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WHEN RECORDED, RETURN TO:  
CW The Alice, LLC  
Attn: Legal Department  
1222 W. Legacy Crossing Blvd., STE 6  
Centerville, UT 84014

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RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
03/15/2022 09:07 AM  
FEE \$68.00 Pgs: 36  
DEP RT REC'D FOR LAYTON CITY

Affecting Parcel No(s): 11-072-0073

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DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS  
FOR   
THE ALICE

(An Expandable Planned Unit Development)

15-104-0101 thru 0124

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THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (hereafter "Declaration") is made on the date evidenced below by CW The Alice, LLC, a Utah limited liability company (hereafter "Declarant").

**RECITALS**

- A. The Declarant is the owner of certain land located in Layton City, Davis County, Utah and more particularly described in **Exhibit A** attached hereto and made part hereof.
- B. The Declarant intends to sell to various purchasers the fee title to the individual Lots (as defined below) contained in the Project (as defined below), 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. 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 Ann. 16-6a-101, *et. seq.*) as amended from time to time.
- D. The Project is not a condominium or cooperative project.

NOW, THEREFORE, the Declarant does hereby declare as follows:

## ARTICLE I - DEFINITIONS

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

**1.1 "Act"** shall mean the Utah Community Association Act, Utah Code, Title 57, Chapter 8a, as the same shall be amended from time to time.

**1.2 "Additional Land"** means any land that may be annexed to this Declaration thereby expanding the community in the manner set forth in Article III.

**1.3 "Assessment"** means any charge imposed or levied by the Association on or against an Owner or Lot pursuant to the terms of the Governing Documents or applicable law, including (1) annual assessments; (2) special assessments; and (3) individual assessments as set forth below.

**1.4 "Association"** means and refers to the "The Alice Owners Association, Inc.", or any successor incorporated or unincorporated association of the Lot Owners acting under this Declaration. 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 unincorporation shall be binding.

**1.5 "Board of Directors"** shall mean and refer to the Board of Directors of the Association.

**1.6 "Bylaws"** shall mean and refer to the Bylaws of the Association as they may be amended from time to time, which Bylaws are attached hereto as **Exhibit B** and incorporated herein by this reference.

**1.7 "Common Area"** means, refers to, and includes: (a) The real property and interests therein, excluding all Lots as defined herein, which comprise the Project; (b) All common areas and facilities designated as such elsewhere herein or on the Plat; (c) All installations for and all equipment connected with the furnishing of the Project's utility services and existing for common use, such as electricity, gas, water and sewer, except as otherwise provided herein; (d) In general, all apparatus, installations and facilities included within the Project and existing for common use; (e) The Project's roads and parking areas, excluding all Lots; (f) All other parts of the Project normally in common use or necessary or convenient to its use, existence, maintenance, safety or management; and (g) All Limited Common Areas and facilities (except inasmuch as it is treated differently than Common Area elsewhere herein for maintenance, use, or insurance purposes).

**1.8 "Common Expenses"** means expenses of administration, maintenance, repair, or replacement of the common areas and facilities including, without limitation, all private drives, private utilities, and detention basin facilities, and the expenses incurred by the Association in carrying out the responsibilities and duties mandated by the Governing Documents.

**1.9 "Community"** means the Project and all of the land described in attached **Exhibit A**, including any property annexed at any time into the Project.

**1.10 "Community Wide Standard"** means the standard of conduct, maintenance, or other activity generally prevailing in the Community, as set forth in this Declaration, the Bylaws and as defined or determined by the Board from time to time.

**1.11 "Declarant"** means CW The Alice, LLC, a Utah limited liability company and any successor or assign thereof to whom or to which it shall expressly (a) convey or otherwise transfer all of its right, title and interest in the Community; or (b) transfer, set over and assign all of its right, title and interest under this Declaration, or any amendment or modification thereof.

**1.12 "Declarant Control Period"** means that period of time from and after the date hereof and expiring upon the occurrence of the Turnover Date.

**1.13 "Fines"** shall mean and refer to fines levied against a Lot Owner for violations of this Declaration, the Bylaws, or Rules and Regulations of the Association. Fines shall be enforced and collected consistent with the Act and may be collected as an unpaid assessment.

**1.14 "Governing Documents"** shall mean and refer to a written instrument by which the Association may exercise powers or manage, maintain, or otherwise affect the property under the jurisdiction of the Association, including Articles of Incorporation, Bylaws, Plat, this Declaration, rules, and architectural or design guidelines.

**1.15 "Improvements"** means every structure or improvement of any kind, including but not limited to landscaping, sprinkler pipes, Living Units, decks, porches, awnings, fences, garages, carports, accessory buildings, driveways, storage compartments or other products of construction efforts on or in respect to the Community (but does not include any exterior antenna or satellite dish, authorized in accordance with the Declaration).

**1.16 "Include," "includes," or "including"** means that the items listed are not an exclusive list, unless the word "only" or similar language is used to expressly indicate that the list is an exclusive list.

**1.17 "Limited Common Area"** means all of the real property identified as limited common area herein or on the Plat, except as otherwise stated herein. Limited Common Areas are Common Areas, but to which certain different rights and limitations apply as more fully set forth herein, including that they are limited to the use of certain Lots to the exclusion of other Lot Owners. The Limited Common Area generally includes the patios attached to each Living Unit and fences that surround such patios, if any, and any other Limited Common Areas, if any, designated on the Plat.

**1.18 "Lot"** means any lot or parcel of land upon which a Living Unit could be constructed in accordance with applicable ordinances and laws, or is already constructed, shown upon the Plat as existing for private use and ownership, including any Improvements thereon.

**1.19 "Manager" or "Managing Agent"** shall mean and refer to the person or entity retained by the Association to manage the Community according to the direction of the Board of Directors.

**1.20 "Mortgage"** means any mortgage or deed of trust encumbering any Lot and any other security interest existing by virtue of any other form of security instrument or arrangement, provided that such mortgage, deed of trust or other form of security instrument, and an instrument evidencing any such other form of security arrangement, has been recorded among the Recorder's Office of Davis County, State of Utah.

**1.21 "Mortgagee"** means the person or entity secured by a Mortgage.

**1.22 "Owner"** means the record owner of fee simple title to any Lot, as shown in the records of the County Recorder, but does not include a tenant, contract purchaser, or holder of a leasehold interest or person holding only a security interest in a Lot.

**1.23 "Period of Administrative Control"** means the period during which the Declarant (or a successor in interest) retains authority to appoint or remove members of the Board and is the time between the date of recordation of this Declaration and the date on which administrative control of the Association is turned over to the Owners pursuant to Section 7.1 below.

**1.24 "Plat" or "Plat Map" or "Record of Survey Map"** (these terms may be used interchangeably herein) means the plat map recorded, or to be recorded, at the Recorder's Office of Davis County, State of Utah, as the same may be amended or substituted, together with any plat subsequently recorded for an additional phase of the Project.

**1.25 "Property" or "Project"** means all of the real property and interests within the boundaries of the project described in the Plat(s), including all Lots, Common Area, easements, and open space.

**1.26 "Rules and Regulations"** means those rules and regulations adopted by the Board from time to time that are deemed necessary or prudent by the Board for the enjoyment, operation or governance of the Community.

**1.27 "Townhome"** means a single-family residential dwelling unit which is attached to another single-family residential dwelling unit and is constructed upon a numbered Lot reflected on a Plat.

**1.28 "Turnover Date"** means the date on which the Declarant files a notice against the Property stating that it has ended the Declarant Control Period and has turned over administrative control of the Association to the Owners.

**1.29 "Living Unit" or "Residence"** shall mean a single-family residential dwelling unit constructed upon a Lot.

**1.30 "Unit"** shall mean a residential dwelling unit.

## ARTICLE II - PROPERTY DESCRIPTION

**2.1 Property Subject to the Declaration and Bylaws.** The real property which is, and shall be, transferred, held, sold, conveyed, used, occupied and improved subject to the Act and to this Declaration, the Governing Documents, and all agreements, decisions and determinations made by the Board or Association is all of the real property described on the Plat and on **Exhibit A** attached hereto, which Declaration and covenants, conditions and restrictions therein shall run with the land and shall be binding upon each and every party which shall at any time have any right, title or interest in or to the Community or any part thereof, their heirs, successors and assigns, and to any other person who may in any manner use the Community or any part thereof submitted to the provisions of this Declaration, and shall inure to the benefit of each Owner thereof. To the extent that the Governing Documents are or become inconsistent with the provisions of any future amendments to the Act, the Act, as amended, shall control.

