

WHEN RECORDED RETURN TO:
1589 E Yalecrest Ave
Salt Lake City, UT 84105

13414933
10/02/2020 12:03 PM \$40.00
Book - 11031 Pg - 7549-7585
RASHELLE HOBBS
RECORDER, SALT LAKE COUNTY, UTAH
ALTUS DEVELOPMENT
1589 E YALECREST AVE
SALT LAKE CITY UT 84105
BY: ARA, DEPUTY - WI 37 P.

**DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR EAST LIBERTY COMMONS**

Table of Contents

Table of Contents 1

1 DEFINITIONS 6

1.1 Architectural Review Committee 7

1.2 Articles 7

1.3 Association 7

1.4 Board 7

1.5 Bylaws 7

1.6 Common Areas 7

1.7 Common Expenses 7

1.8 Community Association Act 7

1.9 Declarant 7

1.10 Declaration 8

1.11 Director 8

1.12 Governing Documents 8

1.13 Improvements 8

1.14 Living Unit 8

1.15 Lot 8

1.16 Map 8

1.17 Member 8

1.18 Nonprofit Act 8

1.19 Owner 8

1.20 Person 9

1.21 Project 9

1.22 Resident 9

1.23 Roadway 9

1.24 Turnover Meeting 9

2 SUBMISSION, EXPANSION, AND WITHDRAWAL 9

2.1 Submission 9

2.2 Declarant Withdrawal 9

3	PROPERTY RIGHTS IN LOTS.....	9
3.1	Use and Occupancy.....	9
3.2	Easements Reserved.....	10
3.3	Easements Shown on the Map.....	10
4	PROPERTY AND USE RIGHTS IN COMMON AREA.....	10
4.1	Member's Right of Enjoyment.....	10
4.2	Delegation of Right of Use.....	11
4.3	Compliance with Covenants and Restrictions and Rules and Regulations.....	11
5	MAINTENANCE.....	11
5.1	Association Responsibility.....	11
5.2	Owner Responsibility.....	11
6	ASSESSMENTS.....	11
6.1	Covenant for Assessment.....	11
6.2	Declarant's Covenant for Assessments.....	12
6.3	Annual Budget.....	12
6.4	Reserve Account.....	12
6.5	Regular Assessment.....	12
6.6	Special Assessment.....	12
6.7	Supplemental Assessment.....	12
6.8	Individual Assessment.....	13
6.9	Apportionment of Assessments.....	13
6.10	Nonpayment of Assessment.....	13
6.11	Application of Payments.....	13
6.12	Acceleration.....	13
6.13	Suspension of Voting Rights.....	13
6.14	Lien for Assessment.....	13
6.15	Enforcement of Lien.....	13
6.16	Termination of Utilities/Access to Recreational Facilities.....	13
6.17	Collection of Rent from Tenant.....	14
6.18	Appointment of Trustee.....	14
6.19	Subordination of Lien.....	14
7	ARCHITECTURAL CONTROL.....	14
7.1	Improvements.....	14
7.2	Architectural Review Committee.....	14
7.3	Architectural Standards and Guidelines.....	15
7.4	Government Approvals.....	15
7.5	Action by ARC.....	15

7.6	Duties.....	15
7.7	ARC Decisions.....	15
7.8	ARC Discretion	15
7.9	Waiver, Precedent, Estoppel.....	16
7.10	Appeal	16
7.11	Effective Period of Consent.....	16
7.12	Determination and Notice of Noncompliance.....	16
7.13	Noncompliance	16
7.14	Liability	16
7.15	Fees	17
7.16	Variance	17
7.17	Estoppel Certificate.....	17
8	RESTRICTIONS ON USE.....	17
8.1	Use of Lots - Residential Use.....	17
8.2	No Obstruction of Common Areas or Roadway	17
8.3	Cancellation of Insurance, Illegal Activity	18
8.4	Nuisances.....	18
8.5	Rules and Regulations	19
8.6	Construction and Alterations.....	19
8.7	Window Coverings and Signs	19
8.8	Animals	19
8.9	Storage and Parking of Vehicles	19
8.10	Aerials, Antennas, and Satellite Dishes	20
8.11	Timeshares.....	20
8.12	Temporary Structures, etc.	20
8.13	Repair of Buildings.....	20
8.14	Subdivision of Lots	20
9	MEMBERSHIP AND ASSOCIATION	21
9.1	Membership.....	21
9.2	Voting Rights	21
9.3	Status and Authority of Board	21
9.4	Composition and Selection of Board	21
9.5	Adoption of Bylaws	21
10	DECLARANT RIGHTS	21
10.1	Administrative Control of Association	21
10.2	Other Rights.....	21
10.3	Easements Reserved to Declarant	22

11	COMPLIANCE AND ENFORCEMENT.....	23
11.1	Compliance	23
11.2	Remedies.....	23
11.3	Action by Owners.....	23
11.4	Injunctive Relief.....	24
11.5	Hearing	24
12	INSURANCE.....	24
12.1	Types of Insurance Maintained by the Association.....	24
12.2	Insurance Company.....	24
12.3	Premium as Common Expense.....	24
12.4	Insurance by Owner.....	24
12.5	Payment of Deductible.....	24
12.6	Right to Adjust Claims.....	24
12.7	Damage to the Project/Insurance Proceeds	25
13	AMENDMENT AND DURATION.....	25
13.1	Amendments.....	25
14	MISCELLANEOUS PROVISIONS.....	25
14.1	Professional Management	25
14.2	Invalidity; Number; Captions.....	25
14.3	Joint Owners.....	25
14.4	Lessees and Other Invitees	26
14.5	Covenants Run with the Land.....	26
14.6	Waiver, Precedent and Estoppel.....	26
14.7	Notice of Sale, Mortgage, Rental, or Lease.....	26
14.8	Taxes on Lots	26
14.9	Service of Process.....	26
	Exhibit A	28
	Legal Description	28
	Exhibit B	29
	Bylaws of East Liberty Commons Homeowners Association, Inc.....	29
1	Bylaw applicability/definitions	29
1.1	Definitions	29
1.2	Bylaw Applicability	29
2	Association.....	29
2.1	Composition.....	29
2.2	Annual Meeting.....	29
2.3	Special Meeting.....	29

2.4	Place of Meeting.....	30
2.5	Conduct of Meeting.....	30
2.6	Quorum.....	30
2.7	Voting.....	30
2.8	Good Standing	30
2.9	Proxies.....	30
2.10	Mail-in Ballots	31
2.11	Written Consent in Lieu of Vote	31
2.12	Record Date	31
3	Board of Directors	31
3.1	Number and Qualification of Directors	31
3.2	Selection and Term of Directors	31
3.3	Vacancies	31
3.4	Removal of Directors	31
3.5	Organization Meeting	32
3.6	Regular Meetings.....	32
3.7	Special Meetings	32
3.8	Conduct of Meetings.....	32
3.9	Quorum.....	32
3.10	Notice and Waiver of Meeting Notice.....	32
3.11	Action without Meeting	32
3.12	Powers and Duties	33
3.13	Manager	34
3.14	Compensation	34
3.15	Limitation of Liability.....	34
4	Officers	34
4.1	Election and Term of Officers.....	34
4.2	Removal of Officers.....	34
4.3	Offices	34
4.4	Delegation of Duties	35
4.5	Compensation	35
5	Notice.....	35
5.1	Manner of Notice	35
5.2	Waiver of Notice	35
6	Finances.....	36
6.1	Fiscal Year.....	36
6.2	Checks, Agreements, Contracts	36

6.3	Books and Availability of Records	36
7	Amendment to Bylaws.....	36
7.1	Amendments.....	36
7.2	Recording.....	36
8	Miscellaneous	36
8.1	Office.....	36
8.2	Conflicts	36
8.3	Severability	36
8.4	Waiver.....	36
8.5	Captions	37
8.6	Gender, etc.....	37

This Declaration is made on the date executed below by East Liberty Commons, LLC, a Utah limited liability company (“Declarant”).

RECITALS

A. East Liberty Commons is a planned unit development located in Salt Lake City, Salt Lake County, Utah.

B. The Declarant intends to sell to various purchasers the fee title to the individual Lots contained in the Project, subject to the following covenants, conditions, restrictions, easements and limitations herein set forth which are hereby declared to be for the benefit of the whole tract and all of the Project described herein and the owners thereof, their successors and assigns.

C. All Owners, guests, invitees, agents, and residents shall abide by the provisions of this Declaration.

D. These covenants, conditions, restrictions, easements, and limitations shall run with the land described in Exhibit “A” and shall be binding on and burden all parties having or acquiring any right, title, or interest to the land or any part thereof and shall create servient tenements on the land. The covenants, conditions, restrictions, easements, and limitations shall also benefit all parties having or acquiring any right, title, or interest to the land and shall create dominant tenements on the land.

E. The Association may be incorporated as a Utah nonprofit corporation. If incorporated, it shall be entitled to the rights, obligations, and benefits of the Revised Nonprofit Corporation Act (Utah Code §§ 16-6a-101, *et. seq.*) as amended from time to time.

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

1 DEFINITIONS

Capitalized terms used in the Governing Documents (including recitals) have the following meanings:

1.1 Architectural Review Committee

Architectural Review Committee means that committee identified in Section 7.2 of the Declaration.

