwelling shall be responsible for the occupant's or any guest's compliance with the Governing Documents. In addition to any other remedy for noncompliance with this Declaration, the Association, following notice to the Owner, shall have the right to initiate a forcible entry and unlawful detainer action, or similar such action, with the purpose of removing the offending non-owner occupant. The Association, the Board, and the Manager shall not have any liability for any action taken pursuant to this subparagraph and the Owner shall indemnify and pay the defense costs of the Association, the Board, and the Manager arising from any claim related to any action taken in good faith by any of them pursuant to this subparagraph. For purposes of this subparagraph, each Owner in accepting the deed to a Dwelling expressly consents to such authority and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments and pursue any and all remedies available to remove the offending non-owner occupant.

(e) The Board of Directors may adopt Rules requiring:

(i) Reporting and procedural requirement related to non-owner-occupied dwellings; and

(ii) Other reasonable administrative provisions consistent with, and as it deems appropriate to enforce, the requirements of this Declaration.

**ARTICLE XIII**  
**ARCHITECTURAL CONTROL COMMITTEE**

13.1 Architectural Control Committee. Following the Class B Control Period, the Board may appoint a three-member Committee, the function of which shall be to ensure that all remodeling or modification to Improvements and landscaping originally installed by the Declarant harmonize with existing surroundings and structures. If such a Committee is not appointed the Board shall perform the duties required of the Committee.

13.2 Submission to Committee. Following the Class B Control Period, no Dwelling, accessory building or structure, addition, landscape changes shall be constructed or maintained, and no alteration, repainting, or refurbishing of the exterior of any Dwelling shall be performed, unless plans and specifications therefor have first been submitted to and approved by the Committee. All such plans and specifications shall be consistent with Architectural Guidelines which shall be from time to time adopted by the Board.

13.3 Approval Procedure. Any plans and specifications submitted to the Committee shall be submitted on a form provided by the Committee. A preliminary review of design drawings will be required with a final review to be made of working drawings. Upon completion of each review, one set of plans will be retained by the Association, one set will be retained by the reviewing architect (if any) and the remaining set of plans will be returned to the property owner. All plans and specifications shall be approved or disapproved by it in writing within thirty (30) days after submission. In the event the Committee fails to take any action within such period it shall be deemed to have approved the material submitted provide such plans otherwise comply with the Governing Documents.

13.4 Construction. Once begun, any improvements, construction, landscaping, or alterations approved by the Committee shall be diligently prosecuted to completion. The exterior construction of all structures on any Lot shall be completed within a period of one (1) year following commencement of construction.

13.5 Liability for Damages. The Owner is responsible for any and all damage to concrete, sidewalks or subdivision infrastructure. The Committee shall not be held liable for damages by reason of any action, inaction, approval, or disapproval by it with respect to any request made pursuant to this Article.

13.6 Exception for Declarant and Declarant Related Entities. The foregoing provisions of this Article shall not apply to any improvement, construction, landscaping, or alteration which is carried out by Declarant or Declarant Related Entities on any Lot or on any part of the Common Areas and which occurs at any time during Class B Control Period.

13.7 Approved Builder. During the Class B Control Period, only contractors approved in advance by Declarant, in their sole discretion, may construct Improvement(s) upon the Lots.

**ARTICLE XIV**  
**ANNEXATION & DE-ANNEXATION**

14.1 Annexation. Additional phases of Subdivision may be added to the Property pursuant to the following procedures, and subject to the limitations as follows:

14.2 Annexation by Declarant. Declarant may from time to time expand the Property subject to this Declaration by the annexation of additional property. The annexation of any such land shall become effective upon the recordation in the office of the County Recorder of Davis County, Utah, of a subdivision plat covering the land to be annexed. If applicable, Declarant may record a supplemental declaration when additional limitations, restrictions, covenants and conditions as are applicable to the annexed land. When any such annexation becomes effective, the annexed land shall become part of the Subdivision and subject to this Declaration.

14.3 Annexation by the Association. Following the Class B Control Period, the Association may annex land to the Subdivision by obtaining approval of such annexation from (a) the owner or owners of the land to be annexed and (b) 67% of the Owners. Nothing in this paragraph shall be construed to require any prior approval for, or to limit or present, any annexation performed by Declarant, so long as such annexation satisfies the limitations set forth herein.

14.4 No Obligation to Annex or Develop. Declarant have no obligation hereunder to annex any additional land to the Subdivision or to develop or preserve any portion of the Undeveloped Land in any particular way or according to any particular time schedule. No land other than the Property as defined on the date hereof and land annexed thereto in accordance with the terms of this Declaration shall be deemed to be subject to this Declaration, whether or not shown on any subdivision plat or map filed by Declarant or described or referred to in any documents executed or recorded by Declarant.

**ARTICLE XV**  
**INSURANCE**

15.1 Insurance Requirement. The Association shall obtain insurance as required in this Declaration and as required by the Act. 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.

As used in this Article:

- (1) "Covered Loss" means a loss, resulting from a single event or occurrence that is covered by the Association's property insurance policy.
- (2) "Dwelling Damage" means damage to a Dwelling.
- (3) "Dwelling Damage Percentage" means the percentage of total damage resulting in covered loss that is attributable to Dwelling Damage.

15.2 Property Insurance.

(a) Hazard Insurance.

(i) Blanket Policy of Property Insurance. The Association shall maintain a blanket policy of property insurance covering all Common Areas, Limited Common Areas and attached Dwellings.

(1) At a minimum, any required blanket policy shall afford protection against loss or damage by: (1) fire, windstorm, hail, riot, aircraft, vehicles, vandalism, smoke, theft, and storm water run-off, if reasonably available; and (2) all perils normally covered by “special form” property coverage.