**2.2 Description and Legal Status of Lots.** Except as otherwise stated herein, the Plat shows the Lots and building designations, the Limited Common Areas, and the Common Areas, and their locations and dimensions from which, together with the Definitions above, those areas may be determined. All Lots shall be capable of being independently owned, encumbered, and conveyed.

**2.3 Intentionally Omitted.**

**2.4 Form of Lot Conveyance - Legal Description of Lot.** Each conveyance or installment contract for the sale of a Lot and every other instrument affecting title to a Lot may describe that Lot by the number shown on the Record of Survey Map with appropriate reference to said Map and to this Declaration, as each shall appear on the records of the County Recorder, State of Utah.

**2.5 Use and Occupancy.** Except as otherwise expressly provided in this Declaration or the Bylaws, the Owner(s) of a Lot shall be entitled to the exclusive use and benefits of ownership of such Lot. Each Lot and Unit, however, shall be bound by, and the Owner shall comply with, the restrictions contained below and all other provisions of the Governing Documents of the Association for the mutual benefit of the Owners.

**2.6 Easements and Rights Reserved.** In addition to the easements and rights shown on the Plat or provided for under this Declaration, the Bylaws or law, the following easements, rights and powers are hereby reserved for the benefit of the Owners and the Association:

(a) **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: (1) determining whether or not the Lot is in compliance with the Governing Documents, (2) determining whether

the use of the Lot is causing damage or harm to the Common Areas, (3) for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Lot in violation of this Declaration, or (4) performing maintenance referred to herein. Requests for entry under numbers (1), (2) and (3) shall be made in advance and at a time that is convenient to the Owner within 30 days of the request, or at a time designated by the Association if such time is more than 30 days from the request, except in the case of an emergency, when such right shall be immediate. No such entry or actions by the Association shall be deemed to constitute a trespass or otherwise create any right of action for damage or otherwise in the Owner of such Lot.

(b) Utility Easements. The Association and any public or private utility provider shall have an easement through all Lots and the Common Areas for the installation, maintenance and development of utilities and drainage facilities, as may be necessary as determined by the Board. The Board may grant or create from time to time, on behalf of the Association and on such terms as it deems advisable, utility and similar easements and rights-of-way over, under, across, and through the Common Area. Within any easement, no structure, planting or other material shall be placed or permitted to remain which may reasonably interfere with or damage utilities or drainage facilities. The easement area within each Lot and all improvements therein shall be maintained continuously by the person or entity responsible for maintenance of such Lot in accordance with the terms herein, except for those improvements for which a public authority or utility provider is responsible. Each Lot Owner shall have an easement in common with all Owners to use all pipes, wires, ducts, cables, conduits, public utility lines and other common facilities located in any of the other Lots and serving his or her Lot. Notwithstanding anything contained herein to the contrary, Layton City shall determine any utilities to be placed within the seven foot (7') public utility and drainage easement located along Fort Lane and adjacent to the Project.

(c) Common Areas. All Owners are hereby granted a non-exclusive right and easement of enjoyment to the Common Areas, excluding the Limited Common Areas as defined herein.

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

### ARTICLE III - EXPANSION OF COMMUNITY

**3.1 Discretion to Expand Community.** Declarant reserves the right at its sole discretion to expand the Community to include Additional Land by unilateral action of the Declarant without the consent of the Owners until expiration of the Period of Administrative Control.

**3.2 No Limitations on Amount of Expansion.** There are no limitations on the maximum or minimum amount of Additional Land which may be added. There may be more than one expansion and the expansion may be made as to any amount or in any order.

**3.3 Process for Expansion.** Expansion shall occur by the Declarant recording: (1) an additional plat or plats creating additional phases for lots in the Community; and (2) a declaration of annexation which shall state the Declarant's intention to have the area described therein subject to this Declaration. Upon the recording of such a declaration of annexation, the property described therein shall be subject in all respects to this Declaration.

**3.4 Limitations on Expansion.**

(a) Any additional properties annexed hereto by the Declarant may be for multi-family residential purposes. Any additional properties annexed to the Community by the Declarant shall be architecturally compatible with the existing Units and shall be of similar quality. However, the Declarant makes no assurances that any Unit constructed on any additional properties annexed hereto by the Declarant will be substantially identical to the Units depicted in the Plat. No other assurances are made as to the improvement or as to the location of said improvements which shall be made on the expansion land.

(b) The Declarant shall have the sole discretion as to the development of the common area in any expansion area and may (or may not) include any facilities or amenities thereon that Declarant deems necessary. Such common areas, if any, shall be managed by the Association.

(c) All taxes and other assessments relating to property to be added must be paid or provided for by the Declarant prior to the addition of the property. Liens arising in connection with Declarant's interest in the property to be added must not adversely affect the rights of existing Lot Owners or the priority of existing first Mortgages on the Property.

#### ARTICLE IV - ASSESSMENTS

##### 4.1 *Covenant for Assessments.*

4.1.1. Covenant for Assessments. Each Owner, by acceptance of a deed hereafter conveying any Lot to it, whether or not so expressed in the deed or other conveyance, shall be deemed to have covenanted and agreed to pay the Association the following types of assessments, as provided for and defined below: Annual Assessments, Special Assessments, and Individual Assessments.

4.1.2. Installments of Annual Assessments. The Board shall determine whether installments of Annual Assessments are levied and collected on a monthly, quarterly, semi-annual, annual or other basis. Any member may prepay one or more installments of any Assessment levied by the Association, without premium or penalty. No member may exempt itself from liability for Assessments by abandonment of any Lot or Unit owned by such member.

4.1.3. Apportionment. Subject to subsection 4.1.4 below, all Owners of a Townhome shall pay equal Annual Assessments and Special Assessments, all commencing upon the date the Lots are made subject to this Declaration. Individual Assessments shall be apportioned exclusively against the Lot(s) or Unit(s) benefitted or to which the expenses are attributable as provided for below.

4.1.4. Declarant Assessment Exemption. Notwithstanding anything herein to the contrary, the Declarant, and any Lot to which the Declarant holds record title, shall be exempt from any Assessment under this Article.

4.1.5. Application of Payments. Unless otherwise provided for by the Board, all payments for Assessments shall be applied to the earliest charges first. Owners shall have no right to direct the application of their payments of Assessments or to require application of payments in any specific order, to specific charges, or in specific amounts.

##### 4.2 *Budget and Annual Assessment.*

4.2.1. Adoption of Budget. The Board shall prepare an annual budget for the Association, which shall provide, without limitation, for the maintenance of the Common Areas and for 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. The Board shall present the adopted budget to Association members at a meeting of the members.



**4.2.2. Definition and Purpose of Base, Lot, and Townhome Assessments.**

(a) **"Base Assessment"** means assessments levied on all Lots and Units for payment of expenses incurred by the Association for the general benefit of all Lots and Units and of the entire Community, including, but not limited to: (a) The improvement, maintenance, operation, care, and services related to the Common Areas; (b) The payment of insurance premiums for coverage of Common Areas and Association coverage; (c) The costs of utilities and other services which may be provided by the Association for the whole Community; and (d) The cost of labor, equipment, insurance, materials, management, legal and administrative fees incurred or expended in performing the general duties under this Declaration or the Bylaws.

(b) **"Lot Assessment"** means an assessment levied against the Lot Owners in order to fulfill the obligations of the Association hereunder to the Lots, independent of the Base Assessment levied against all Owners. The Lot Assessment shall be used for payment of expenses incurred by the Association for the general benefit of all Lots and only the Lots, including, but not limited to: (a) The improvement, maintenance, operation, care, and services provided by the Association to the Lots exclusively; and (b) The cost of funding reserves established by the Association for the general benefit of the Lots exclusively, if deemed necessary by the Board.