1.2 Articles

Articles mean the Articles of Incorporation for East Liberty Commons Homeowners Association, Inc., as amended from time to time.

1.3 Association

Association means the East Liberty Commons Homeowners Association, Inc. It is intended that the Association be a Utah non-profit corporation. Failure of the Association to maintain its corporate status will not result in dissolution of the Association. The Association may renew its corporate status, reinstate its corporate status, or incorporate without Owner approval. Any actions taken during any period of un-incorporation shall be binding.

1.4 Board

Board means the Board of Directors as described in this Declaration and the Bylaws. The Board governs the Project and the business and affairs of the Association.

1.5 Bylaws

Bylaws mean the bylaws of the Association, as amended or restated from time to time. The Bylaws are attached to this document as Exhibit "B."

1.6 Common Areas

Common Areas mean any areas shown on the Map as Common Area or open space. The Common Areas may consist of landscaping, irrigation equipment, pavilion, playground equipment, paving, storm water retention, and other improvements. Common areas include any private utility lines and storm water systems that serve the Project as a whole or that service more than one Lot such as sewer main lines and water main lines. Utility lines that service one Lot, such as a water or sewer lateral line, shall be excluded from Common Areas. The Association owns all Common Areas. Common Areas include the sewer line easement recorded on October 9, 1963, as entry number 1952530 in the Salt Lake County Recorder's Office, which grants the owner of the Project an easement to lay, maintain, and repair a sewer line, as shown on the Map, and which shall be held and maintained by the Association.

1.7 Common Expenses

Common Expenses mean all sums spent to administer, maintain, or replace the Common Areas; expenses agreed upon as common expenses by a majority of a quorum of Owners; expenses authorized by the Governing Documents or the Community Association Act as common expenses; and any other expenses necessary for the common benefit of the Owners.

1.8 Community Association Act

Community Association Act shall mean Utah Code §§ 57-8a-1 *et seq.*, as amended or replaced from time to time.

1.9 Declarant

Declarant shall mean East Liberty Commons, LLC, and its successors who take title to a majority of the Lots for the purpose of development or construction of the initial Living Units or are otherwise granted an assignment of the rights as Declarant under this Declaration by the predecessor Declarant.

1.10 Declaration

Declaration means this document, as amended, annexed, supplemented, or restated from time to time.

1.11 Director

Director means a member of the Board.

1.12 Governing Documents

Governing Documents mean the Declaration, Bylaws, Articles of Incorporation, Map, and rules and regulations adopted by the Board.

1.13 Improvements

Improvements means every structure or improvement of any kind. Improvements include without limitation landscaping, dwellings, decks, porches, awnings, fences, garages, carports, driveways, sidewalks, storage or sheds, shelters, exterior material and finish selections, color schemes, exterior paint, roofs, exterior doors, exterior windows, plant selections, or other products of construction efforts on or in respect to the Project (but does not include any exterior antenna or satellite dish, authorized in accordance with the Declaration).

1.14 Living Unit

Living Unit means a structure or portion of a structure which is designed and intended for use and occupancy as a single-family residence, together with all improvements located on the Lot concerned that are used in conjunction such residence.

1.15 Lot

Lot means a separately numbered parcel of property as shown on the Map. Lots shall include the Living Unit and all utility lines and other installations exclusively serving the Lot whether under or over the Common Areas or not.

1.16 Map

Map means the plat map for East Liberty Commons, on file with the Salt Lake County Recorder and any amendments or supplements thereto or any plat maps recorded for additional phases.

1.17 Member

Member means an Owner. If an Owner is not a natural person, the Owner may designate a person in writing to act as its representative. If no representative is designated, then an officer, trustee, director, manager, or member as shown in the entities formative documents shall be its representative.

1.18 Nonprofit Act

Nonprofit Act means Utah Code §§ 16-6a-101 *et seq.*, as amended or replaced from time to time.

1.19 Owner

Owner means the owner of the fee in a Lot as shown in the real property records of Salt Lake County. If a Lot is subject to an executory purchase contract, the contract seller shall be considered the Owner until such time that the sale closes and title transfers to the purchaser. However, the seller and buyer may otherwise agree but must inform the Board in writing of the alternative arrangement.

1.20 Person

Person means an individual, corporation, partnership, association, trustee, or other legal entity.

1.21 Project

Project means East Liberty Commons as shown on the Map and any expansions thereof. The Project includes the land, buildings, improvements and structures, easements, rights, appurtenances, and articles of personal property intended for use in connection therewith. Exhibit "A" contains the legal description for the Project.

1.22 Resident

Resident means any Person living or staying at the Project. Residents include without limitation: Owners, tenants, family members of Owners and tenants, and guests staying more than a week.

1.23 Roadway

Roadway shall mean the right of way and private road called out as Cottam Lane on the Map.

1.24 Turnover Meeting

Turnover Meeting means the meeting described in Section 9.1.

2 SUBMISSION, EXPANSION, AND WITHDRAWAL

2.1 Submission

The Project is submitted to be bound by the Governing Documents, to the provisions of the Community Association Act, and the Association is submitted to the Nonprofit Act. All Owners shall take title subject to the Governing Documents, Community Association Act, and Nonprofit Act. All Residents and other users of the Project shall be subject to the Governing Documents and Community Association Act.

2.2 Declarant Withdrawal

Prior to the Turnover Meeting, the Declarant may withdraw any or all of the property in the Project from the Project. Such withdrawn property shall no longer be subject to this Declaration except for any easements, rights, reservations, exemptions, power or privileges reserved to the Declarant pursuant to this Declaration which shall continue to burden the withdrawn property unless otherwise provided for in the withdrawal. Additionally, any easements (such as utility easements, rights of way, or other similar easements) necessary for the other Lots shall continue for the benefit of any property which is subject to the Declaration. Such withdrawal shall be made by recording an amendment, supplement, or cancellation of this Declaration with the Salt Lake County Recorder's Office, withdrawing the effect of the covenants and restrictions of the Declaration and any other Governing Document from the withdrawn property. Such withdrawn property may be utilized by the Declarant, or any successor, assign or transferee thereof, for any lawful purpose or use.

3 PROPERTY RIGHTS IN LOTS

3.1 Use and Occupancy

Except as otherwise expressly provided in the Governing Documents such as in the case of easements or rights of way, the Owner of a Lot shall be entitled to the exclusive use and benefit of such Lot and Living Unit. Each Lot shall be bound by, and the Owner shall comply with the

Governing Documents for the mutual benefit of the Owners.

3.2 Easements Reserved

In addition to the easements shown on the Map or provided for under this Declaration, the Bylaws, or law, the following easements are hereby granted to and reserved for the benefit of the Owners and the Association:

3.2.1 Right of Entry. The Association and any person authorized by the Association may at any reasonable time, and from time to time at reasonable intervals, enter upon any Lot for the purpose of determining whether or not the Lot is in compliance with the Governing Documents and performing maintenance and corrections of any issues identified. Requests for entry shall be made in advance. Entry shall be made at a time convenient to the Owner, except in the case of an emergency, when such right shall be immediate. No such entry shall be deemed to constitute a trespass or otherwise create any right of action in the Owner of such Lot. The right of entry granted by this subsection is in addition to the Association's enforcement rights.

3.2.2 Easement for Encroachment. If any part of the Common Areas encroaches on a Lot, an easement for the encroachment and for maintenance shall exist. If any part of a Lot encroaches upon the Common Areas or another Lot, an easement for the encroachment and for maintenance shall exist. Such encroachments will not be considered to be encumbrances to the Common Areas or Lots. Encroachment causes include, without limitation, errors in the original construction; errors in the Map; settling, rising, or shifting of the earth; or changes in position caused by good faith mistakes in the repair or reconstruction of the Project.

3.2.3 Utility Easements. The Association shall have an easement over all Lots for the installation, maintenance, and development of utilities and drainage facilities. The easement area of each Lot and all improvements therein shall be maintained continuously by the Owner of the Lot of the Association in accordance with the terms of the Governing Documents, except for those improvements for which a public authority or utility provider is responsible. The Board shall have the authority to grant the easements discussed in this Section to public and private utility providers and to execute any documents necessary to effectuate such an easement.

3.3 Easements Shown on the Map

Lots shall be subject to the easements shown on the Map. For the avoidance of any doubt Cottam Lane shall constitute a right of way in favor of the Owners and Residents and their invitees, guests, and others.

4 PROPERTY AND USE RIGHTS IN COMMON AREA

4.1 Member's Right of Enjoyment

4.1.1 The Project includes Common Areas and the Roadway for the benefit of all owners. Every member of the Association shall have a non-exclusive right and easement for the use, benefit, and enjoyment in and to the Common Area and Roadway, and such nonexclusive right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the restrictions herein set forth.

4.1.2 Subject to the Governing Documents, each Owner, Resident, guest, or invitee is hereby granted and has the right to ingress and egress across the Common Areas and Roadway

necessary for access to his or her Lot. The rights described in this Section are appurtenant to and pass with title to the Lot.

4.1.3 No portion of the Common Area may be used exclusively by any Owner or Owners for personal gardens, storage facilities, or for any other purpose.

4.2 Delegation of Right of Use

Any member of the Association may delegate its rights to the use and enjoyment of the Common Area and Roadway to Residents, all subject to such reasonable rules and regulations which the Association may adopt.