(2) Any 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 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.

(b) Flood Insurance. If the property insured by the Association is not situated in a Special Flood Hazard Area, the Association may nonetheless, if approved by a majority of Owners, purchase flood insurance to cover water and flooding perils not otherwise covered by blanket property insurance.

(c) Earthquake Insurance. The Association may nonetheless, if approved by a majority of Owners, purchase earthquake insurance to cover earthquakes not otherwise covered by blanket property insurance.

(d) Associations Obligation to Segregate Property Insurance Deductible. The Association shall keep 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.

(e) 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 the Association need not tender the claim to the Association’s insurer.

15.3 Comprehensive General Liability (CGL) Insurance. The Association shall obtain CGL Insurance insuring the Association, the agents and employees of the Association, and the Owner, 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 One



Million Dollars (\$1,000,000) covering all claims for death of or injury to any one person or property damage in any single occurrence.

15.4 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 Governing Documents, and breach of contract (if available). The policy shall:

- (a) Include coverage for volunteers and employees;
- (b) Include coverage for monetary and non-monetary claims;
- (c) 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
- (d) 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.

15.5 Insurance Coverage for Theft and Embezzlement of Association Funds. The Association may obtain insurance covering the theft or embezzlement of funds that shall:

- (a) Provide coverage for an amount of not less than the sum of three months regular assessment in addition to the prior calendar year's highest monthly balance on all operating and reserve funds; and
- (b) Provide coverage for theft or embezzlement of funds by:
  - (i) Officers and Board of Directors member of the Association;
  - (ii) Employees and volunteers of the Association;
  - (iii) Any manager of the Association; and
  - (iv) Officers, directors and employees of any manager of the Association.

15.6 Association's Right to Negotiate All Claims and Losses and Receive Proceeds. Insurance proceeds for a loss under the Association's property insurance policy shall be payable to the Association; and shall not be payable to a holder of a security interest. 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 proceeds remaining 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 Dwellings.

Each Owner hereby appoints the Association, as attorney-in-fact for the purpose of negotiating all losses related thereto, including: the collection, receipt of, and 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 representative, successors or assigns of an Owner.

15.7 Owner Act Cannot Void Coverage under Any Policy. An Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

15.8 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.

15.9 Owners' Individual Coverage. **EACH OWNER SHOULD PURCHASE INDIVIDUAL INSURANCE COVERAGE IN THE AMOUNT RECOMMENDED BY THE OWNER'S INSURANCE AGENT.**

**ARTICLE XVI**  
**DAMAGE & DESTRUCTION**

16.1 Immediately after damage or destruction by fire or other casualty to all or any part of the Common Areas covered by insurance written in the name of the Association, the Board, or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Common Areas. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Common Areas to substantially the same condition in which they existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

16.2 Any damage or destruction to the Common Areas shall be repaired or reconstructed unless Owners representing at least seventy-five (75%) percent of the total vote of the Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the costs of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Areas shall be repaired or reconstructed; provided, however, this provision shall not apply to construction mortgagees providing construction financing for such damaged property.

16.3 In the event, that it should be determined in the manner described above that the

damage or destruction to the Common Areas shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Common Areas shall be restored to their natural state and maintained by the Association, in a neat and attractive condition.

**ARTICLE XVII**  
**DISBURSEMENT OF PROCEEDS**

17.1 If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repair or reconstruction to the Common Areas shall be retained by and for the benefit of the Association and placed in a capital improvements and/or reserve account. In the event no repair or reconstruction is made, any proceeds remaining after making such settlement as is necessary and appropriate with the affected Owner(s) shall be retained by and for the benefit of the Association and placed in a capital improvements and/or reserve account.

**ARTICLE XVIII**  
**REPAIR AND RECONSTRUCTION**

18.1 If the damage or destruction to the Common Areas for which insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the members, levy a special assessment against all Owners as provided in the Governing Documents.

**ARTICLE XIX**  
**CONDEMNATION**

19.1 Whenever all of any part of the Common Areas shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of members representing at least sixty-seven percent (67%) of the total Association vote by any authority having the power of condemnation or eminent domain), each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows: if the taking involves a portion of the Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking the Owners representing at least sixty-seven percent (67%) of the total vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Areas to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If the taking does not involve any improvements of the Common Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such

purposes as the Board shall determine.

**ARTICLE XX**  
**MISCELLANEOUS PROVISIONS**

20.1 Violation Deemed a Nuisance. Any violation of these covenants that is permitted to remain on the Property is deemed a nuisance, and is subject to abatement by the Association or by any other Owner.

(a) Any single or continuing violation of the covenants contained in this Declaration may be enjoined in an action brought by an Owner or by the Association. In any action brought to enforce these covenants, the prevailing party shall be entitled to recover as part of its judgment the reasonable costs of enforcement, including reasonable attorney fees and court costs.

(b) Nothing in this Declaration shall be construed as limiting the rights and remedies that may exist at common law or under applicable federal, state or local laws and ordinances for the abatement of nuisances, health and safety, or other matters. This Declaration is to be construed as being in addition to those remedies available at law.

(c) The remedies available under this Declaration and at law or equity generally are not to be considered as exclusive, but rather as cumulative.

(d) The failure to take enforcement action shall not be construed as a waiver of the contents contained in this Declaration in the future or against other similar violations.

20.2 Association Litigation.

(a) In recognition of the expenses and disruption associated with litigation, the Association shall not commence a judicial or administrative proceeding without the approval of the Declarant for so long as the Members govern the Association and thereafter only upon the approval of Owners representing at least 80% of the total vote of the Association.