**4.2.3. Determination of Annual Assessment.**

(a) The Board shall fix the amount of the Base Assessment and the Lot Assessment for each assessment period at least thirty (30) days in advance of the beginning of an annual assessment period.

Written notice of the Annual Assessments shall be sent to all members of the Association at least thirty (30) days in advance of the beginning of any assessment period, or thirty (30) days in advance of any increase in the Annual Assessment that is to take effect during any assessment period.

(b) The omission by the Board, before the expiration of any assessment period, to fix the amount of the Annual Assessment for that or the next period, shall not be deemed a waiver or modification in any respect of the provisions of this article or a release of any member from the obligation to pay the Annual Assessment, or any installment thereof, for that or any subsequent assessment period. In the event of such omission, the Annual Assessment fixed for the preceding period shall continue until a new assessment is fixed.

(c) **Equitable Changes.** If the Annual Assessments levied at any time are, or will become, inadequate to meet the expenses incurred by the Association for any reason, including nonpayment of any Owner's Assessments on a current basis, the Board may determine the approximate amount of the inadequacy and adopt a resolution which establishes a supplemental budget and establishes the equitable change in the amount of the Annual Assessment. Owners shall be given at least twenty (20) days' written notice of any changes in the amount of an Assessment.

**4.3. Special Assessments.** In addition to the Annual Assessments authorized in this article, the Association may levy a special assessment from time to time ("Special Assessment") against all Units for the purpose of defraying, in whole or in part, the costs incurred or to be incurred by the Association which cannot be paid for through other types of Assessments. The Board may authorize a Special Assessment for any lawful purpose provided, however, that any Special Assessment levied within 12 months of a prior Special Assessment, and any Special Assessment greater than \$500 per Unit may only be levied if it is first voted upon by the Owners against which the Special Assessment is to be levied, and: (1) the votes cast favoring the action exceed the votes cast opposing the action, and (2) a quorum of Owners representing at least 30% of the voting rights of Owners against which the Special Assessment is to be levied cast a vote.

**4.4. Individual Assessments.** Any expenses which are not common expenses and which benefit or are attributable to fewer than all of the Units or Lots, or fewer than all of the Units in any particular housing type, may be assessed exclusively against the Lots and/or Units affected or benefitted ("Individual Assessments"). Individual Assessments shall include, but are not limited to: (1) Assessments levied against any Lot or Unit to reimburse the Association for costs incurred in bringing the Lot or its Owner into compliance with, or to otherwise defend or uphold, or carry out, the provisions of the Governing Documents, and for fines or other charges, including attorney fees, imposed pursuant to this Declaration for violation of the Governing Documents; (2) Expenses relating to the cost of maintenance, repair and replacement of a Lot to the extent incurred by the Association, other than Common Expenses incurred in fulfilling its ordinary maintenance responsibilities to Lots hereunder.

**4.5. Reserve Funds.**

**4.5.1.** The Association shall establish and maintain a reserve fund for repairs and replacement of the Common Areas, for any emergency, unforeseen, unusual, or unanticipated expenditures, and for any other purpose determined from time to time by the Board by the allocation and payment to such reserve fund of an amount to be designated from time to time by the Board in its sole discretion and best business judgment or of an amount and in the manner as may be required by law. The fund shall be conclusively deemed to be a Common Expense of the Association and may be deposited with any banking institution, the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

**4.5.2.** The Association may establish such other reserves for such other purposes as the Board may from time to time consider to be necessary or appropriate.

**4.5.3.** The Board's reasonable determination with respect to the amount of the reserve fund contribution shall be conclusively deemed appropriate absent intentional misconduct or gross mismanagement of Association funds. Except in such instances, individual Board members shall not be held liable for any potential or alleged under funding of the reserve account.

**4.6. Nonpayment of Assessments.** The Annual Assessments shall be due and payable on a monthly basis on the first (1st) calendar day of each month, unless otherwise provided by the Board, and shall be delinquent if not paid by the 10<sup>th</sup> of the month or within such other period established by the Board from time to time. The due date of any Special Assessment or other Assessment shall be fixed in the resolution or document authorizing or levying the Assessment.

**4.6.1. Interest.** Delinquent payments shall bear interest from the eleventh (11<sup>th</sup>) day of the month, or such other date established by the Board (the "date of delinquency"), at the rate of 18% per annum, or such other rate established by the Board.

**4.6.2. Late Charge.** Each delinquent payment shall be subject to a late charge of Thirty Dollars (\$30.00), or such other amount as determined by the Board from time to time.

**4.6.3. Acceleration.** If the delinquent installments of any Assessment, including an Annual Assessment, and any charges thereon are not paid in full, the Board, or its authorized agent, may declare all of the unpaid balance of the Assessment to be immediately due and payable upon not less than ten (10) days' written notice to the Owner, and may enforce the collection of the full Assessment and all charges thereon in any manner authorized by law and this Declaration. If, however, the Assessment is accelerated and an Owner subsequently files bankruptcy or the Board otherwise decides acceleration is not in its best interest, the Board, at its option and in its sole discretion, may elect to decelerate the obligation.

**4.6.4. Rent Payments by Tenant to Association.** If the Owner of a Lot who is leasing the Lot fails to pay an assessment for more than 60 days after the assessment is due, the Board may demand that the tenant pay to the Association all future lease payments due to the Owner, beginning with the next monthly other periodic

payment, until all amount dues to the Association are paid. Such demand to the tenant shall be made in accordance with the law and the written procedures of the Association. The Board, or its agent, shall give the Owner written notice of its intent to demand full payment from the tenant and such notice shall be made in accordance with the law and the written procedures of the Association.

4.6.5. Termination of Common Services and Facility Use. If an Owner fails or refuses to pay an assessment when due, the Board may, after giving notice and an opportunity to be heard in accordance with the law and the written procedures of the Association, terminate an Owner's right: (1) to receive any service paid as a common expense, including but not limited to utility services; and (2) of access and use of recreational facilities. If a hearing is requested, utility services or right of access and use of the recreational facilities may not be terminated until after the hearing has been conducted and a final decision has been rendered by the Board. In the event that the Association incurs costs to terminate any such utility service, the defaulting Owner shall be responsible for all such costs. Upon payment of the assessment due, including any interest, late charge, and costs of collection, the Board shall immediately take action to reinstate the terminated utility services to the Lot.

4.6.6. Other Remedies. All membership rights, including the right of a Member to vote shall be automatically suspended during any period of delinquency, unless otherwise determined by the Board. A Board member shall become immediately ineligible to serve on the Board and automatically dismissed from such position if delinquent more than 60 days in the payment of any Assessment. The Association shall have each and every remedy for collection of assessments provided in the Act as amended from time to time, and the provisions of the Act shall be deemed to be fully set forth herein when required by such Act in order to exercise any such remedy.

4.7. Lien. All Assessments imposed shall be a charge and continuing lien upon each of the Lots against which the assessment is made in accordance with the terms and provisions of this Article and shall be construed as a real covenant running with the land. If an assessment is payable in installments, the lien is for the amount of each installment as such becomes due and this provision shall be deemed a notice of assessment. In a voluntary conveyance, the grantee of a Lot shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the unpaid assessments up to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee. The Association and each Owner of a Lot hereby conveys and warrants pursuant to Utah Code Ann. § 57-1-20 and § 57-8a-402 to the attorney of the Association, with power of sale, each Lot and all improvements to each Lot for the purpose of securing payment of assessments under the terms of the Declaration.

4.8. Enforcement of Lien. The Association may enforce the lien for any Assessment, including Annual, Special, Individual or otherwise, pursuant to the provisions of this Declaration. The lien is imposed upon the Lot against which the Assessment is made. The lien is established and may be enforced for damages, interest, costs of collection, late charges permitted by law, and attorneys' fees provided for in this Declaration (whether or not a legal proceeding is initiated) or by law or awarded by a court for breach of any provisions of the Governing Documents. The lien maybe foreclosed judicially or non-judicially consistent with the laws of the state of Utah for the non-judicial foreclosure of deeds of trusts. The Association, through duly authorized agents, shall have the power to bid on the Lot at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon completion of the foreclosure sale, an action may be brought by the Association or the purchaser at the sale in order to secure occupancy of the defaulting Owner's Lot, and the defaulting Owner shall be required to pay the reasonable rental value of such Lot during any period of continued occupancy by the defaulting Owner or any persons claiming under the defaulting Owner. The Association shall be entitled to the appointment of a receiver to collect the rental income or the reasonable rental value without regard to the value of the security.