4.3 Compliance with Covenants and Restrictions and Rules and Regulations

Each Owner and Resident shall comply with the covenants and restrictions imposed by this Declaration. Further, each Owner and Resident shall fully and faithfully comply with the rules, regulations, and restrictions as such rules, regulations, and restrictions are from time to time adopted by the Association for the safety, care, maintenance, good order, and cleanliness of the Project.

5 MAINTENANCE

5.1 Association Responsibility

The Association shall improve, develop, supervise, manage, operate, examine, insure, inspect, care for, repair, replace, restore, and maintain the Common Areas and the Roadway.

The Board, after notice and opportunity for hearing, or immediately in the case of an emergency, may assume the maintenance responsibility over a Lot if, in the opinion of the Board, the Owner is unwilling or unable to adequately provide such maintenance. Should the Board exercise its right under this provision, it shall not be liable for trespass or nuisance and shall have the right to levy an Individual Assessment to recover its maintenance costs.

5.2 Owner Responsibility

Except as otherwise provided for in this Declaration or by Association rule, all maintenance, repair, and replacement of the Lots shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in good repair and in accordance with the Governing Documents. Owners shall be responsible to install, repair, replace, and maintain the landscaping on their Lot including any irrigation system necessary for such landscaping. Landscaping shall be kept in a clean and attractive state. The Board may adopt such rules and regulations as it deems fit to ensure that each Lot in the Project is maintained in clean and attractive manner.

6 ASSESSMENTS

6.1 Covenant for Assessment

By accepting a deed or other conveyance, each Owner covenants and agrees to pay the Association all regular assessments, special assessments, supplemental assessments, individual assessments, late penalties, and collection costs (including attorney's fees) whether or not a lawsuit is commenced. No Owner may exempt themselves from liability for assessments by abandonment of their Lot, failure of the Association to maintain the Common Areas, or non-use of the Common Areas. Except for foreclosures, the personal obligation for unpaid assessments, late fees, interest, and collection costs, including attorney fees, shall pass to the successor in title. A successor in title is entitled to a statement from the Association setting forth the

amounts due by the prior owner. The amounts set forth in the statement shall be binding upon the Association. If an Owner loses their Lot to foreclosure or voluntarily conveys it, they shall remain personally liable for unpaid assessments, late fees, interest, and collection costs (including attorney's fees).

6.2 Declarant's Covenant for Assessments

Declarant shall not be obligated to pay assessments. However, during the period that Declarant owns any Lots, it shall provide the difference between the Association's expenses and actual assessment collections. Declarant may provide the difference with money, services, or in kind.

6.3 Annual Budget

The Board shall prepare an annual budget for the Association. The annual budget shall provide for: the maintenance, repair, and replacement of the Common Areas and Roadway; maintenance of other areas required to be maintained by the Association; insurance; all other Common Expenses; the funding of a reserve fund; and the administration, management, and operation of the Association. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect.

6.4 Reserve Account

The Association shall establish a reserve account to fund long-term maintenance and replacement items. The Board shall use reasonable efforts, subject to the Owners' rights under the Community Associations Act, to fund the reserve account. The Board shall not be personally liable for failure to fund the reserve unless gross negligence or intentional misconduct is proven in a court of law.

6.5 Regular Assessment

The Association may collect the regular assessment on an annual basis, semi-annual basis, quarterly basis, or monthly basis. Written notice of the regular assessment amount and payment schedule shall be sent to Owners prior to the beginning of the fiscal year for which the regular assessment will be due. Apart from the initial notice of regular assessment, the Association is not obligated to send periodic invoices for regular assessments. If the Board fails to adjust a regular assessment, the amount of the last regular assessment and payment schedule will continue in effect, whether or not notice is sent.

6.6 Special Assessment

The Association may levy a special assessment for the purpose of defraying in whole or in part the cost of any construction, reconstruction, maintenance, repair, or replacement of the Common Areas, Roadway, or other components of the Project that the Association is responsible for. The Association may levy a special assessment up to 50% of the annual budget without approval from the Owners. If a special assessment exceeds 50% of the annual budget, it must be approved by a majority of a quorum of Owners.

6.7 Supplemental Assessment

If the regular assessments are inadequate to pay the Common Expenses, the Board shall determine the amount of the shortfall. Once the amount of the shortfall is determined, the Board shall adopt a supplemental budget. The Association may levy a supplemental assessment to fund the supplemental budget. The Association may levy a supplemental assessment up to 50% of the original annual budget without approval from the Owners. If a supplemental assessment exceeds 50% of the original annual budget, it must be approved by a majority of a quorum of Owners.

6.8 Individual Assessment

Any expenses attributable to less than all the Lots may be assessed exclusively against the affected Lots. Individual assessments include, without limitation:

6.8.1 Assessments levied against a Lot to reimburse the Association for costs incurred in correcting a violation of the Governing Documents;

6.8.2 Fines, late fees, interest, collection costs (including attorney's fees);

6.8.3 Services provided to a Lot due to an Owner's failure to maintain, for emergency repairs, or to protect the health, safety, and welfare of adjoining Lots and Common Areas;

6.8.4 Reinvestment or transfer fees due at the transfer of a Lot; and

6.8.5 Any charge described as an individual assessment by the Governing Documents.

6.9 Apportionment of Assessments

Regular, special, and supplemental assessments will be apportioned equally among the Lots. Individual assessments shall be apportioned exclusively to the Lots benefitted or affected.

6.10 Nonpayment of Assessment

Assessments not paid within 10 days after the due date established by the Board will be late and subject to interest at 18% per annum on any delinquent balance and a late fee of 5% of the amount of the assessment. Late fees may only be charged once per missed payment.

6.11 Application of Payments

Payments shall be credited first to collection costs (including attorney's fees), then to interest and late fees, then to the oldest assessments, then the most recent assessments.

6.12 Acceleration

If an Owner fails to pay their assessments for 61 days or more, the Board may elect to accelerate the remainder of the Assessments due that year.

6.13 Suspension of Voting Rights

If an Owner has a delinquent assessment balance, the Association may suspend their right to vote.

6.14 Lien for Assessment

All assessments, late fees, interest, and collection costs (including attorney's fees) not timely paid shall be a charge and continuing lien upon each Lot against which the assessment is made. The Association shall file a notice of lien with the county recorder as evidence of nonpayment.

6.15 Enforcement of Lien

Without waiving its right to personally pursue an Owner for unpaid assessments, the Association may foreclose its lien through non-judicial foreclosure, judicial foreclosure, or any other manner permitted by Utah law.

6.16 Termination of Utilities/Access to Recreational Facilities

If an Owner fails to pay their assessments, the Association may terminate utility services paid in common and access to recreational facilities. The Board shall establish procedures for

terminating utilities and access to recreational facilities, which shall comply with the Community Association Act.

6.17 Collection of Rent from Tenant

If an Owner rents their Lot and fails to pay their assessments, the Association may demand that the tenants to pay the Association any rent owed to the Owner. Payment of rent to the Association shall not be a violation of the lease by the tenant. The Board shall establish procedures for collecting rents from tenants, which shall comply with the Community Association Act.

6.18 Appointment of Trustee

The Owners hereby convey and warrant pursuant to Utah Code sections 57-1-20 and 57-8a-302 to a member of the Utah State Bar that may be determined from time to time by the Board, with power of sale, the Lot and all improvements to the Lot for the purpose of securing payment of assessments under the terms of the Declaration.

6.19 Subordination of Lien

A lien for assessments shall be subordinate to a first Mortgage now or hereafter placed upon a Lot. The sale of a Lot pursuant to foreclosure of a first Mortgage shall extinguish the lien for assessments which became due prior to the foreclosure sale. A foreclosure will not relieve the purchaser's obligation to pay six months of assessments, late fees, and penalties.

7 ARCHITECTURAL CONTROL

7.1 Improvements

No Improvement may be commenced, erected, placed, or altered on any Lot until an application and construction plans and specifications, showing the nature, shapes, heights, materials, colors and proposed location of Improvements or changes have been submitted to and approved in writing by the Architectural Review Committee as provided in this Article. It is the intent and purpose of this Declaration to assure a high quality of workmanship and materials, to assure harmony of exterior design with the existing improvements and landscaping, and to ensure a common plans as to the location of Improvements with respect to adjoining Improvements, property lines, and finished grade elevations.

7.2 Architectural Review Committee

7.2.1 During Declarant Control. The initial Architectural Review Committee ("ARC") shall be comprised of the Declarant or any persons or entities appointed by the Declarant as it determines. The ARC may be comprised of one or more persons. After the Turnover Meeting, or at an earlier date if Declarant so elects, the ARC shall be organized according to the provisions of Section 7.2.2.

7.2.2 Owner Controlled ARC. After the Declarant has relinquished control of the ARC pursuant to Section 7.2.1, the ARC shall be organized according to this Section. Unless delegated to a separate committee of Owners, the Board of Directors serves as the Architectural Review Committee. The members of the ARC are referred to as the "ARC Members." If Board Members serve as the ARC Members, each Board Member's term as an ARC Member runs concurrently with the individual Board Member's term. However, the Board may elect to establish the ARC as a separate committee. In such an event, the ARC will consist of no fewer than three (3) members. The term of office for each ARC Member, appointed by the Board, runs

for one (1) year unless lengthened or shortened by the Board of Directors at the time of appointment. The Board may appoint any or all of the ARC Members. There is no requirement for non-Board Members to serve on the ARC. The ARC's decisions remain subject to the approval of the Board and the Board may establish the extent of the ARC's authority at the time the Board establishes the ARC with non-Board Members in the same manner that the Board may establish committees as set forth in the Bylaws.