(b) Neither the Association nor any Owner shall institute an action against any person which arises out of an alleged defect in the development of the Subdivision until: (i) Declarant and the person(s) who physically constructed the portion of the subdivision in which the alleged defect exists have been notified and given a reasonable time and opportunity in which to inspect, assess, correct, or redesign any alleged defect or other portions of the Subdivision (provided, however, that the terms of this Section shall not create an obligation of any person to effect a repair of an alleged defect); (ii) the Association or Owner(s) have pursued their remedies under any express warranty covering all or any portion of the alleged defect; (iii) the Declarant and the affected contractor(s) have been given the opportunity to be heard at a meeting of the Association regarding the

alleged defect; and (iv) all proposed parties to the action have been given a reasonable opportunity to mediate any dispute or disagreement relating to the alleged defect, and have either participated or refused to participate in such mediation.

(c) Notwithstanding any other provision to the contrary in this Declaration, the Association shall not file, commence or maintain any lawsuits, actions or legal proceedings against Declarant, the individual managers, owners, members or officers of Declarant, Declarant's contractors, or any other person or entity involved in the construction of the Dwellings unless and until all of the following requirements have been satisfied:

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

(ii) The Association has collected funds from the Owners, by special assessment or otherwise, equal to at least one-half (1/2) of the Litigation Budget.

(d) If any claims or actions falling within the scope of this Section are filed without satisfying all of the requirements set forth above, such claims/action shall be dismissed without prejudice and shall not be re-filed unless and until all such requirements have been satisfied. In any action to enforce the requirements of this Section, the prevailing party shall be entitled to an award of reasonable attorney fees and costs. Individual Owners, however, shall not be allowed to file or pursue any actions or claims belonging to other Owners or to the Association.

(e) No action affected by this Section shall be conducted utilizing legal counsel who are compensated on a contingency fee or similar means of compensation in which litigation costs and attorney's fees are not paid on a current basis or are paid out of the settlement or judgment amount recovered by the Association in such action.

(f) This Section shall not apply to: (i) actions brought by the Association to enforce the Governing Documents (including, without limitation, the foreclosure of liens); (ii) the collection of assessments; (iii) proceedings involving challenges to ad valorem

taxation; (iv) counterclaims brought by the Association in proceedings instituted against it; or, (v) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of an express contract with the Association or its manager for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

20.3 Repurchase Option for Construction Defect Claims. In the event any Owner shall commence action against Declarant or Declarant' Related Entities for the purpose of constructing Dwellings on the Lot (collectively "Declarant") in connection with any alleged construction defects in such Owner's Dwelling, Declarant shall have the option, but not the obligation, to purchase such Dwelling on the following terms and conditions:

(a) The purchase price shall be an amount equal to the sum of the following, less any sums paid to such Owner under any homeowner's warranty, in connection with the alleged defect:

(i) The purchase price paid by the original Owner of the Dwelling & Lot when originally purchased from Declarant;

(ii) The agreed upon value of any improvements made to the Dwelling by anyone other than Declarant; and

(iii) The Owner's reasonable moving costs.

(b) Close of escrow shall occur not later than forty-five (45) days after written notice from Declarant to the Owner of Declarant' intent to exercise the option herein.

(c) Title shall be conveyed to Declarant free and clear of all monetary liens and other encumbrances other than non-delinquent real estate taxes.

(d) Exercise of the repurchase option as provided for herein above shall constitute full and final satisfaction of all claims relating to the subject Dwelling and Lot. The Owner shall promptly execute and deliver any notice of dismissal or other document necessary or appropriate to evidence such satisfaction.

(e) Declarant's option to repurchase granted herein with respect to any particular Dwelling and Lot shall automatically terminate upon the expiration of the last applicable statute of limitations applicable to any construction or warranty claim governing such Dwelling and Lot including all applicable tolling periods.

20.4 Amendment Requires Consent of Declarant. Notwithstanding any other provision of this Declaration, this Article and its subsections may not be amended except with the prior written consent of the Declarant.

20.5 Severability. Each of the covenants contained in this Declaration shall be independent of the others, and in the event that any one is found to be invalid, unenforceable, or illegal by a court of competent jurisdiction, the remaining covenants shall remain in full force and effect.

20.6 Consent, Power of Attorney, Waiver. By acceptance of a deed, lease, or other conveyance of an interest in Dwelling, each Owner or Occupant consents to the rights reserved to the Association in this Declaration, including but not limited to, the right to prepare, execute, file, process, and record necessary and appropriated documents and other items to establish and grant easements and to make necessary and appropriate amendments of this Declaration, the Plat and Bylaws. By such acceptance, each Owner or Occupant agrees to execute all documents and to do all other things as may be necessary or convenient to effect the same; and such acceptance shall be deemed an appointment of the Association, with full right of substitution, as the attorney-in-fact of such Owner or Occupant to execute such documents and to do such things on Owner's or Occupant's behalf; and such appointment, being coupled with an interest, shall be irrevocable for the specific period of the Association's reserved rights as set forth in this Declaration and shall not be affected by the disability of any such Owner or Occupant.

20.7 No Representations and Warranties. Each Owner and occupant understands, agrees, and acknowledges through taking title or residing in the Project that the Declarant, Association and the Board have not made any representations or warranties of any kind related to the Project and that each Owner or occupant has not relied upon any reorientations or warranties, expressed or implied, including any warranty of merchantability or fitness for any particular purpose relative to the Project.