4.9. Appointment of Trustee. The Declarant, the Association and each Owner hereby appoints the attorney of the Association who has been retained by the Association at the time a foreclosure is initiated as trustee for the purpose of exercising the power of sale in connection with non-judicial foreclosures as provided in Title 57, Chapter 1, Utah Code and made applicable hereto by Title 57, Chapter 8a, Utah Code Ann., as may be amended from time to time.

**4.10. Subordination of Lien to Mortgages.** The lien of the Assessments provided for in this article shall be subordinate to the lien of any first mortgagees or deeds of trust now or hereafter placed upon the Lot subject to assessment, except as follows: the sale or transfer of any Lot pursuant to mortgage or deed of trust foreclosure, or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Such sale or transfer shall not relieve the Lot from liability for any Assessments thereafter becoming due, or from the lien of any future assessment, nor shall it relieve any personal obligation arising under Section 5.16 or elsewhere.

**4.11. Personal Obligation and Costs of Collection.** Assessments imposed under this Declaration, together with interest at a rate to be established by resolution of the Board, not to exceed the maximum permitted by law, and costs and reasonable attorneys' fees incurred or expended by the Association in the collection thereof (whether or not a lawsuit is initiated), shall also be the personal obligation of the Owner holding title to any Lot at the time when the assessment became due.

**4.12. Duty to Pay Independent.** No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, order or directive of any municipal or other governmental authority, the obligation to pay Assessments being a separate and independent covenant on the part of the each Owner.

**4.13. Statement of Unpaid Assessment & Payoff Information.** The Association shall, upon demand at any time, furnish to any Owner liable for assessment a certificate in writing signed by an officer of the Association setting forth whether Assessments has been paid. The certificate shall be conclusive evidence of payment of any assessment therein stated as having been paid. A reasonable charge may be levied in advance by the Association for each certificate so delivered. The Association may charge a fee for providing Association payoff information needed in connection with the financing, refinancing, or closing of a lot owner's sale of the owner's lot up the maximum amount allowed by law.

**4.14. Reinvestment Fee.** The Board of Directors, or the Declarant during the Period of Administrative Control, may require the transferor / seller or transferee / buyer to pay a fee related to the transfer of a Unit (the "Reinvestment Fee") as provided for in Utah Code Ann. §57-1-46 and in an amount to be determined by the Board of Directors, or the Declarant during the Period of Administrative Control, and to the extent allowed by law. For purposes of this Section 4.14, a transfer is any change in the ownership of the Unit as reflected in the records of the Davis County Recorder, regardless of whether it is pursuant to the sale of the Unit or not but shall not include (a) any transfer between the Declarant and any affiliated entity or a builder the Declarant agrees to exempt, as determined solely by the Declarant, (b) an involuntary transfer, such as a transfer as part of a condemnation proceeding or sale in lieu of condemnation, (c) a transfer that results from a court order, (d) a bona fide transfer to a family member of the seller within three degrees of consanguinity who, before the transfer, provides adequate proof of consanguinity, (e) a transfer or change in interest due to death, provided in a will, trust or decree of distribution, or (f) the transfer of a burdened property by a financial institution, except to the extent the reinvestment fee covenant requires a payment of a common interest association's costs directly related to the transfer of the burdened property, not to exceed \$250.00. The amount shall be established by the Board of Directors, or the Declarant during the Period of Administrative Control, consistent with Utah Code Ann. §57-1-46 or in the Notice of Reinvestment Fee Covenant. The Association shall not levy or collect a Reinvestment Fee for any transfer exempted by Utah Code Ann. §57-1-46. The Association shall have authority to record any notice required by law to effectuate this provision. The Association shall have the authority to enact rules that may include requirements for Owners to provide sales and transfer documents, and other procedural requirements and rules as the Board of Directors deems appropriate to effectuate the terms of this provision in a prompt and reasonable manner.

## ARTICLE V - RESTRICTIONS ON USE

**5.1 Restrictions and Requirements.** The following restrictions and requirements are in addition to all other restrictions and requirements contained in this Declaration and the Bylaws:

5.1.1 Residential Use. Units shall be used for residential purposes in accordance with, and subject to, the other provisions of this Declaration and the Bylaws and rules and regulations adopted pursuant thereto.

5.1.2 Drainage System. There shall be no interference with the established drainage patterns or systems, if any, over or through any Lot so as to affect any other Lot or any real property outside the Community unless adequate alternative provision is made for proper drainage and is approved by the Board of Directors.

5.1.3 Offensive Activities. No noxious, offensive or unsightly conditions, including, but not limited to, the placement or storage of inoperable vehicles, car parts and appliances, or activities shall be permitted on any Lot or within the Community, nor shall anything be done in or placed upon any Common Area or within the Community which interferes with or jeopardizes the enjoyment of other Lots or which is a source of annoyance to residents.

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

5.1.5 Animals.

(1) The Board shall have the express authority and right to promulgate rules, beyond those stated herein, restricting the keeping of pets within the Community.

(2) No animals, livestock, or poultry of any kind may be raised, bred, kept or permitted within any Lot, except dogs, cats, or other household pets provided that they are not kept, bred, or maintained for any commercial purpose or in any unreasonable numbers. The Owner of any dog must keep such dog on a leash when outside of the Lot or keep it confined within the Lot.

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

(4) An Owner may be required to remove a pet upon receipt of a written notice from the Board given pursuant to a resolution relating to rules and regulations governing pets within the Community and enforcement of such rules and regulations and provisions of this subsection. The Board may apply for appropriate judicial relief in the event that Owners violate this Article.

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

5.1.7 Vehicles in Disrepair.

(1) No Owner shall permit any vehicle which is in an extreme state of disrepair to be abandoned or to remain parked upon any part of the Community unless such vehicle is within a garage. A vehicle shall be deemed in an extreme state of disrepair when the Board reasonably determines that its presence offends the occupants of the other Lots.

(2) If an Owner fails to remove a vehicle deemed to be in an extreme state of disrepair within seventy-two (72) hours after the date and time on which written notice is securely placed on such vehicle or delivered to the responsible Owner by the Board, the Board may have such vehicle removed from the Community (i.e., towed) and assess the Owner the expense of such removal and any storage necessitated thereby.

5.1.8 Parking of Automobiles and Other Vehicles.

(1) Parking of all personal vehicles shall only be authorized in the garage of an Owner's respective Townhome or Residence.

(2) Parking of boats, trailers, commercial vehicles, commercial trucks, truck campers, motor homes and like vehicles and equipment shall only be allowed in designated parking areas and shall be subject to further rules and regulations promulgated by the Board.

(3) The Board may adopt and amend rules to govern the parking of vehicles within the Community, which rules may include assessing an Owner the expense of removing any automobile, vehicle or equipment parked in violation of any rule or of this subsection and the cost of any storage thereof.

5.1.9 Clothes Lines and Materials. No clothes lines, clothing racks, or other apparatus on which clothes, rags, or similar items are exposed for the purpose of drying or airing shall be located on the Community except within a Unit, unless in an area screened from public view. No garments, rugs, rags, laundry, or other clothing or materials shall be allowed to hang from the windows or from any of the facades or any other part of a Unit unless in an area screened from public view.

5.1.10 Signs. Unless written approval is first obtained from the Board, no advertisement or poster of any kind may be posted in or upon the Properties, except Declarant may do so, in its sole discretion.