7.3 Architectural Standards and Guidelines

The Board is granted the authority to adopt architectural standards and guidelines (the "Standards") that control all Improvements in the Project, including on the individual Lots. The Standards may include any procedures and specific requirements that Owners and others must meet in order to submit an application and receive approval for any Improvement in the Project. The Standards may include restrictions on specific types of construction, materials, colors, setbacks or locations, and any other matter concerning Improvements.

7.4 Government Approvals

Nothing in the Governing Documents shall limit the authority of any city or other governmental authority to require an Owner or other person to comply with the requirements of its laws and ordinances. The Standard's shall be in addition to any requirements imposed by government entities. All Improvements shall comply with all laws and ordinances as well as the Standards.

7.5 Action by ARC

A majority of the members of the ARC have the power to act on behalf of the ARC without the necessity of a meeting. All decisions of the ARC must be in writing setting forth the action taken by the ARC member consenting thereto. The method of voting and internal review may be set by the Board.

7.6 Duties

The ARC shall consider and act upon the proposals or plans submitted pursuant to this Article and the Standards.

7.7 ARC Decisions

The ARC will render its approval or denial decision with respect to the proposal within thirty (30) business days after it has received all materials required by it with respect to the application. All decisions shall be in writing. If the ARC fails to render its decision of approval or denial in writing within thirty (30) business days of receiving all materials required by it with respect to the proposal, the application is deemed to be approved.

In the event the Board Members do not constitute all of the ARC Members, the Board may require the ARC to submit its decision to the Board prior to submitting it to the requesting person for Board review and approval. The ARC and the Board shall render its decision of approval or denial within thirty (30) business days of receiving all materials required by it with respect to the proposal.

7.8 ARC Discretion

The ARC may withhold approval of any proposal if the ARC finds the proposal would be inappropriate for the particular Lot or incompatible with the Standards or the Project. Considerations such as shape, size, color, design, height, solar access, or other effects on the

enjoyment of other Lots or Common Area, and any other factors which the ARC reasonably believes to be relevant, may be taken into consideration by the ARC in determining whether or not to approve any proposal.

7.9 Waiver, Precedent, Estoppel

Approval or disapproval by the ARC of any proposal, or any failure to enforce the Standards or provisions of the Governing Documents dealing with Improvements, shall not be deemed to constitute precedent, waiver, or estoppel impairing the Association's or ARC's right to withhold approval or grant approval as to any similar matter thereafter proposed or submitted to it.

7.10 Appeal

Any Owner adversely impacted by an action of the ARC may appeal such action to the Board of Directors. If, however, the ARC's duties are being carried out by the Board of Directors, then no such right to appeal exists for the person submitting the proposal, but another Owner may still appeal the decision to the Board. Appeals must be submitted within ten (10) days of the approval or rejection of the proposal. All appeals and hearings will be conducted in accordance with procedures set forth by the Board by resolution or in the rules and regulations.

7.11 Effective Period of Consent

The ARC's approval of any proposal is automatically revoked within three (3) months after issuance unless construction or other work relating to the proposal has been commenced or the Owner or other person has applied for and received an extension of time from the ARC.

7.12 Determination and Notice of Noncompliance

7.12.1 Inspection. The ARC, the Board, or any person authorized by the Board, may inspect, from time to time, all work performed and determine whether it is in substantial compliance with the approval granted.

7.12.2 Notice of Noncompliance. If the ARC or the Board finds that the work was not performed in substantial conformity with the approval granted, or if the ARC or the Board finds that the approval required was not obtained, the ARC or the Board may notify the Owner in writing of the noncompliance. The notice of noncompliance must specify the particulars of noncompliance and request the Owner to remedy the noncompliance by a specific date.

7.13 Noncompliance

Any Improvement done in violation of the Governing Documents or the Standards is deemed to be in noncompliance. Upon receipt of a notice of noncompliance, Owners, at their own cost and expense, must take such action to remove such nonconforming Improvement and restore the Lot to substantially the same condition as existed prior to the non-conforming construction, alteration, or other work. Should an Owner fail to remove and restore as required hereunder, the ARC, the Board of Directors, or its designee, has the right to enter the Lot and remove the violation and restore the Lot to substantially the same condition as existed prior to the construction, alteration or other work, without being deemed to be a trespasser. All costs incurred by the Association, including attorney fees, will be an Individual Assessment against the Owner.

7.14 Liability

Neither the Board of Directors, the ARC, nor any member thereof is liable to any Owner, Resident, occupant, builder, or other person for any damage, loss, or prejudice suffered or

claimed on account of any action or failure to act of the ARC or the Board provided only that the ARC Members or Board Members have, in accordance with the actual knowledge possessed by them, acted in good faith. The ARC and the Board are not responsible for determining compliance with structural and building codes, solar ordinances, zoning codes, safety requirements, or other governmental regulations, all of which are the responsibility of the Owner.

7.15 Fees

The Association may charge a fee for the actual costs incurred for reviewing and approving an application. Costs include those incurred by the Association to retain architects, surveyors, attorneys, engineers, landscape architects, and other consultants to advise the ARC or the Board concerning any aspect of the application or compliance with any appropriate architectural criteria or standards. Such fee is to be collectible as an Individual Assessment pursuant to this Declaration.

7.16 Variance

The Board may grant variances to the Standards. Variances may only be granted if the Improvements will be reasonably similar in design and appearance to the remainder of the Project. Procedures for variances will be established by Board resolution.

7.17 Estoppel Certificate

Within fifteen (15) business days after written request is delivered to the Board by an Owner, and upon payment to the Association of a reasonable fee fixed by the Board to cover costs, the Board may provide such Owner with a certificate executed by the chairman, or other authorized Member of the Board certifying with respect to any Lot owned by the Owner, that as of the date thereof either:

- (a) All improvements made or done upon or within such Lot by the Owner that are subject to the requirements of this Article comply with the Declaration and the Bylaws; or
- (b) Such improvements do not comply, in which event the certificate also identifies the non-complying improvements and sets forth with particularity the nature of such noncompliance.

The Owner, Owner's heirs, devisees, successors, and assigns are entitled to rely on the certificate with respect to the matters set forth. The certificate is conclusive as between and among the Board, the Association and all Owners and such persons deriving any interest through any of them.

8 RESTRICTIONS ON USE

8.1 Use of Lots - Residential Use

Each of the Lots in the Project is limited to single-family, residential use only. The use is further defined by Salt Lake City zoning code. Each Lot and Owner is subject to the uses and restrictions imposed by such restrictions (including any parking restrictions).

8.2 No Obstruction of Common Areas or Roadway

There shall be no obstructions of the Common Areas or Roadway by the Owners, Residents, and their tenants, guests, or invitees without the prior written consent of the Board. The Board may

by Rules and Regulations prohibit or limit the use of the Common Areas and Roadway as may be reasonably necessary for protecting the interests of all the Owners or protecting the Project.

Nothing shall be kept or stored on any part of the Common Areas without the prior written consent of the Board, except as specifically provided herein. Nothing shall be altered on, constructed in or removed from the Common Areas or Roadway except upon the prior written consent of the Board.

8.3 Cancellation of Insurance, Illegal Activity

Nothing shall be done or kept in the Project or any part thereof that would result in the cancellation of the insurance on the Project or any part thereof, or increase the rate of the insurance on the Project or any part thereof over what the Board, but for such activity, would pay, without the prior written consent of the Board.

Nothing shall be done or kept in any Lot or other portion of the Project that would be a violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Areas or any part thereof shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Board and the Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees.

8.4 Nuisances

No Owner or Resident shall create, maintain, or permit a nuisance in, on, or about the Project. For purposes of this section a "nuisance" includes behavior which annoys, disturbs, or interferes with other Residents and interferes with their right to the quiet and peaceful enjoyment of their property. A nuisance includes but is not limited to the following:

8.4.1 The development of any unclean, unhealthy, unsightly, or unkempt condition on, in, or about a Lot or any other portion of the Project;

8.4.2 The storage of any item, property, or thing that will cause any Lot or any other portion of the Project to appear to be in an unclean or untidy condition or that will be noxious to the senses.

8.4.3 The accumulation of rubbish, unsightly debris, garbage, equipment, or other things or materials so as to constitute an eyesore as reasonably determined by the Board or the Association;

8.4.4 The storage of any substance, thing, or material upon any Lot or other portion of the Project that will emit any foul, unpleasant, or noxious odors, or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the other Residents at the Project;

8.4.5 The creation or maintenance of any noxious or offensive condition or activity in or about any Lot or other portion of the Project;

8.4.6 Actions or activities tending to cause embarrassment, discomfort, annoyance, distress, or a disturbance to any other Resident and their guests or invites, particularly if the police, sheriff, or other law enforcement officer must be called to restore order;

8.4.7 Maintaining any plants, animals, devices, items, instruments, equipment,

machinery, fixtures, or things of any sort whose activities or existence in any way is illegal, noxious, dangerous, unsightly, unpleasant, or of a nature that diminishes or destroys the enjoyment of the Project by other Residents and their guests or invites;

8.4.8 Excessive noise in, on, or about any Lot or other portion of the Project, especially after 10:00 p.m. and before 7:00 a.m.;

8.4.9 Excessive traffic in, on, or about any Lot or other portion of the Project, especially after 10:00 p.m. and before 7:00 a.m.;

8.4.10 Allowing a pet to be unleashed while outside of the Living Unit or fenced portion of the Lot;

8.4.11 Continuous barking, meowing, or other animal noises;

8.4.12 Allowing a pet to urinate or defecate on another Lot or other portion of the Project, or failing to clean up immediately any feces deposited by a pet on another Lot or other portion of the Project.