20.8 Amendment. At any time while this Declaration is in effect, the covenants herein contained can be modified by the Declarant or Declarant's successors and assigns during the Class B Control Period at the sole discretion of the Declarant. Thereafter, the covenants herein contained can only be modified by the affirmative vote of the Owners representing not less than sixty-seven (67%) percent of the total votes of the Association. No meeting or voting shall be required for an amendment, if the required, written consent is obtained from the requisite number of Owners.

20.9 Constructive Notice. Every person who owns, occupies or acquires any right, title or interest in any Lot in the Project is conclusively deemed to have notice of this Declaration and its contents, and to have consented to the application and enforcement of each of the provision of this Declaration against his/her Lot, whether or not there is any reference to this Declaration in the instrument by which he/she acquires interest in any Lot.

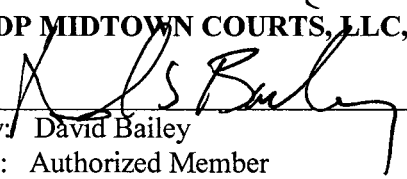
20.10 Notices. All notices under this Declaration are provided as set forth in the Bylaws.

20.11 Liberal Interpretation. The provisions of this Declaration shall be interpreted liberally to further the goal of creating a uniform plan for the development of the Project. Headings

are inserted for convenience only and shall not be considered in interpretation of the provisions. Singular will include plural, and gender is intended to include masculine, feminine and neuter as well.

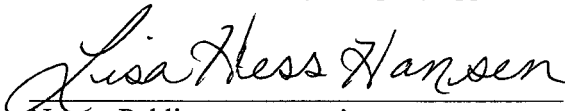
20.12 Right to Modify Lot Boundaries and Interior Boundary Lines. Declarant reserve the unilateral right to modify Lot boundaries and interior boundary lines and/or combine Lots or Dwellings so long as it owns the Lots; provided, however, such changes may not extensively alter the boundaries of the Common Area and Facilities nor change the percentages of ownership interest.

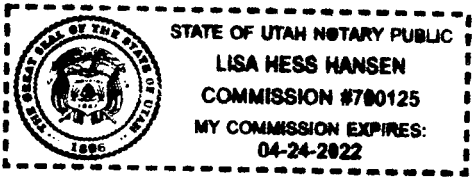
**HDP MIDTOWN COURTS, LLC, the Declarant**

  
By: David Bailey  
Its: Authorized Member

STATE OF UTAH                    )  
  : ss  
COUNTY OF DAVIS)

On this 20 day of Aug, 2018, personally appeared before me David Bailey, who being by me duly sworn, did say that he/she is a Member of HDP Midtown Courts, LLC, a Delaware limited liability company, and that the within and foregoing instrument was signed on behalf of said limited liability company by authority and said member duly acknowledged to me that said limited liability company approved the same.

  
Notary Public  
Residing at: Davis County  
My Commission Expires: 4-24-22





**Exhibit "A"**  
**Legal Description**

Beginning at a point on the west line of Falcon Wood Subdivision and the quarter section line, said point being

North 0°08'00" East 661.15 feet to and along the west line of Falcon Wood Subdivision and along the quarter section line from the South Quarter Corner of Section 8, Township 4 North, Range 1 West, Salt Lake Base and Meridian, and running;

Thence South 89°52'30" West 350.10 feet;

Thence southwesterly 96.50 feet along the arc of a 135.00 foot radius curve to the left, (center bears South 0°07'30" East and long chord bears South 69°23'49" West 94.46 feet, with a central angle of 40°57'22");

Thence South 48°55'08" West 115.39 feet to the east line of 800 West Street; Thence North 41°04'52" West 125.55 feet along the east line of 800 West Street;

Thence northerly 193.59 feet along the arc of a 270.00 foot radius curve to the right, (center bears North 48°55'08" East and long chord bears North 20°32'26" West 189.47 feet, with a central angle of 41°04'52") along the east line of 800 West Street;

Thence North 74.06 feet to the south line of Harrisburg Place Subdivision No. 2;

Thence North 89°52'30" East 675.03 feet along the north line of Harrisburg Place Subdivision No. 2 to and along the north line of Harrisburg Place Subdivision No. 1 to the Northwest Corner of Falcon Subdivision, also being on the quarter section line;

Thence South 0°08'00" West 237.76 feet along the west line of Falcon Wood Subdivision and the quarter section line to the point of beginning.

Contains 169,772 square feet, 3.897 acres.

**Exhibit "B"**  
**Bylaws**

**BYLAWS  
OF MIDTOWN COURTS HOMEOWNERS ASSOCIATION, INC.**

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The following are the Bylaws of Midtown Courts Homeowners Association, Inc. ("Bylaws"), a Utah non-profit corporation ("Association"). Upon recordation of these Bylaws, they are binding upon the Association and all present and future Owners and/or occupants.

**ARTICLE I - DEFINITIONS**

**Section 1.1 Definitions.** All terms used but not defined herein shall have the meanings given them under that certain Declaration of Covenants, Conditions & Restrictions for Midtown Courts Townhomes, a Planned Unit Development, of even date and recorded in the Official Records of the Davis County Recorder's Office (hereinafter "Declaration"), and as the same may be amended from time to time as therein provided.

**ARTICLE II - MEETINGS OF OWNERS**

**Section 2.1 Annual Meetings.** An annual meeting of the Owners shall be held no less than once each calendar year at a location and time designated by the Board of Directors ("Board"). The Board may set the date, time and location of the annual meeting in accordance with Section 2.3 below.

**Section 2.2 Special Meetings.** Special meetings of the Owners may be called at the request of the Board, or, following the Class B Control Period, upon written request of the Owners holding at least fifty-one percent (51%) of the total eligible votes of the membership. Notwithstanding, the Board remains the only authorized body to act for and in behalf of the Association.