5.1.11 Antenna and Dish Policy. To the extent not prohibited by applicable law, including, without limitation, Section 207 of the Telecommunications Act of 1996 (17 C.F.R. Section 1.4000), Satellite dishes and antennas not regulated by the FCC are prohibited. Satellite antennas, such as Direct Broadcast Satellite ("DBS") antennas/dishes one meter in diameter or less, and designed to receive direct broadcast satellite service, including direct-to-home satellite service, or receive or transmit fixed wireless signals via satellite, may be installed; provided the dish and any wires are installed so as to not be visible from the streets. If locating the dish so that it is not visible from the streets precludes reception of an acceptable quality signal, the dish shall be installed with the least visibility from the streets possible. An Owner must submit written notification to the Association within three (3) business days before installing any antenna or dish that is allowed pursuant to this section. If requested by the Association, the Owner must establish a mutually convenient time to meet with a representative of the Association to review and discuss the antenna/dish. Location of an FCC approved dish may not be restricted by the Association so as to cause unreasonable delay in installation; unreasonably increase the cost of the equipment or its installation, maintenance, or use; or preclude reception of an acceptable quality signal. No dish may encroach upon the Common Area or the property of another Owner.

The Owner is responsible for all damage caused by or connected with the dish, for as long as the dish remains, including damage resulting from water entering a building due to the installation or existence of such antenna/dish. By installing a dish, the Owner agrees to hold the Association harmless and indemnify the

Association in the event that someone is injured by the dish or in the installation or maintenance of the dish. The Owner shall keep the dish in good repair so that it does not violate any portion of this Declaration. In the event of a violation of this Section, the Association may bring an action for declaratory and/or injunctive relief and the Owner is subject to a \$50.00 fine to the Association for each violation. If the violation is not corrected within a reasonable length of time as determined by the Board, additional fines of \$10.00 per day will be imposed for each day that the violation continues. The Association shall be entitled to recover its reasonable attorney's fees, costs and expenses incurred in the enforcement of this Section. If any provision of this Section is ruled invalid, the remainder of these rules shall remain in full force and effect. If the FCC modifies its rules, the modified rules shall be incorporated into this Section as if fully set forth herein. The terms "dish" and "antenna" are to be used interchangeably in the interpretation of the above policy.

5.1.12 Noise Disturbance. Residents shall exercise extreme care to minimize noise and to use musical instruments, radios, televisions, amplifiers, or any other device so as to not disturb other residents. Noise disturbances shall subject the Owner of the Unit from which the noise originates to a fine, as levied by the Board in its sole discretion.

5.1.13 Increase in Insurance Cost. Nothing shall be done or kept within any Lot or on the Common Areas, including Limited Common Areas, which will increase the cost of insurance to the Association or to other Owners. No Owner shall permit anything to be done or kept within his or her Unit, Lot or Common Areas which will result in cancellation of insurance on any Lot.

5.1.14 Lease/Rental Restrictions. All leases shall be in writing and be subject to the Governing Documents and any failure by the lessee to comply with the terms of such documents shall be a default under the Lease. It is expressly acknowledged and authorized that Lots and Units may be rented on a nightly or short term basis and nothing herein shall be deemed to prohibit such use.

5.1.15 Architectural Control.

(a) No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to, or change or alteration thereto, of any sort, whether structural, landscaping, cosmetic or otherwise, be made by an Owner until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board. Such approval shall be solely at the discretion of the Board as it deems appropriate from time to time. Any such request shall be deemed to have been denied if the relevant Owner, including any subsequent Owner, cannot produce the written approval granted by the Board upon request, and any changes or alterations made by an Owner, or prior Owner, shall be removed and the property restored to its original condition at the request of the Board. In the event the Board fails to approve or disapprove a request by an Owner, the request will be deemed to have been denied. This subsection shall not apply to Declarant's building or construction activities during the building and development of the Project.

(b) Design and construction of Improvements (other than by the Declarant) shall be consistent with and shall comply with the procedures and criteria set forth in this Declaration and such other building and design criteria which the Board is hereby empowered to adopt (referred to as "Design Guidelines") to expand, clarify, and otherwise provide for the harmony and compatibility of the Improvements constructed within the Project. Design Guidelines shall also be deemed to include the requirement that the quality of all materials to be used in any construction or Improvements within the Project be equal or superior to that utilized for original construction. All original construction by Declarant shall be and is hereby approved. All builders and owners, including individual builders of one or more lots obtained from the Declarant, shall comply with and are bound by the design restrictions herein and the Design Guidelines, if and when such are adopted.

**5.2 Association Rules and Regulations.** In addition to the restrictions and requirements above, the Board from time to time may, by resolution, adopt, modify, or revoke such rules and regulations governing the conduct of persons in the Community and the operation and use of the Units, Lots, Common Areas and Community as it may deem necessary or appropriate in order to assure the peaceful and orderly use and enjoyment of the Community. Reasonable fines may be levied and collected as an assessment for violations of said rules and regulations and for violations of any restrictions contained in this Declaration. A schedule of fines may be adopted by the Board of Directors specifying the amounts of such fines, and any other provisions or procedures related to the levying of such fines.

## ARTICLE VI - MAINTENANCE OBLIGATIONS

### 6.1 Owner's Responsibility.

6.1.1 Lots. Except to the extent that the Association is responsible therefore under Section 6.2, maintenance of the Lots and the Units shall be the responsibility of the Owner(s) thereof, who shall maintain such Lots and Units in good condition and repair. Each Owner at his or her sole expense shall maintain and repair the interior of the Unit, including floors and each and every structural element beneath the Unit, exterior windows, window frames, and exterior doors/door frames. In addition to decorating and keeping the interior of his or her Unit in good repair and in a clean and sanitary condition, he or she shall be responsible for the maintenance, repair or replacement of any plumbing fixtures, water heaters, heating equipment, air conditioners, lighting fixtures, refrigerators, dishwasher, disposal equipment, ranges, toilets, or other appliances or fixtures that may be in, or connected with, his or her Lot. Any fixture, pipe, conduit, or other utility device or apparatus that services only one Lot shall be the responsibility of that Lot's Owner to maintain, repair, and replace. Each Unit and Lot shall be maintained so as to not detract from the appearance of the Community and so as to not adversely affect the value or use of any other Unit or Lot.

6.1.2 Limited Common Area. Each Lot Owner shall, at its own cost, maintain, repair, replace, and keep in a clean, sanitary and attractive condition at all times, the Limited Common Areas appurtenant to his or her Lot.

### 6.2 Maintenance by Association.

6.2.1. The Association shall provide for, as a common expense, such care, maintenance, repair and replacement of the following as deemed necessary or desirable by the Board to keep them attractive and generally in good condition and repair:

- (a) The Common Area (unless otherwise stated in this Declaration);
- (b) The private drives, private utilities, and detention basin facilities throughout the Project; and
- (c) The landscaping, including trees, shrubs, and grass, and walks.

6.2.2. Snow Removal. The Association shall provide for snow removal from the Common Area and Limited Common Area (including sidewalks, walkways and driveways), and from the walkways on the Lots. If a parked vehicle prevents or interferes with snow removal from any Lot, the Owner of the Lot shall be responsible for such snow removal.

6.2.3. To the extent not clarified herein and not inconsistent with the provisions of this Declaration, the Association may, by duly adopted Board resolution, identify and assign those areas of maintenance and



responsibility that are either (1) Owner responsibilities; or (2) Association responsibilities. Such determinations shall be set forth in a Board resolution distributed to all Owners and shall be binding against all Owners.

6.2.4. The Association elects to provide for the maintenance, repair and replacement of the exteriors of the Units, the cost of which shall be assessed to the Unit Owners.

6.2.5. Except to the extent any injury or damage is covered by the Association's insurance, the Association shall not be liable for injury or damage to any person or property caused by the elements, or resulting from electricity, water, rain, dust or sand which may leak or flow from outside or from any parts of any building, including from any pipes, drains, conduits, appliances, or equipment, or from any other place, unless caused by the grossly negligent or intentional act of the Association.

6.2.6. If any area or improvement is damaged, or the need for maintenance, repair or replacement is caused, by the willful or negligent acts of an Owner, their guests, tenants, invitees or other Unit occupants, the Owner shall be responsible for the cost of required maintenance, repair or replacement and such costs shall automatically and immediately be an Assessment against such Owner.