8.5 Rules and Regulations

No Owner or Resident shall violate the Rules and Regulations for the use of the Lots and of the other portions of the Project as adopted from time to time by the Board. An Owner shall be responsible to advise their guests and invitees about the rules and shall be responsible for their guests' and invitees' compliance with the rules and regulations.

8.6 Construction and Alterations

Except for initial construction and landscaping performed by Declarant or its agents and contractors, no improvements, alterations, repairs, excavation, or other work which in any way alters the exterior appearance of the Project or the improvements located thereon shall be made without the prior approval of the Board. The Board may impose architectural guidelines and No alterations to the exterior of a Living Unit may be performed without the prior approval of the Board and the appropriate governmental entity. No building, fence, wall, or other structure shall be erected, maintained, improved, altered, made or done (including choice of exterior color scheme and building materials) without the prior written approval of the Board.

8.7 Window Coverings and Signs

The Board, by rule, may require that certain colors and types of window covering be used, and may place restrictions on the time and place of any signs on a Lot. No signs shall be erected or maintained in the Common Areas without the prior written consent of the Board.

8.8 Animals

The Board shall have the express authority to establish rules and regulations that restrict and govern the keeping of any animal in the Project. If a pet owner violates any of the animal rules and regulations, the Board shall have the express authority to issue citations or levy fines and assessments, and collect these by judgment, lien, or foreclosure. The Board may also require that the Owner or Resident remove their animal from the Project for violating the rules and regulations or prohibit animals in general.

8.9 Storage and Parking of Vehicles

The driving, parking, standing and storing of motor vehicles in, on, or about the Project shall be subject to the following:

8.9.1 The parking rules and regulations adopted by the Board from time to time which may provide for fines and other enforcement methods.

8.9.2 No recreational, commercial, or oversized vehicles shall be allowed within the Project unless said vehicle or trailer is kept at all times within the garage and the garage door is closed, or for purposes of loading or unloading passengers or supplies (for a period of time up to 24 hours).

8.9.3 No motor vehicle or trailer, including but not limited to any car, automobile, truck, van, or any other transportation device of any kind may be parked or stationed in such a manner so as to block access to any Lot or parking space or to create an obstacle.

8.9.4 No resident shall repair or restore any vehicle of any kind in or on a Lot (outside the garage) or the Common Area, except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.

8.9.5 No garage may be altered in such a manner that the number of motor vehicles which may reasonably be parked therein after the alteration is less than the number of motor vehicles that could have been reasonably parked in the garage as originally designed and constructed.

Vehicles parked in violation of this Declaration or the rules and regulations may be impounded or towed without further notice at the Owner's sole expense.

8.10 Aerials, Antennas, and Satellite Dishes

Aerials, antennas, and satellite dishes larger than one meter in diameter are prohibited. Aerials, antennas, and satellite dishes may not be installed on Common Areas. One antenna or satellite dish smaller than one meter in diameter may be installed within the Lot. The Association may create policies to create a hierarchy of preferred installation locations to protect the aesthetics of the Project. The hierarchy of preferred installation locations may not interfere with reception.

8.11 Timeshares

Timeshares and time-sharing of Living Units within the Project is prohibited, and under no circumstances shall any Lot be owned or used for time sharing, including but not limited to a "Timeshare Interest" as that term is defined in Utah Code section 57-19-2, as amended.

8.12 Temporary Structures, etc.

No structure of a temporary character, trailer, camper, tent, shack, garage, or other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently, unless first approved in writing by the Board.

8.13 Repair of Buildings

No improvement upon any Lot shall be permitted to fall into disrepair, and each such improvement shall be at all times be kept in good condition and repair and adequately painted or otherwise finished.

8.14 Subdivision of Lots

No Lot shall be further subdivided or separated into smaller Lots or parcels by any Owner, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner without the prior written approval of the Board. No Lot may be converted into a condominium or cooperative or other similar type of entity without the prior written approval of the Board. No

further covenants, conditions, restrictions, or easements shall be recorded against any Lot without the written consent of the Board being evidenced on the recorded instrument containing such covenant, condition, restriction, or easement and without such approval such document shall be null and void. No applications for rezoning, variances, or use permits shall be filed without the written approval of the Board.

9 MEMBERSHIP AND ASSOCIATION

9.1 Membership

Every Owner is a Member of the Association. Membership in the Association is mandatory, is appurtenant to the Lot, and shall not be separated from the Lot.

9.2 Voting Rights

Voting is governed by the Bylaws.

9.3 Status and Authority of Board

The Board is the governing body of the Association. It is obligated to manage, operate, and maintain the Project and to enforce the Governing Documents. The Board has exclusive authority to act in the Association's name. Any action taken by the Board on behalf of the Association will be deemed to be done in the Association's name. The rights and powers of the Board are governed by the Bylaws.

9.4 Composition and Selection of Board

The Bylaws govern how the Board is established and selected.

9.5 Adoption of Bylaws

The Association has adopted Bylaws which are being recorded simultaneously with this Declaration.

10 DECLARANT RIGHTS

10.1 Administrative Control of Association

Declarant shall assume full administrative control of the Association through an appointed interim Board that shall serve until the Turnover Meeting.

The Turnover Meeting shall be held at the Declarant's option and sole discretion but shall not be held later than one year from the date the last Lot to be developed upon the Project is sold to a person that does not qualify as a successor in interest to or assignee of the Declarant.

Declarant may elect to relinquish control of the Association at an earlier time by written notice to the Owners and the Turnover Meeting shall be held within ninety days of such notice.

10.2 Other Rights

In addition to any other rights under the Governing Documents, as long as Declarant owns at least one Lot within the Property, the Declarant shall have the following rights:

10.2.1 Sales Office and Model. Shall have the right to maintain a sales office and model on one or more of the Lots which Declarant owns. Declarant and prospective purchasers and their

agents shall have the right to use and occupy the sales office and models during reasonable hours any day of the week.

10.2.2 "For Sale Signs." May maintain a reasonable number of "For Sale" signs, the size of which may be determined by Declarant, at reasonable locations on the Project, including without limitation, the Common Areas.

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

10.3 Easements Reserved to Declarant

The Declarant reserves to itself and its successors and assigns the following rights and easements:

10.3.1 Non-exclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Map as a right of way, public utility easement, or otherwise designated as an easement area over any road or Common Area on the Project, and over those strips of land running along the front, rear, side and other Lot lines of each Lot shown on the Map.

10.3.2 An easement on any portion of the Project for the installation, construction, maintenance, reconstruction, and repair of public and private utilities to serve the Project and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Lot or Common Area.

10.3.3 An easement to enter upon the Common Areas for such purposes as making openings and excavations thereon, which openings and excavations shall be restored in a reasonable period of time, and for such alterations of the contour of the land as may be necessary or desirable to affect such purposes.

10.3.4 A non-exclusive easement and right-of-way in, through, over, and across the Project for the purpose of the storage of building supplies and materials, and for all other purposes reasonably related to the completion of construction and development of the project and the provision of utility services and related services and facilities.

10.3.5 The right to grant easements, rights-of-way, and licenses to any person or municipality in, over, through, or upon any portion of the Project, including Lots, to install and maintain any utility or to grant such other licenses or permits as the Declarant may deem necessary for the improvement of the Project.

10.3.6 The right to dedicate all of said roads, streets, alleys, rights of way, or easements as shown on the Map. No road, street, avenue, alley, right of way, or easement shall be laid out or constructed through or across any Lot or Lots in the Project except as set forth in this Declaration, or as laid down and shown on the Map, without the prior written approval of the Board.

10.3.7 The right at or after the time of grading of any street, sidewalk, or other improvement and any part thereof to enter upon any abutting Lot and grade a portion of such Lot adjacent to such improvement, provided such grading does not materially interfere with the use

or occupancy of any Living Unit, but Declarant shall not be under any obligation or duty to do such grading or to maintain any slope.

10.3.8 The additional right, notwithstanding any other provision of the Declaration, to use any and all portions of the Project other than those Lots conveyed to Owners, for any purposes until the full and final completion of construction of the Project.

The Declarant will take reasonable steps to avoid unduly interfering with the beneficial use of the Lots by Owners.

11 COMPLIANCE AND ENFORCEMENT

11.1 Compliance

Each Owner or Resident of a Lot and their guests and invitees shall comply with the provisions of the Governing Documents and any applicable law. Failure to comply therewith shall be grounds for an action or suit maintainable by the Association or an aggrieved Owner.