**Section 2.3 Notice of Meetings.** Unless an Owner requests in writing that all notices be provided to said Owner by U.S. mail, all notices shall be given by, or at the direction of, the Board via email or other electronic communication. Notice shall be provided at least ten (10) days before a meeting, but no more than sixty (60) days, to each Owner at the email or electronic address provided by the Owner. Said notice is effective upon sending the email or electronic communication. Notices provided by U.S. mail shall be sent via U.S. First Class Mail and effective upon deposit in the mail. Such notice shall specify the location, day and time of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Upon becoming an Owner of the Association, or upon the written request by the Association, Owners shall provide a valid email address or other requested electronic information for purpose of notification related to the Association unless the Owner has opted out by providing a written request for notice by U.S. Mail.

**Section 2.4 Quorum.** Unless otherwise specifically set forth in the Declaration, at any meeting of Owners, a quorum shall be established by those Owners present, in person or by proxy, at a properly noticed meeting. Notwithstanding, the Board remains the only authorized body to act for and in behalf of the Association. Further, a majority of those Owners present in person or proxy at such meeting may vote to reschedule the meeting based upon low attendance. Otherwise, the meeting shall proceed as scheduled.

**Section 2.5 Proxies.** At all meetings of Owners, each Owner may vote in person or by proxy. All proxies shall be in writing, signed by the Owner, and filed with the Board at or before said meeting. Notwithstanding, any proxy delivered to the Board at the meeting must be provided no later than any point in the meeting announced as the final time to deliver proxies. The proxy form provided with any notice of meeting may also provide an additional requirements and a deadline to return proxies. Every proxy shall be revocable and shall automatically terminate upon conveyance by the Owner of his Lot. If conflicting proxy votes for an Owner or Lot exist, said proxy votes will not be counted.

**Section 2.6 Conduct of Meetings.** The Board, or its authorized representatives, shall preside over all meetings. The Secretary or other authorized person shall keep and maintain minutes of all meetings. The Board may adopt further policies and procedures with regard to conduct at an Association meeting.

- (a) **Recording.** No person, whether an Owner, occupant, owner representative, or other third party is permitted to record (whether audio, video, transcription or combination) any Association or Board meeting, work session, event, get-together, or similar event regardless of the location of such event.

**Section 2.7 Action Taken Without a Meeting.** Any action that may be taken at any annual or special meeting of Owners may be taken without a meeting and without prior notice, if one or more consents in writing, setting forth the action taken, are signed by the Owners having not less than the minimum voting power that would be necessary to authorize or take the action at a meeting at which all Owners eligible to vote on the action were present and voted, unless a different approval percentage for the action is specifically set forth in the Declaration. The Board may obtain such approvals and conduct business through mail or email/electronic ballots.

Ballots shall set forth each proposed action and provide the option of voting for or against each proposed action. The ballot must specify the period of time, up to 90 days, during which the Association shall accept written ballots. Following this period, the Association shall provide notice if such action was approved.

**Section 2.8 Voting.** Only an Owner that is current on all assessments and charges due and owing at least thirty (30) days prior a duly noticed meeting shall be deemed in good standing and eligible vote. The Association shall have two (2) classes of voting membership, Class "A" and Class "B," as set forth in the Declaration.

The votes appurtenant to any one Lot may not be divided between Owners of such Lot and all such votes appurtenant to any one Lot shall be voted in one block. If the vote of a majority of the Owners of a Lot cannot be determined, no vote shall be cast in relation to such Lot. The Association shall honor the vote of: a duly authorized trustee or successor trustee of a trust that is an Owner; the duly authorized representative of a legal entity that is an Owner; and shall honor the vote of an individual that is a holder of a Limited or General Durable Power of Attorney with respect to an Owner as though such vote were the vote of the Owner.

### **ARTICLE III - BOARD, SELECTION AND TERM OF OFFICE**

**Section 3.1 Number & Tenure.** Except for the Initial Board selected by Declarant, which consists of three members and their successors, that may hold office during the Class B Control Period, the affairs of the Association shall be managed by a Board of Directors composed of three (3) individuals. At the first meeting of the Owners at which the election of Directors will take place following the Class B Control Period, the candidate who receives the most votes shall serve as a Director for three (3) years. The candidate that receives the second highest number of votes shall serve as a Director for two (2) years, and the third candidate who receives the third highest number of votes shall serve as Director for one (1) year. At each annual election, the successor to the Director whose term shall expire in that year shall be elected to hold office for the term of (3) years. Any change in the number of Directors may be made only by amendment of these Bylaws. The members of the Board of Directors shall serve until their respective successors are elected, or until their death, resignation or removal.

**Section 3.2 Advisory Board Member.** During the Class B Control Period and prior to turnover of the Association to Owner control, the Declarant and/or Board may identify an owner(s) to be an advisory member of the Board and participate in Board meetings and activities. This advisory member(s) shall not vote.

**Section 3.3 Eligibility.** Following the Class B Control Period, all members of the Board shall be Owners or an Owners' spouse or legal partner that resides with Owner in the Dwelling. Notwithstanding, only one member of a single household can be a member of the Board at any one time.

**Section 3.4 Resignation & Removal.** A Director may resign at any time by delivering a written resignation to either the President or the Board. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Director, except during Class B Control Period, may be removed from the Board, with or without cause, by a vote of at least (51%) of the Owners of the Association. In the event of death, resignation or removal of a Director, his successor shall be selected by the remaining Directors and shall serve for the unexpired term of his predecessor.