6.2.7. The Association may assume an Owner's maintenance responsibility as to a Lot or Unit if, in the opinion of the Board, the Owner is unwilling or unable to adequately provide such maintenance. Before assuming such maintenance responsibility, the Board shall provide notice to the Owner of its intention to do so, and if such Owner has not commenced and diligently pursued remedial action with ten (10) days after mailing of such written notice, then the Association may proceed to maintain the Lot. The expenses of such maintenance incurred by the Association shall be reimbursed to the Association by the Owner. Such expenses shall automatically and immediately be an Assessment against such Owner.

#### **ARTICLE VII - DECLARANT RIGHTS AND CONTROL**

**7.1 Administrative Control of Association.** Declarant shall assume full administrative control of the Association through an appointed interim Board of Directors, which shall serve until the Turnover Date. The Turnover Date shall be held no later than upon expiration of the Period of Administrative Control.

**7.2** The Period of Administrative Control shall expire upon the earlier of: (1) the date Declarant no longer owns any Lot within the Community, or (2) the date Declarant voluntarily terminates the Period of Administrative Control by written notice to the Owners. Declarant will call and hold a Turnover Date at the time the Period of Administrative Control expires.

#### **7.3 Other Rights.**

In addition to any other rights under this Declaration or the Bylaws, as long as Declarant owns at least one (1) Lot within the Community, Declarant:

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

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

(c) Approval of Amendments. Consistent with the amendment provisions of this Declaration and Bylaws, for so long as the Declarant owns at least one Lot within the Community or so long as any Additional Property remains to be added to the Community, the approval of the Declarant shall be required in order to adopt

any amendment to the Declaration or Bylaws of the Association. Declarant, acting unilaterally, may amend the Governing Documents for any purpose.

(d) The Act. The Declarant, the Declarant-appointed Board and the Association are exempted from all procedures, requirements and obligations imposed by the Act to the extent allowed by the Act during the Period of Administrative Control and all rights authorized to be reserved by a declarant under the Act are hereby deemed reserved by the Declarant. The Declarant and the Declarant-appointed Board are exempt from association rules and the rulemaking procedure under Utah Code Ann. § 57-8a-217 and all rights under that section are hereby reserved by Declarant.

#### **7.4 Easements Reserved to Declarant.**

(a) The reservation to Declarant, its successors and assigns, of non-exclusive easements and rights of way over those strips or parcels of land designated or to be designated on the Plat as drainage, utility or sewer easements or open space or common area or otherwise designated as an easement area over any road or on the Community, and over those strips of land running along the front, rear, side and other Lot lines of each Lot shown on the Plat.

(b) An easement for the installation, construction, maintenance, reconstruction and repair of public and private utilities to serve the Community and the Lots therein, including but not limited to the mains, conduits, lines, meters and other facilities for water, storm sewer, sanitary sewer, gas, electric, telephone, cable television, and other public or private services or utilities deemed by Declarant necessary or advisable to provide service to any Lot, or in the area or on the area in which the same is located.

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

### **ARTICLE VIII – THE ASSOCIATION**

**8.1 Organization.** The Association has been organized as a nonprofit corporation under the nonprofit corporation laws of the state of Utah (Utah Code Annotated Titled 16 Chapter 6a, as may be amended from time to time). In the event the Association is at any time administratively dissolved by the State of Utah, the Board may re-incorporate the Association without a vote of the Owners. The affairs of the Association shall be governed by a Board as provided herein and in the Bylaws Declarant has appointed an interim Board of Directors of the Association, which shall serve until their successors have been elected at the Turnover Date.

**8.2 Membership.** Each Owner shall be a member of the Association. The membership shall commence, exist and continue by simply virtue of the ownership, shall expire automatically upon termination of ownership and need not be confirmed or evidenced by any certificate or acceptance of membership.

**8.3 Voting Rights.** The method of voting shall be as provided in the Bylaws. Voting rights within the Association shall be allocated as follows:

(a) Lots/Units. Subject to any rights granted to Declarant during the Period of Administrative Control expressed above, each Owner shall have one (1) vote in matters of the Association for each Lot owned.

(b) Declarant. For each Lot owned, the Declarant shall have three (3) votes up until, but not including, the Turnover Date.

**8.4 Powers, Duties and Obligations.** The Association shall have all the powers set forth in its Articles of Incorporation and Bylaws, together with its general powers as a corporation and under any applicable statute, as such statute may be amended to expand the scope of association powers, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including the power to levy and collect assessments and fines as provided in this Declaration. Without in any way limiting the generality of the foregoing, the Association shall have the following powers:

(a) The Board may delegate by resolution or contract to the Managing Agent any of its powers under this Declaration; provided, however, that the Board cannot delegate to such Managing Agent the power to execute any contract binding on the Association for a sum in excess of Five Thousand Dollars (\$5,000.00).

(b) The Association may borrow money, provided the assent of a majority of all Owners is obtained prior to mortgaging, pledging or hypothecating any or all of the Association's real property as security.

(c) Telecommunications/Fiber Optic/Related Contracts. Provided the Association already provides such service to the Lots, the Board shall have the power, in its own discretion and subject to federal law, to enter into, accept an assignment of, or otherwise cause the Association to comply with contracts with Telecommunication Service providers and Telecommunication Facilities owners (both, a "Telecommunication Provider"), pursuant to which the Telecommunication Provider serves as the exclusive provider of Telecommunication Services and/or Telecommunication Facilities to each Lot in the Properties, as well as the power to enter into or contract on behalf of the Association for similar bulk rate service contracts of any nature deemed in the Association's best interests. If such service(s) is not already provided to the Lots, the prior approval of the Owners shall be obtained by a vote where a majority of the votes cast are cast in favor of the service.

#### ARTICLE IX - PARTY WALLS

**9.1 General Rules of Law Apply.** Each wall to be built as a part of the original construction of any Unit and placed substantially on a dividing line between any two (2) such Units shall constitute a party wall. In the event the Owner, or its tenant, guest or invitee, causes damage to the party wall, then the general rules of law regarding party walls and liability for damage due to negligence or willful acts or omissions shall apply thereto. The Owner of each Lot adjoining a Party Wall shall be an "Owner" of the wall for purposes of this Article.

**9.2 Sharing of Repair and Maintenance.** The cost of reasonable repair and maintenance of a Party Wall shall be shared by the Owners in proportion to their ownership thereto, and maintained or not maintained by the Association as otherwise provided in this document.

**9.3 Destruction by Fire or Other Casualty.** If a Party Wall is destroyed or damaged by fire or other casualty, any Owner thereof may restore it, and the other Owners thereof shall contribute to the cost of restoration thereof in proportion to such ownership without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

**9.4 Arbitration.** In the event any dispute arises concerning a Party Wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all of the arbitrators.

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

#### ARTICLE X - COMPLIANCE AND ENFORCEMENT

**10.1 Compliance.** Each Owner, tenant or occupant of a Lot shall comply with the provisions of this Declaration, the Bylaws and the rules and regulations adopted pursuant thereto and any applicable statute. Failure to comply therewith shall be grounds for levying of a fine and an action or suit maintainable by the Association or an aggrieved Owner.