11.2 Remedies

Violation of any provisions of the Governing Documents, or of any decision of the Association made pursuant to such documents, shall give the Board acting on behalf of the Association the right, in addition to any other rights set forth in the Governing Documents or under law, to do any or all of the following after giving notice to the non-complying Owner:

11.2.1 To enter the Lot which or as to which such violation exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing, or condition that may exist contrary to the intent and meaning of such provisions, and the Board shall not thereby be deemed guilty of any manner of trespass, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished. Costs and attorney's fees shall be an Individual Assessment;

11.2.2 To enjoin, abate, or remedy such thing or condition by appropriate legal proceeding;

11.2.3 To levy reasonable fines pursuant to a schedule of fines adopted by resolution of the Board;

11.2.4 To terminate the right to receive utility services paid for out of assessments, if any, or to terminate the right of access to and use of recreational and service facilities of the Association until the violation has been corrected; or

11.2.5 To suspend the Owner's voting rights and their right to use the Common Area; or

11.2.6 Bring suit or action against the person on behalf of the Association and other Owners to enforce the Governing Documents. Costs and attorney's fees shall be an Individual Assessment.

11.3 Action by Owners

Subject to any limitation imposed under the Governing Documents, an aggrieved Owner may bring an action against another Owner, person, or the Association to recover damages or to enjoin, abate, or remedy any violation of the Governing Documents by appropriate legal

proceedings.

11.4 Injunctive Relief

Nothing in this Section shall prevent an Owner, the Association, or other interested party from resorting to a court of competent jurisdiction in those instances where injunctive relief may be appropriate.

11.5 Hearing

The Board shall, by resolution, promulgate procedures for hearings. When a hearing is requested or required, the hearing shall be conducted in accordance with the Board's resolution on hearings.

12 INSURANCE

12.1 Types of Insurance Maintained by the Association

The Association shall maintain the following insurance:

12.1.1 Property and liability insurance for the Project as required by Part 4 of the Community Association Act as amended or replaced from time to time; and

12.1.2 Property and liability insurance for the Common Areas and Roadway in an amount determined by the Board.

The Association may maintain any additional insurance that the Board determines is reasonably necessary including directors and officers insurance and dishonest acts insurance. The Board may adopt insurance rules and policies to maintain the insurability of the Project, keep the premiums reasonable, and enforce responsibilities of the Owners.

12.2 Insurance Company

The Association shall use an insurance company knowledgeable with community association insurance and that is licensed in Utah.

12.3 Premium as Common Expense

The premiums for the Association's insurance policies shall be a Common Expense.

12.4 Insurance by Owner

Owners shall maintain personal liability and property insurance for their Living Units and Lots in an amount reasonably determined by the Board or, in the absence of Board directive, in an amount reasonably determined by the Owner.

12.5 Payment of Deductible

The deductible on a claim made against an Association policy shall be allocated amongst the parties to the loss as described in Part 4 of the Community Association Act as amended or replaced from time to time.

12.6 Right to Adjust Claims

The Association has the right and authority to adjust claims.

12.7 Damage to the Project/Insurance Proceeds

If the Project is damaged or destroyed, the Association shall follow Part 4 of the Community Association Act as amended or replaced from time to time to determine whether to rebuild and how to use insurance proceeds.

13 AMENDMENT AND DURATION

13.1 Amendments

13.1.1 Approval Required. Except as otherwise provided in this Declaration, this Declaration may be amended by approval of Owners holding sixty-seven percent (67%) of the voting rights of the Association.

13.1.2 Execution and Recordation. An amendment shall not be effective until the amendment is certified by the president and secretary of the Association as being adopted in accordance with this Declaration is acknowledged and is recorded in the Salt Lake County Recorder's Office, Utah.

13.1.3 Declarant's Right to Amend. Notwithstanding anything in this Declaration, the written consent of the Declarant is required to amend this Declaration or the Map any time before the Turnover Meeting. As long as Declarant owns any Lot, the Declarant shall have the unilateral right to amend the Declaration.

14 MISCELLANEOUS PROVISIONS

14.1 Professional Management

The Association may be managed by a professional management company. The Board may select the professional management company using criteria set by the Board and complying with Utah law.

14.2 Invalidity; Number; Captions

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

14.3 Joint Owners

In any case in which two or more persons share the ownership of any Lot, regardless of the form of ownership, the responsibility of such persons to comply with this Declaration shall be a joint and several responsibility and the act or consent of any one or more of such persons shall constitute the act or consent of the entire ownership interest; provided, however, that in the event such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Board, and the vote or right of consent involved shall then be disregarded completely in determining the proportion of votes or consents given with respect to such matter in accordance with the Bylaws.

14.4 Lessees and Other Invitees

Lessees, invitees, contractors, family members and other persons entering the Project under rights derived from an Owner shall comply with all of the provisions of the Governing Documents restricting or regulating the Owner's use, improvement, or enjoyment of such Owner's Lot and other areas within the Project. The Owner shall be responsible for obtaining such compliance and shall be liable for any failure of compliance by such persons in the same manner and to the same extent as if the failure had been committed by the Owner. In the event that an Owner fails to take appropriate action against a tenant for failing to comply with the provisions of the Governing Documents, the Association shall have the right to take such action, including eviction, and to charge the Owner for its costs of taking action, including attorney fees.

14.5 Covenants Run with the Land

The Declaration contains covenants which run with the land and create equitable servitudes. The Declaration shall be binding upon and inure to the benefit of the Association, all parties who acquire any interest in or occupy a Lot or any part of the Project, and their heirs, successors, assigns, grantees, devisees, personal representatives, guests, and invitees. All interests in the Lots shall be subject to the Governing Documents. By acquiring any interest in a Lot or occupying such Lot, each Owner or Resident agrees to be bound by the Governing Documents.

14.6 Waiver, Precedent and Estoppel

No restriction, condition, obligation, or provision contained in Governing Documents shall be deemed to have been abrogated or waived by the Association or any Owner by reason of any failure to enforce the same, irrespective of the number of violations or breaches thereof which may occur and any failure to enforce the same shall not be deemed to constitute precedent or estoppel impairing the right of the Association or Owner as to any similar matter. The Association's rights and remedies hereunder may only be waived in writing, approved and signed by the Board.

14.7 Notice of Sale, Mortgage, Rental, or Lease

Immediately upon the sale, mortgage, rental, or lease of any Lot, the Owner shall promptly inform the secretary or manager of the name and address of said grantee, vendee, mortgagee, lessee, or tenant.

14.8 Taxes on Lots

Each Owner will pay all taxes which may be assessed against their Lot.

14.9 Service of Process

The registered agent of the Association will be the person named in the corporate records on file with the Utah State Department of Commerce.

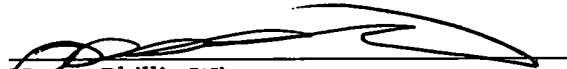
If the corporate status of the Association expires, the president shall be the successor agent. The name and address of the president shall be kept with the Association's records at its principal place of business.

[Signature on Next Page]

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

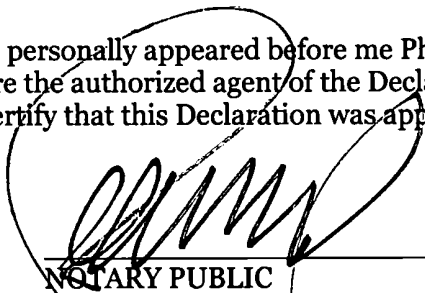
DATED: August 10, 2020

DECLARANT:
East Liberty Commons, LLC


Name: Phillip Winston
Its: Manager

STATE OF UTAH)
County of Salt Lake :SS.

On this 10 day of August, 2020, personally appeared before me Phillip Winston who being by me duly sworn, did say that they are the authorized agent of the Declarant authorized to execute this Declaration and did certify that this Declaration was approved by Declarant's members.



NOTARY PUBLIC

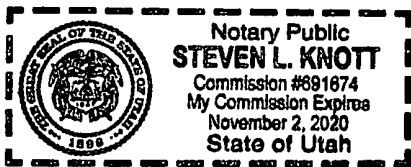


Exhibit A

Legal Description

BEGINNING AT THE SOUTHEAST CORNER OF LOT 14, BLOCK 17, FIVE ACRE PLAT "A" BIG FIELD SURVEY, SAID POINT ALSO BEING SOUTH 929.69 FEET AND WEST 31.00 FEET FROM THE STREET MONUMENT IN THE INTERSECTION OF 900 SOUTH STREET AND 1100 EAST STREET; AND RUNNING THENCE WEST 115.50 FEET; THENCE SOUTH 82.25 FEET; THENCE WEST 4.50 FEET; THENCE SOUTH 68.87 FEET; THENCE WEST 154.81 FEET; THENCE NORTH 144.00 FEET; THENCE EAST 22.00 FEET; THENCE NORTH 21°08'14" EAST 42.12 FEET; THENCE EAST 0.37 FEET; THENCE NORTH 36.44 FEET; THENCE EAST 41.25 FEET; THENCE NORTH 2.00 FEET; THENCE EAST 49.00 FEET; THENCE SOUTH 2.00 FEET; THENCE EAST 12.00 FEET; THENCE SOUTH 36.44 FEET; THENCE EAST 135.00 FEET TO A POINT ON THE WESTERLY RIGHT OF LINE OF 1100 EAST STREET; THENCE SOUTH 32.17 FEET ALONG SAID RIGHT OF WAY TO THE POINT OF BEGINNING.