**Section 3.5 Compensation.** No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for actual and approved expenses incurred in the performance of his duties.

**Section 3.6 No Estoppel or Reliance.** No one may rely upon any authorization (from the Board or otherwise) contrary to the terms and conditions of the Governing Documents regardless of circumstances. No claim of estoppel, waiver or similar equitable claims or defense may be raised by anyone related to any alleged reliance.

**Section 3.7 Records Retention.** The Board shall take appropriate action to develop, implement and update procedures for record retention. The Board should maintain documents in a manner to be easily accessible and copied. The Board may budget specifically for this expense and may seek the advice of consultants in developing retention procedures.

#### **ARTICLE IV - NOMINATION AND ELECTION OF DIRECTORS**

**Section 4.1 Nomination.** Following the Class B Control Period, nomination for election to the Board may be made by the Board or by Owners from the floor at the annual meeting.

**Section 4.2 Election.** Following the Class B Control Period, the election of Directors shall be by vote or written ballot, as determined at the discretion of the Board. The persons receiving the largest number of votes shall be elected. Cumulative voting is not authorized.

#### **ARTICLE V - MEETINGS OF THE BOARD**

**Section 5.1 Regular Meetings.** Regular meetings of the Board shall be held at least annually, or more frequently as determined by the Board. All notices shall be provided by email or other electronic means. Directors are required to provide an email or electronic address for purposes of notice of Board meetings. Notice shall be provided at least five (5) days before a meeting, but no more than thirty (30) days.

Owners, and Owner representatives (if designated in writing in advance) may attend Board meetings and may be present for all discussions, deliberations, and decisions except when the Board is in executive session. Owners shall comply with all reasonable rules established by the presiding officer for their attendance. The Board may limit Owners' comments and/or questions to a specific period of time within the meeting. The Board shall provide email notice in accordance with the Act to Owners that have requested, in writing, to be notified of Board Meetings and have provided a valid email address.

**Section 5.2 Special Meetings.** When, in the discretion of the President or two members of the Board, circumstances require that a meeting be held sooner than the required five (5) five' notice for a regular meeting, a special meeting may be called by the President or by any two (2) Directors, after not less than twenty-four (24) hours' notice to each Director.

**Section 5.3 Quorum.** A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

**Section 5.4 Conduct of Meetings.** The Board, or its authorized representatives, shall preside over all meetings. The Secretary or other authorized person shall keep and maintain minutes of all meetings. The Board may adopt further policies and procedures with regard to conduct at a Board meeting.

- (a) **Recording.** No person, whether an Owner, occupant, owner representative, or other third party is permitted to record (whether audio, video, transcription or combination) any Association or Board meeting, work session, event, get-together, or similar event regardless of the location of such event.

**Section 5.5 Action Taken Without a Meeting.** The Directors may take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of a majority of the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Board.

## ARTICLE VI - POWERS AND DUTIES OF THE BOARD

**Section 6.1 Powers and Duties.** The Board shall have all of the powers and duties necessary for the administration of the affairs of the Association in accordance with the provisions of the Governing Documents and Utah law. The Board may delegate its authority to manager(s), subject to any limitations or provisions contained in the Governing Documents.

## ARTICLE VII - OFFICERS AND THEIR DUTIES

**Section 7.1 Enumeration of Officers.** The officers of this Association shall be a president, secretary, and treasurer, as designated by the Board.

**Section 7.2 Election of Officers.** The election/appointment of officers shall take place at the first Board meeting following the annual meeting of the Owners. Officers shall serve in their office for a period of one (1) year. Notwithstanding, nothing in these Bylaws prevent an officer or directors from being re-elected to their respective positions.

**Section 7.3 Special Appointments.** The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine. Appointed Officers may be removed by the Board with or without cause.

**Section 7.4 Resignation and Removal.** Any officer may resign at any time by delivering a written resignation to any Director or to any Manager. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any officer may be

removed and replaced by a majority of the Board of Directors at any time, with or without cause. In the event of death, resignation or removal of an officer, his successor shall be selected by the Board and shall serve for the unexpired term of his predecessor.

**Section 7.5 Duties.** The Board may adopt policies and resolutions to define the respective duties of Directors and Officers.

## ARTICLE VIII - CONTRACTS, LOANS & INVESTMENT

**Section 8.1. Contracts.** The Board may authorize any officer(s), agent(s), to enter into any contract or execute and deliver any instrument in the name of or on behalf of the Association, and such authority may be general or confined to specific instances.

**Section 8.2 Loans.** Any loan entered into by the Association must be in accordance with the Declaration.

**Section 8.3 Deposits & Investments.** Association funds may only be deposited into institutions that are federally insured. The Board may deposit Association funds into savings accounts, money market accounts, or purchase certificates of deposits. Other investment options that may pose additional risks must be approved by at least 51% of the total eligible votes of the membership prior to the investment.

## ARTICLE IX - COMMITTEES

**Section 9.1 Committees.** The Board may appoint such committees as deemed appropriate in carrying out its purposes. A committee shall not have any powers, duties, or responsibilities beyond those specifically assigned by the Board. The Board may terminate any committee at any time.

## ARTICLE X - MISCELLANEOUS

**Section 10.1 Waiver of Procedural Irregularities.** All inaccuracies and irregularities in calls or notices of meetings, in the manner of voting, in the form of proxies, in the method of asserting persons present, in the method of making decisions, or in the method of accepting or counting votes shall be deemed waived under the following circumstances:

- (a) If the objecting person was in attendance at the meeting and the issue upon which the objection was based was perceptible and no objection to the particular procedural issue was made at the meeting.
- (b) If the objecting person was not in attendance at the meeting but had proper notice of the meeting.
- (c) If the objecting person was not in attendance at a meeting and had actual notice of the meeting before it occurred.
- (d) If the objecting person who was not in attendance at the meeting and did not have proper or actual notice fails to assert the objection within 30 days of receiving notice of the circumstances giving rise to their objection.