**10.2 Remedies.** Violation of any provisions of this Declaration, the Bylaws, or any rules or regulations adopted pursuant thereto, or of any decision of the Association made pursuant to such documents, shall give the Board of Directors acting on behalf of the Association, the right, but not the obligation, in addition to any other rights set forth in this Declaration or the Bylaws, or under law, to do any or all of the following after giving notice:

**10.2.1** Subject to the provisions of this Declaration, to enter the Lot 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 of Directors 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;

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

**10.2.3** To levy fines and any violation of any express rule, regulation, covenant, restriction, or term of any Governing Document of the Association shall be subject to a fine in the amount determined by the Board from time to time. A subsequent violation of the same specific type occurring within 12 months of a prior violation shall be deemed the same violation for all purposes, including the purpose of notice, and shall be subject to an immediate fine;

**10.2.4** To terminate the right to receive utility services paid for by assessments, if any, to terminate the right of access to and use of recreational and service facilities of the Association, if any, until the correction of the violation has occurred;

**10.2.5** The right of the Association to suspend the voting rights after notice and an opportunity to request a hearing for any period not to exceed sixty (60) days for any infraction of any of the Governing Documents, including failure to timely pay an assessment;

**10.2.6** Bring suit or action against the Owner on behalf of the Association and other Owners to enforce this Declaration, the Bylaws and any rules or regulations adopted pursuant thereto. The Association shall be entitled to an award of its attorneys' fees and costs in any action taken for the purpose of enforcing or otherwise implementing the terms of the Governing Documents, or for any action taken pursuant to the Governing Documents, if it prevails in such action, regardless of who instituted the action; or

**10.2.7** To record, in the records of the County Recorder, against a Lot as to which a violation exists relating to the land or improvements on the land and the noncompliance of such land or improvements with the Governing Documents, a notice of noncompliance setting forth the thing, condition or violation that exists and thereby providing notice to prospective purchasers and all others of the violation and of the requirement that the violation be remedied by the Owner or future Owner of the Lot.

**10.3 Action by Owners.** Subject to any limitation imposed under the Governing Documents or Utah law, an aggrieved Owner may bring an action against such other Owner or the Association to recover damages or to enjoin, abate, or remedy such thing or condition by appropriate legal proceedings.

**10.4 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.

#### ARTICLE XI - INSURANCE

**11.1 Types of Insurance Maintained by the Association.** The Association shall obtain the following types of insurance:

(a) **Liability.** A public general liability insurance policy covering the Association, its officers, Board members and managing agents, having at least a One Million Dollar (\$1,000,000.00) limit per total claims that arise from the same occurrence or in an amount not less than the minimum amount required by applicable law, ordinance or regulation. Coverage under this policy shall include, without limitation, all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common areas.

(b) **Property.** Blanket property insurance or guaranteed replacement cost insurance with not less than 100% of the full replacement cost for the physical structure of all Townhomes, Limited Common Areas appurtenant to a Townhome, and Common Areas, insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils, and including coverage for any fixture, improvement, or betterment installed at any time to a Townhome or to a Limited Common Area appurtenant to a Townhome, including a floor covering, cabinet, light fixture, electrical fixture, heating or plumbing fixture, paint, wall covering, window, and any other item permanently part of or affixed to a Townhome or to such Limited Common Area.

(c) **Fidelity Insurance or Bond.** The Association shall obtain and maintain adequate fidelity coverage to protect against dishonest acts by its officers, members of the Board, employees, and all others who are responsible for handling funds of the Association, including any property manager. Such fidelity coverage shall: (i) name the Association as an obligee; (ii) not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or managing agent, as the case may be, at any given time, and shall in no event be in an amount less than three months assessments on all Lots plus reserves; (iii) contain an appropriate endorsement(s) to the policy to cover any persons who serve without compensation if the policy would not otherwise cover volunteers, and to cover the Association's management agent, if the Association has delegated some or all of the responsibility for the handling of funds to a management agent; (iv) provide that coverage may not be canceled or substantially modified (including cancellation for nonpayment of premiums) without at least ten (10) days prior written notice to the Association or any insurance trustee.

(d) **Miscellaneous Items.** The following provisions shall apply to all insurance coverage of the Association:

1) **Certificate of Insurance.** Evidence of insurance shall be issued to each Owner and Mortgagee upon request.

2) **Deductible.** The Association shall pay for the deductible on any claim made against the Association's property insurance policy for a covered loss incurred to the Common Area, except where the claim is made because of the negligence or willful acts of an Owner or occupant, including a guest, invitee, or visitor, as determined by the Board. In such cases, the corresponding Owner shall pay the deductible amount.

3) **Special Endorsements.** Each policy shall contain or provide those endorsements commonly purchased by the other community association in the county.

4) Intent. The foregoing provisions shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Board or Association may deem necessary or appropriate from time to time, including directors and officers liability insurance.

### **11.2 Lot Owner Insurance Responsibility.**

11.2.1. Master Policy Deductible. For covered losses to Lots, the Association's policy is primary but the Lot Owner is responsible for the Association's policy deductible (which shall be an automatic Assessment against such Owner thirty (30) days after substantial completion of the repairs to, as applicable, the Lot, a dwelling on the Lot, or the limited common area appurtenant to the Lot) as follows:

(a) If a loss occurs that is covered by the Association's policy and by a Lot Owner's policy, the Association's policy provides primary insurance coverage and the Lot Owner's policy applies to that portion of the loss attributable to the policy deductible of the Association.

(b) If a Lot, or Limited Common Area or facility appurtenant to a Lot, suffers damage as part of a covered loss, the Lot Owner is responsible for an amount calculated by applying the percentage of total damage resulting in a covered loss that is attributable to Lot damage for that Lot to the amount of the deductible under the Association's policy. The amount of the deductible under the Association's policy shall be determined by the Board from time to time. The Association shall provide notice to the Lot Owners of any change in the amount of the deductible.

11.2.2. Contents of Lot/Unit. The Association's policy does not cover the contents of a Lot or Unit or a Lot Owner's personal property. Each Lot Owner is strongly encouraged to obtain insurance coverage for contents of their Lot or Unit, as well as for coverage in the event the Owner has to pay the Association policy deductible as provided above

11.2.3. Loss Due to Fault of Another. This Declaration does not prevent a person suffering a loss as a result of damage to property from asserting a claim, either directly or through subrogation, for the loss against a person at fault for the loss, except that, notwithstanding the foregoing, an insurer under a property insurance policy or liability insurance policy obtained by the Association waives the insurer's right to subrogation under the policy against: (a) any person residing with the unit owner, if the unit owner resides in the unit, and (b) the unit owner.

11.2.4. Acceptable Contractors. No work on any part of the Property, including Lots and Units, shall be performed for repair or replacement due to a covered loss except by a licensed contractor carrying adequate liability and workers compensation insurance, whether such person is hired by an Owner or the Association.

### **11.3 Power of Attorney**

(a) Notwithstanding any of the foregoing provisions and requirements relating to Association property or liability insurance, there may be named as an insured, on behalf of the Association, the Association's authorized representative, including any trustee with whom the Association may enter into any insurance trust agreement (the "Insurance Trustee") who shall have exclusive authority to negotiate losses under any policy providing property or liability insurance and to perform such other functions as are necessary to accomplish this purpose. By purchasing a Lot, all Owners appoint the Association or any Insurance Trustee designated by the Association as attorney-in-fact for the purpose of purchasing and maintaining the insurance specified in this section, including: (1) the collection and appropriate disposition of the proceeds thereof; (2) the negotiation of losses and execution of releases of liability; (3) the execution of all documents; and (4) the performance of all other acts necessary to accomplish such purpose.

(b) By purchasing a Lot, all Owners appoint the Association or any trustee designated by the Association as attorney-in-fact for the purpose of representing the Owners in condemnation proceedings or negotiations, settlements, and agreements with the condemning authority for acquisition of the Common Areas, or part thereof, by the condemning authority.

## ARTICLE XII - AMENDMENT AND DURATION

### 12.1 *Amendments.*

(a) How Proposed. Amendments to the Declaration shall be proposed by either a majority of the Board of Directors or by Owners holding thirty percent (30%) or more of the voting rights of the Association. The proposed amendment must be reduced to writing and shall be included in the notice of any meeting at which action is to be taken thereon or attached to any request for approval or consent to the amendment

(b) Approval Required. This Declaration may be amended if such amendment is approved by sixty percent (60%) of the voting rights of the Association. Notwithstanding the foregoing, however, for so long as the Declarant owns a single Lot in the Community or any of the Additional Property remains to be annexed into the Project, any and all amendments proposed pursuant to this Section must first receive the approval of the Declarant. Failure to receive such approval shall make the amendment null and void.

(c) Declarant Amendments. The Declarant may unilaterally amend this Declaration at any time until the Turnover Date for any purpose.

(d) Execution and Recordation. An amendment shall not be effective until the amendment is certified by the president of the Association as being adopted in accordance with this Declaration is acknowledged and is recorded in the appropriate County Recorder's Office. An amendment or revocation which only requires the execution of an instrument by Declarant shall be effective when executed by Declarant and recorded with the County Recorder.