CONTAINING 35,268 SQ. FT. OR 0.810 ACRES, MORE OR LESS

Exhibit B

Bylaws of East Liberty Commons Homeowners Association, Inc.

1 BYLAW APPLICABILITY/DEFINITIONS

1.1 Definitions

The capitalized terms used in the Bylaws shall have the same meaning given to them in the Declaration, unless otherwise specifically stated.

1.2 Bylaw Applicability

The provisions of these Bylaws are binding upon the Association and the Owners. All present and future Owners shall be subject to these Bylaws, as amended from time to time. Acquisition of any Lot constitutes an acknowledgment that the Owner has agreed to and ratified these Bylaws and will comply with them.

2 ASSOCIATION

2.1 Composition

All of the Owners acting as a group in accordance with the Governing Documents shall constitute the Association. Except for matters specifically reserved for a vote of the Owners, the Board, on behalf of the Owners, shall administer the Association's affairs.

2.2 Annual Meeting

Annual meetings shall be held once a year. The Board shall determine the date, time, and place of the annual meeting. The Association shall send notice of annual meetings at least 10 days but not more than 60 days in advance of the meeting or as otherwise required by the Community Association Act and the Nonprofit Act. At the annual meeting the Association shall conduct the following business in any order the Board sees fit:

- 2.2.1 Roll call and verification of quorum;
- 2.2.2 Approval of minutes from preceding annual meeting;
- 2.2.3 Reports of officers;
- 2.2.4 Special committee reports;
- 2.2.5 Election of Directors;
- 2.2.6 Review of reserve analysis, vote on funding reserves;
- 2.2.7 Unfinished business from preceding annual meeting; and
- 2.2.8 New business.

2.3 Special Meeting

Special meetings may be held at any time for any purpose. A special meeting may be called by a majority of the Directors or upon petition of at least 20% of the Owners in good standing. The Association shall schedule and send notice of a special meeting within 30 days of request. The

notice of a special meeting shall state the date, time, place, and purpose of the meeting. The Association shall send notice of a special meeting at least 10 days in advance of the meeting. No business may be transacted at a special meeting except as stated in the notice.

2.4 Place of Meeting

Meetings shall be held at a place designated by the Board and stated in the notice of meeting. Meetings shall be held in Salt Lake County.

2.5 Conduct of Meeting

The President shall preside over all meeting of the Association. The Secretary shall keep the minutes of the meeting and take record of all resolutions adopted at the meeting.

2.6 Quorum

A quorum shall be the Owners present in person or by proxy at a meeting.

2.7 Voting

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

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

2.7.2 **Class B.** The Class B Member shall be the Declarant. The Class B Member shall be entitled to 2 votes for every Lot owned by Declarant plus 2 votes for every class A vote. The Class B membership shall automatically cease and be converted to a Class A membership upon the sale of the last Lot to a person that does not qualify as a successor Declarant under the Declaration.

If a Lot is owned by more than one Person and multiple Owners are present at a meeting, the vote appertaining to that Lot shall be cast by agreement of a majority of the Owners. If a Lot is owned by more than one Person and a single Owner is present at a meeting, the vote appertaining to that Lot shall be cast by the Owner present. The Association may conclusively presume the consent of all a Lot's Owners when a vote is cast by a Lot with multiple Owners.

Except where a greater number is required by the Governing Documents or the Nonprofit Act and elections of Directors, any decision requiring Owner consent shall be passed by majority vote of a quorum.

2.8 Good Standing

An Owner shall be in good standing if he or she has paid all assessments levied against his or her Lot, including late fees, interest, fines, collection costs, and attorney fees. An Owner must have paid in full at least three days prior to the meeting or action.

2.9 Proxies

An Owner in good standing may vote or otherwise act by proxy. An Owner may appoint a proxy by signing a proxy appointment form. The proxy appointment form may be submitted to the Association in person, by mail, or electronically. The proxy appointment form must name a proxy, be dated, and signed by the Owner. Any proxy appointment form that does not contain a proxies name, date, or signature shall be void. A proxy appointment form is valid until revoked by the Owner's attendance at a meeting, a signed and dated revocation is delivered to the

Association, a subsequent proxy is appointed, notice of death or incapacity of the Owner is given to the Association, or the passage of 11 months.

2.10 Mail-in Ballots

Any action requiring a vote of the Owners, except election of Directors, may be taken by mail-in ballots. Action by mail-in ballot shall comply with the procedures set forth in Nonprofit Act, as amended from time to time. A combination of mail-in ballots, ballots collected electronically, and ballots cast in person may be used.

2.11 Written Consent in Lieu of Vote

Any action requiring a vote of the Owners, except election of Directors, may be taken by written consent. Action by written consent shall comply with the procedures set forth in the Nonprofit Act, as amended from time to time. Written consents may be collected electronically.

2.12 Record Date

The record date for determining which people are entitled to vote shall be the date notice of the meeting or action is sent. The Board may change the record date prior to sending notice of the action. The Owners shown on the records of the Association on the record date shall be the people entitled to vote on an action.

3 BOARD OF DIRECTORS

3.1 Number and Qualification of Directors

There shall be one or three Directors, as determined by the Board. Except for Directors appointed by Declarant, Directors must be Members in good standing.

3.2 Selection and Term of Directors

After the Turnover Meeting, Directors shall serve for a term of two years and shall serve until their successors have been elected. There is no limit on the number of terms an Owner may serve as a Director. If there is more than one Director, the Directors' terms shall be staggered as follows: (i) two Directors shall be elected in years ending with an even number; and (ii) one Director shall be elected in years ending with an odd number. At the initial election of the Directors, the newly elected Directors shall determine their terms in order to create staggered terms in accordance with this Section.

3.3 Vacancies

After the Turnover Meeting, Director vacancies, for any reason other than removal by vote of the Association, shall be filled by vote of a majority of the remaining Directors. The Board shall conduct a special meeting for the purpose of filling the vacancy. The meeting shall be valid even if a quorum is not present. Each replacement Director shall serve until the next annual Owners' meeting, then the vacancy shall be filled by vote of the Owners. The replacement Director elected by the Owners shall serve the remaining term of the replaced Director.

3.4 Removal of Directors

After the Turnover Meeting, a Director may be removed with or without cause by vote of a majority of a quorum of Owners. If it is proposed that a Director be removed, the Association or person calling for the meeting, if other than the Association and if acting in accordance with Governing Documents, shall give the Director and Owners at least 15 day written notice of the meeting and the purpose of the meeting. The Director shall be given an opportunity to be heard at the meeting prior to the vote to remove him or her. At any meeting where a Director is

removed by the Owners, the Owners must vote to replace the Director. The replacement will serve the remaining term of the removed Director.

After the Turnover Meeting, any Director who allows his or her assessments to become more than ninety days past due may be removed and replaced by vote of a majority of the remaining Board. The Board shall give the Director ten day written notice to cure the default prior to voting to remove the Director.

3.5 Organization Meeting

The Directors shall hold a meeting following the annual owners meeting for the purpose of electing officers. Notice of the organization meeting shall be given verbally at the annual meeting. The organization meeting shall be conducted at the next regular meeting of the Board or may be conducted at a special meeting.

3.6 Regular Meetings

The Board shall hold regular meetings. The Board shall determine the frequency, times, and locations of regular meetings. However, the Board shall conduct at least two regular meetings per year. Notice of regular meetings shall be given to each Director at least three days prior to the meeting.

3.7 Special Meetings

A Director may call a special meeting of the Board. Notice shall be given at least three days prior to the meeting. Notice shall state the time, place, and purpose of the meeting.

3.8 Conduct of Meetings

The President shall preside over all meetings of the Board. The Secretary shall take minutes of the Board meetings and shall make record of all resolutions.

3.9 Quorum

A majority of the Board shall constitute a quorum. A quorum shall be required to conduct business at a meeting. If less than a quorum is present at a meeting, the majority of those present may adjourn the meeting until such time as a quorum is present. Once established, a quorum will be present even if Directors leave. Directors may attend a meeting telephonically.

3.10 Notice and Waiver of Meeting Notice

Notice to Directors may be personally delivered, mailed, or delivered by any available electronic mean, including, without limitation: text, email, fax, or posting on the website. Directors may waive notice of meetings in writing. A waiver shall be deemed equivalent to notice. Attendance of a Director at a meeting will be considered a waiver of notice, unless the Director attends to dispute notice. If all Directors are present at a meeting, notice of the meeting is waived and any business may be conducted.

3.11 Action without Meeting

Any action by the Board may be taken without a meeting if all the Directors consent to the action.

Additionally, if not all of the Directors consent to the action, an action may be submitted to a written vote either for, against, or abstaining from the action. The Director seeking for the vote shall submit a notice that includes 1) the action to be taken, 2) the time by which a Director must respond to the notice, 3) that failure to respond by the time stated in the notice will have the

same effect as abstaining and failing to demand in writing by the time stated that action not be taken without a meeting, and 4) any other information that the requesting Director deems is important for the Board to review in making their vote. Written votes may be given in person, by mail, or electronically. The Association shall file the written votes with its record of minutes. In the event that a Director provides written notice to the Association prior to the expiration of the time listed in the notice that the Director demands an in person meeting, the Board shall hold an in person meeting in order to take the action contemplated.