**Section 10.2 Requirements for Objections.** All objections except those made at a meeting shall be in writing. Whenever made, objections must specifically describe the circumstances giving rise to the objection and reference the specific provision of the Governing Documents or law that is alleged to have been violated, with a brief statement of the facts supporting the claimed violation.

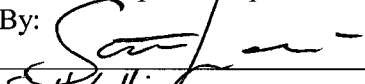
**Section 10.3 Irregularities that Cannot Be Waived.** Any irregularity that is the result of fraud or that was done knowingly and intentionally in violation the Governing Documents or Utah law.

**Section 10.4 Fiscal Year.** The fiscal year of the Association shall begin on the first day of January and end on the 31<sup>st</sup> day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

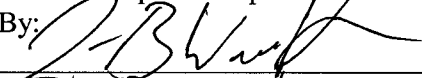
**Section 10.5 Amendment.** During the Class B Control Period, these Bylaws may be amended at any time by the Declarant. Following the Class B Control Period, these Bylaws may be amended by Owners holding at least fifty-one percent (51%) of the total eligible votes of the membership. An amendment to these Bylaws shall be effective immediately upon recordation in the Office of the Washington County Recorder, State of Utah.

The foregoing Bylaws are adopted by the undersigned and made effective upon recordation in the Office of the Davis County Recorder, State of Utah.


MIDTOWN COURTS HOMEOWNERS ASSOCIATION, INC.  
a Utah non-profit corporation

By:   
\_\_\_\_\_  
*Scott Galli*  
Board Member

MIDTOWN COURTS HOMEOWNERS ASSOCIATION, INC.  
a Utah non-profit corporation

By:   
\_\_\_\_\_  
*John B. Warnick*  
Board Member

MIDTOWN COURTS HOMEOWNERS ASSOCIATION, INC.  
a Utah non-profit corporation

By:   
\_\_\_\_\_  
*Jeremy P. Farrell*  
Board Member

**ARTICLES OF INCORPORATION OF  
MIDTOWN COURTS HOMEOWNERS ASSOCIATION, INC.**

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I, the undersigned natural person over the age of eighteen (18) years, acting as incorporator of a non-profit corporation, pursuant to the Utah Revised Nonprofit Corporation and Utah Community Association Acts, hereby adopt the following Articles of Incorporation (“Articles”) of Midtown Courts Homeowners Association, Inc. (“Association”).

**ARTICLE I – NAME & PRINCIPAL PLACE OF BUSINESS**

- 1.1 The name of the nonprofit corporation is Midtown Courts Homeowners Association, Inc.
- 1.2 The principal place of business of the Association is located at 67 South Main St., Suite 300, Layton, Utah 84041.

**ARTICLE II - DURATION**

- 2.1 The duration of the Association shall be perpetual unless earlier dissolved pursuant to law.

**ARTICLE III - POWERS AND PURPOSES**

- 3.1 Purpose. The Association is organized and shall be operated as a nonprofit corporation for the purpose of enforcing the terms and conditions of the Articles, the Bylaws, and Declaration, as amended, and otherwise administering any Common Areas and facilities and generally providing for and promoting the recreation, health, safety, and welfare of Members of the Association.
- 3.2 Powers. The Association shall have all of the powers conferred upon it by the Articles, Bylaws and Declaration, as amended, and all powers allowed by law necessary or convenient for accomplishment of any of its purposes, including all powers conferred by the Utah Revised Nonprofit Corporation and Utah Community Association Acts.
- 3.3 Non-Profit. The Association is not organized for pecuniary profit. No dividend shall be paid to, no part of the Association's funds shall be distributed to, and no part of the net income of the Association shall inure to the benefit of, any of its Members, Directors, or Officers or any other person except to reimburse approved costs.

#### **ARTICLE IV - DEFINITIONS**

- 4.1 Definitions. All terms used but not defined herein shall have the meanings given them under that certain Declaration of Covenants, Conditions & Restrictions for Midtown Courts Townhomes, a Planned Unit Development, recorded in the Official Records of the Davis County Recorder's Office (hereinafter referred to as the "Declaration"), applicable to the Property, and as the same may be amended from time to time as therein provided. The term "Member" shall mean and refer to those persons entitled to membership in the Association, as provided in the Declaration and these Articles.

#### **ARTICLE V – MEMBERSHIP SHARES AND VOTING RIGHTS**

- 5.1 Membership/Shares. Every Owner shall be a Member of the Association. Declarant shall be deemed a Member of the Association, as outlined in the Declaration. 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. The Association shall not issue shares of stock. Neither the issuance nor the holding of shares of stock shall be necessary to evidence membership in the Association.
- 5.2 Voting Rights. The Members of the Association shall have voting rights, as set forth in the Bylaws and/or Declaration.
- 5.3 Membership List. The Association may for all purposes act and rely on the information concerning Members and Lot ownership, which is provided by Members or, at its option, the Association may act and rely on current ownership information respecting any Lot which is obtained from the office of the Davis County Recorder. The address of a Member shall be deemed to be the address of the residence situated on such Member's Lot unless the Association is otherwise advised in writing.

#### **ARTICLE VI - ASSESSMENTS**

- 6.1 Members of the Association shall be subject to assessments and other authorized fees by the Association from time to time in accordance with the provisions of the Declaration, as amended, and shall be liable to the Association for payment of such assessments and fees.