3.12 Powers and Duties

The Board shall manage the affairs and business of the Association. The Board is vested with all power and authority necessary to administer the affairs of the Association in accordance with the Governing Documents. The Board may do any act required or allowed by the Governing Documents, the Community Association Act, the Nonprofit Act, or any other rule of law.

Subject to the limitations contained in the Declaration, Bylaws, or Community Association Act, the Board shall have the following authority:

3.12.1 Prepare an annual budget and establish what constitutes a Common Expense;

3.12.2 Adopt and amend rules, regulations, policies, and procedures governing the Project, administration of the Association, and to enforce and interpret the Governing Documents;

3.12.3 Delegate authority to a managing agent to act on behalf of the Association;

3.12.4 Provide for the maintenance, repair, and replacement of the Project in conformity with the Governing Documents;

3.12.5 Hire, contract for, and terminate personnel or contractors necessary for the maintenance, repair, and replacement of the Project, and administration of Association business. Provide for the compensation of personnel. Purchase supplies, equipment, and materials for use in the Association;

3.12.6 Open and maintain bank accounts on behalf of the Association. Designate authorized signers for the bank accounts;

3.12.7 File lawsuits or initiate other legal proceedings on behalf of the Association;

3.12.8 Defend lawsuits, administrative actions, and other legal proceedings against the Association;

3.12.9 Pay costs of any services rendered to the Project or multiple Owners, but not billed to the Owners individually;

3.12.10 To keep books of accounting and, upon resolution by the Board, retain an independent auditor to audit the books;

3.12.11 Grant easements, licenses, or permission over, under, and through the Common Areas and the Roadway;

3.12.12 Upon approval by 67% of the ownership interest in the Common Areas, to convey Common Areas or to release a portion of the Project from the Governing Documents as provided

for in the Declaration;

3.12.13 Create committees;

3.12.14 Any other act allowed or required by the Governing Documents, the Community Association Act, or the Nonprofit Act;

3.12.15 Any act allowed or required to be done in the name of the Association.

3.13 Manager

The Board may employ a manager to perform such duties and services as the Board shall authorize. The Board may delegate to the manager all powers granted to the Board and officers by the Governing Documents. However, the manager must obtain the Board's written consent to exercise the powers listed in Bylaw Sections 3.12.2, 3.12.6, 3.12.7, 3.12.8, 3.12.11, 3.12.12.

3.14 Compensation

Directors shall not be compensated for their work. However, Directors may seek reimbursement for actual costs and mileage incurred during their service.

3.15 Limitation of Liability

The Directors shall not be liable to the Owners for any mistake of judgment, negligence, or other errors, unless it was by willful misconduct or criminal conduct. The Association shall indemnify and hold the Directors harmless against liability to third parties for actions taken on behalf of the Association, while acting in their capacity as Director, unless the action constitutes willful misconduct or criminal conduct.

4 OFFICERS

4.1 Election and Term of Officers

The Board shall elect the officers of the Association. Officers shall be elected from the Directors. Officers shall serve one-year terms and shall serve until their successor is elected.

4.2 Removal of Officers

The Board may remove any officer with or without cause by affirmative vote of a majority of a quorum of the Board. If an officer is removed, the Board shall replace them.

4.3 Offices

The Association officers shall be president, vice president, secretary, and treasurer. The Board may appoint assistant officers, who need not be Directors, as it may deem necessary. The same person may hold two or more offices.

4.3.1 President

The president shall be the chief executive officer. He or she shall preside at meetings of the Association and the Board and shall be an unofficial member of all committees. The president shall have general and active management of Association business. He or she shall see that all resolutions and policies of the Association are executed.

4.3.2 Vice President

The vice president shall perform the duties and exercise the powers of the president in the absence or disability of the president. If the president and vice president are unable to act, the

Board shall appoint a Director to fulfill the duties on an interim basis.

4.3.3 Secretary

The secretary shall attend all meetings and take minutes thereof and shall also make record of all resolutions, rule, policies, and procedures. The secretary shall give or cause to be given notice of all meetings and shall compile or cause to be compiled a complete list of the owners and their contact information.

4.3.4 Treasurer

The treasurer shall oversee the finances of the Association and shall be responsible to ensure that the Association has full and accurate records of income and expenses. The treasurer shall give financial reports at regular Board meetings and the annual Owners' meeting.

4.4 Delegation of Duties

The Association officers may delegate any of their duties to a manager or to a committee. However, the officers shall be responsible to oversee and ensure that the duties so delegated are being properly discharged.

4.5 Compensation

Officers shall not be compensated for their work. However, officers may receive reimbursement for their actual costs and mileage incurred during their service.

5 NOTICE

5.1 Manner of Notice

All notices and other communications required under the Governing Documents shall be in writing.

5.1.1 Notices to Owners may be delivered using the following methods:

5.1.1.1 By professional courier service or First-class U.S. mail, postage prepaid, to the address of the Lot or to any other address designated by the Owner in writing to the Association;

5.1.1.2 By hand to the address of the Lot or to any other address designated by the Owner in writing to the Association;

5.1.1.3 By posting on the Association website; or

5.1.1.4 By facsimile, electronic mail, or any other electronic means to an Owner's number or address as designated by the Owner in writing to the Association.

5.1.2 Notice to the Association may be delivered using the following methods:

5.1.2.1 By professional courier service or First-class U.S. mail, postage prepaid, to the principal office of the Association as designated in writing to the Owners; or

5.1.2.2 By facsimile, electronic mail, or any other electronic means to the Associations official electronic contact as designated in writing to the Owners.

5.1.2.3 Notices sent via courier or mail shall be deemed received 3 days after being sent. Notices hand delivered or sent via electronic means shall be deemed received upon delivery or being sent.

5.2 Waiver of Notice

Whenever any notice is required under the Governing Documents, the Community Association Act, or the Nonprofit Act, an owner may waive notice in writing. The waiver may be signed before or after the time for notice. A waiver of notice shall be equivalent to notice.

6 FINANCES

6.1 Fiscal Year

The fiscal year of the Association shall be the calendar year.

6.2 Checks, Agreements, Contracts

All checks, contracts, deeds, leases, and other instruments used for expenditures or obligations may be executed by any person authorized by the Board.

6.3 Books and Availability of Records

The Association shall keep books with detailed accounts of the receipts and expenditures of the Association. The books shall be kept in accordance with generally accepted accounting practices. Upon resolution by the Board, the Association may retain an independent auditor to audit the books. The Association's financial records shall be available for review by the Owners as provided by the Community Association Act and Nonprofit Act.

7 AMENDMENT TO BYLAWS

7.1 Amendments

These Bylaws may be amended by the Board, unless it would result in changing the rights, privileges, preferences, restrictions, or conditions of a membership class as to voting, dissolution, redemption, or transfer by changing the rights, privileges, preferences, restrictions, or conditions of another class. These Bylaws may also be amended by a majority vote of a quorum of the Owners.

7.2 Recording

Any amendment to these Bylaws shall become effective on the date it is recorded in the Salt Lake County Recorder's Office.

8 MISCELLANEOUS

8.1 Office

The principal office of the Association shall be located at any place within the State of Utah which may be designated from time to time by the Board.

8.2 Conflicts

The Bylaws are subordinate to any conflicting provisions in the Community Association Act, the Nonprofit Act, the Articles, the Map, or the Declaration. The Bylaws are superior to the rules, regulations, and policies of the Association.

8.3 Severability

If any provision of these Bylaws is held by a court of law to be invalid, the validity of the remainder of these Bylaws shall not be affected.

8.4 Waiver

No provision of these Bylaws shall be deemed to be waived because of a failure to enforce the provision.

8.5 Captions

The captions contained in these Bylaws are for convenience only. The captions shall not be used to interpret, limit, or enlarge the provisions of these Bylaws.

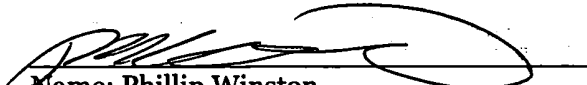
8.6 Gender, etc.

Whenever the context so requires, the singular shall include the plural and vice versa. The use of any gender shall include all genders.

IN WITNESS WHEREOF, the Declarant has caused these Bylaws to be executed by its duly authorized officers.

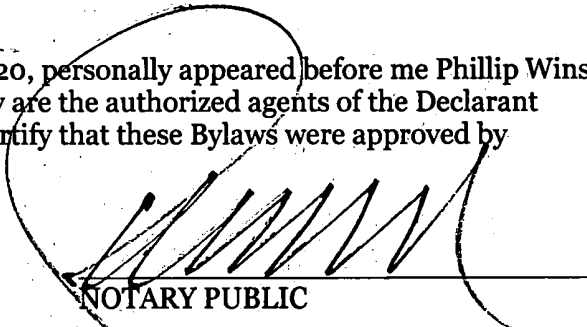
DATED: August 10, 2020

**DECLARANT:
East Liberty Commons, LLC**


Name: Phillip Winston
Its: Manager

STATE OF UTAH)
County of Salt Lake :ss.

On this 10 day of August, 2020, personally appeared before me Phillip Winston who being by me duly sworn, did say that they are the authorized agents of the Declarant authorized to execute these Bylaws and did certify that these Bylaws were approved by Declarant's members.


NOTARY PUBLIC