**ARTICLE VII – INITIAL REGISTERED OFFICE AND REGISTERED AGENT**

- 7.1 The address of the initial registered agent of the Association is:  
Burt R. Willie  
SMITH KNOWLES, P.C.  
2225 Washington Blvd., Suite 200  
Ogden, Utah 84401

By signing below, the undersigned, whose address is set forth hereinabove, accepts appointment as the registered agent.

SMITH KNOWLES, P.C.

By: Burt R. Willie  
Burt R. Willie

Its: Registered Agent

**ARTICLE VIII – APPOINTMENT OF BOARD OF DIRECTORS (“Board”)**

- 8.1 Until the Class B Control Period ceases and is automatically converted to a Class A membership pursuant to the terms of the Declaration, Declarant, and its assigns and successors in interest under the Declaration, shall have the right and option to appoint, remove and replace all of the members of the Board. In the event the Declarant fails to exercise this option or in the event the Declarant, by written notice to the Association, voluntarily turns over to the Members the responsibility for electing the Board before the termination of the Class B Control Period, the Board shall be elected by the Members of the Association in accordance with the Declaration and the Bylaws of the Association.

**ARTICLE IX – INTIAL BOARD OF DIRECTORS**

- 9.1 Initial Board. Declarant shall appoint three individuals to serve on the initial Board of Directors.

**ARTICLE X – INCORPORATOR**

- 10.1 The name and address of the incorporator of the Association is as follows:

Burt R. Willie

2225 Washington Blvd, Suite 200,  
Ogden, Utah 84401

**ARTICLE XI - MISCELLANEOUS**

- 11.1 Transfer of Common Areas to Public Entity. Following the Class B Control Period, the Board may, in connection with dissolution of the Association or otherwise, dedicate or transfer any part of the Common Area to any public agency or authority for such purpose and subject to such conditions as may be agreed to by the Board and agency. Any such dedication or transfer must, however, be consented to by sixty-seven percent (67%) of the votes of the membership and approved by Declarant during the Class B Control Period. No such dedication or transfer, however, may take place without the Association first receiving approval from City, County or other applicable government entity pursuant to all applicable state and city laws, rules and ordinances in effect at the time of such proposed dedication or transfer.
- 11.2 Dissolution. Following the Class B Control Period, the Association may be dissolved by the affirmative vote of sixty-seven percent (67%) of the votes of the membership. Upon dissolution of the Association, all of its assets (including the Common Areas) shall be transferred to a nonprofit corporation, trust, or other public entity to be used for purposes similar to those provided for in these Articles and the Declaration.
- 11.3 Manager. The Board may carry out through a managing agent any of its functions which are properly authorized by the Articles, Bylaws or Declaration. Any managing agent shall be an independent contractor and not an employee of the Association. The managing agent shall be responsible for managing the Property for the benefit of the Association and the Members and shall, to the extent permitted by law and the terms of the agreement with the Association, be authorized to perform any of the functions or acts required or permitted to be performed by the Association itself. Retention of a managing agent shall be within the Board's discretion and the Board is authorized to enter into a contract for services with the managing agent.
- 11.4 Amendment. Following the Class B Control Period, any amendment to these Articles shall require the consent of at least fifty-one percent (51%) of all eligible votes. During the Class B Control Period, the Declarant may amend these Articles in Declarant's sole discretion.
- 11.5 Rules, Policies & Resolutions. The Board may adopt, amend and repeal rules, policies and resolutions for regulation and management of the affairs of the Association not inconsistent with these Articles, Bylaws and the Declaration, as required by the Community Association Act.
- 11.6 Interpretation. The captions which precede the various portions of these Articles are for convenience only and shall in no way affect the manner in

which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any provision contained in these Articles shall not affect the validity or enforceability of the remainder hereof. These Articles have been prepared in conjunction with the Bylaws and Declaration and should be read and construed in light of that fact and liberally so as to affect all of the purposes of these instruments. To the extent the provisions of the Utah Revised Nonprofit Corporation and Utah Community Association Acts are consistent with these Articles, such legislation shall supplement the terms hereof.

- 11.7 Indemnification. No Director, officer, managing agent or member of a committee 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, managing agent 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, managing agent 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 person having heretofore or hereafter been a Director, officer, managing agent, or member of a committee or by reason of any action alleged to have been heretofore or hereafter taken or omitted to have been taken by him/her as such Director, officer, managing agent, or committee member, and the Association shall advance and reimburse any such person for all legal and other expenses reasonably incurred in connection with any such claim or liability. However, 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 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.
- 11.8 Settlement of Association. The right of any person to be indemnified shall be subject always to the right of the Association, 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.

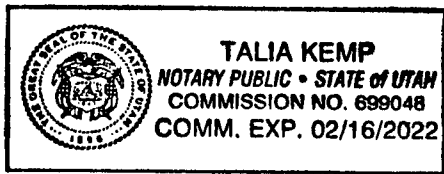
DATED this 20 day of August, 2018

Burt R. Willie  
Burt R. Willie  
Incorporator

STATE OF UTAH            )  
                                      : SS  
COUNTY OF WEBER        )

On the 20<sup>th</sup> day of August, 2018 the foregoing instrument was acknowledged and verified before me Burt R. Willie who personally appeared before me, and being by me duly sworn declare under penalty of perjury that he is the incorporator of Midtown Courts Homeowners Association, Inc. and that he signed the foregoing, and that the statements contained therein are true and correct.

In witness whereof, I have set my hand and seal this 20<sup>th</sup> day of August, 2018.



Talia Kemp  
Notary Public