12.2 *Duration.* The provisions, covenants, conditions and restrictions contained in this Declaration, as amended in whole or in part from time to time as provided above, shall continue and remain in full force and effect until there is recorded an instrument directing the permanent termination of this Declaration and the Association after the vote and approval of seventy-five percent (75%) of all of the Owners of the Lots, or from the unilateral decision of the Declarant in the event the Declarant still owns at least one Lot. Any such termination shall become effective only if a certificate of the president and secretary of the Association, certifying that termination as of a specified termination date has been approved in the manner required herein, is duly acknowledged and recorded in the County Recorder's Office not less than six (6) months prior to the intended termination date.

## ARTICLE XIII - MISCELLANEOUS PROVISIONS

13.1 *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.

13.2 *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 of Directors, 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.

**13.3 Lessees and Other Invitees.** No damage to, or waste of the Common Areas or any part thereof shall be committed by any Owner or any Unit occupant, guest, invitee, lessee of any Owner, and each Owner shall indemnify and hold the Board and the other Owners harmless against all loss resulting from any such damage or waste caused by any such person. Lessees, invitees, guests, Unit occupants, contractors, family members and other persons entering the Community 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 Community. 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.

**13.4 Waiver, Precedent and Estoppel.** No restriction, condition, obligation or provision contained in this Declaration or rules and regulations adopted pursuant hereto shall be deemed to have been abrogated or waived by the Declarant, Association, the Board of Directors 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 Declarant, Association, Board of Directors or Owner as to any similar matter.

**13.5 Interpretation.** All questions of interpretation or construction of any of the covenants or restrictions in this Declaration shall be resolved by the Board, and its decision shall be final, binding and conclusive on all parties affected for all purposes.

**13.6 Premises Liability.** From the time that the Common Area, or any portion thereof, is opened and put into use for the enjoyment of Owners, Declarant shall be and remain wholly free and clear of any and all liability to, or claims by, all Owners, and all persons and entities, of whatever kind or character, whether sounding in contract or tort, deriving from the occurrence of any injury or damage to any person or property on, or in respect of the use and operation of, the Common Area or any of its improvements, fixtures, and facilities; inasmuch as the control, operation, management, use and enjoyment, of the common area shall be within, under, and subject to the Association—and not Declarant, and an Owner shall defend, indemnify and hold harmless the Declarant against such claim, loss or liability asserted by such Owner or his or her guest, invitee, licensee, tenant, or visitor. In this respect, it shall be the affirmative duty and responsibility of each Owner and user of the common area facilities to continuously inspect the same for any defects or perils or other unsafe conditions or circumstances, prior to and during such use or enjoyment thereof; and all users of, and visitors to, the common area and its improvements and facilities shall use, enjoy, and visit, the same at their own risk and peril.

**13.7 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.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, the Declarant has executed this Declaration this 7 day of MARCH, 2022.

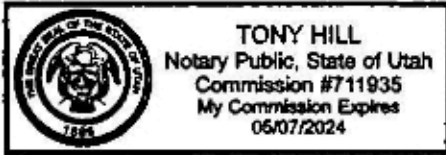
CW The Alice, LLC,  
a Utah limited liability company

*Darlene Carter*  
By: DARLENE CARTER  
Its: MANAGER

STATE OF UTAH                    )  
  )ss:  
COUNTY OF DAVIS    )

The foregoing instrument was acknowledged before me on this 7 day of MARCH, 2022 by DARLENE CARTER, of CW The Alice, LLC, a Utah limited liability company.

*Tony Hill*  
Notary Public for Utah



**EXHIBIT A**  
**(LEGAL DESCRIPTION)**

Beginning at the Northwest Corner of Lot 6 of the Rosewood Subdivision, Entry No. 338770 as recorded in the Davis County Recorder's office; said point being South 00 02'50" East, (NAD83 Bearing is South 00 19'02" West), along the section line, 361.89 feet and West, 1831.96 feet from the East Quarter corner of Section 28, Township 4 North, Range 1 West, Salt Lake Base and Meridian; said East Quarter corner being South 89 55'10" East, 5284.58 feet from the West Quarter corner of said Section 28; (Basis of Bearing is North 00 04'00" East between the West Quarter Corner and Northwest Corner of said Section 28, Township 4 North, Range 1 West, Salt Lake Base and Meridian); and running thence South 12 32'50" East, along the westerly boundary line of said Rosewood Subdivision, 63.40 feet; thence South 80 06'55" West, 141.13 feet; thence North 89 09'50" West, 232.26 feet to a point on the easterly right-of-way line of Fort Lane; thence North 00 50'10" East, along said easterly right-of-way line, 185.00 feet; thence South 89 09'50" East, 232.34 feet more or less to a point on the Rosewood Subdivision No. 3 boundary line, Entry No. 344450 as recorded in the Davis County Recorder's office; thence North 66 43'10" East, along the boundary line of said Rosewood Subdivision No. 3, 45.63 feet; thence South 47 16'46" East, 70.70 feet; thence South 22 33'06" East, 74.64 feet to the point of beginning,

Contains: 1.45 Acres (or 63,191 sq. ft.)

**EXHIBIT B**  
**BYLAWS OF**  
**THE ALICE OWNERS ASSOCIATION, INC.**  
**(Layton City, Davis County, Utah)**

THESE BYLAWS OF THE ALICE OWNERS ASSOCIATION, INC., are effective upon recording in the office of the Davis County Recorder pursuant to the Utah Community Association Act and the Utah Revised Nonprofit Corporation Act (referred to collectively herein as the "Acts").

**RECITALS**

A. The Association is organized for any and all lawful purposes for which a nonprofit corporation may be organized under the Utah Revised Nonprofit Corporation Act, as amended, subject to the terms and conditions contained in the Declaration of Covenants, Conditions, and Restrictions, and Reservation of Easements for The Alice (the "**Declaration**") and Articles of Incorporation for The Alice Owners Association (the "**Articles**").

B. These Bylaws are adopted in order to complement the Declaration, to further define the rights of the Association and the Owners, to provide for the ability to effectively govern and operate the Association and the Project, and, to further the Association's efforts to safely, efficiently, and economically provide a quality living environment.

**ARTICLE I**  
**DEFINITIONS**

Capitalized terms used herein shall have the same meaning and effect given to such terms in the Declaration except as otherwise provided herein or as may be required by context.

**ARTICLE II**  
**APPLICATION**

All present and future Owners, Occupants, mortgagees, and any other persons who may use the facilities of the Project in any manner are subject to these Bylaws, the Declaration, and the Rules. The mere acquisition or rental of any of the Units, or the mere act of occupancy or use of any such Units or the Common Area and Facilities will signify that these Bylaws, the Declaration, and the Rules are accepted, ratified, and will be complied with by such persons.

**ARTICLE III**  
**MEMBERSHIP IN ASSOCIATION; VOTING; MEETING OF OWNERS**

3.1 Membership in Association. Declarant, so long as Declarant owns a Lot, and every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to ownership of any Lot. Unless otherwise stated in the Declaration, each Lot in the Project shall be entitled to one (1) vote. Membership will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If a Lot is owned by more than one person, the membership appurtenant to that Lot shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Lot is held. Ownership of a Lot within the Project cannot be separated from the Association membership appurtenant thereto, and any devise, conveyance or other disposition of a Lot shall constitute a devise, conveyance or other disposition, respectively, of such Owner's membership in the

Association and the rights appurtenant thereto. The foregoing is not intended to include conveyances made solely for the purpose of securing performance of an obligation.

3.2 Voting. Unless otherwise provided for herein, or required by the Declaration, all matters submitted to a vote shall be by a majority vote of all votes cast. Notwithstanding the foregoing, during the Declarant Control Period, Declarant may act in all Association matters with or without a vote of the Owners. To the extent any matters are submitted to a vote of the Owners during the Declarant Control Period, the same shall be approved and implemented if, and only if, the Declarant also approves such matters. After the Declarant Control Period, all matters submitted to a vote of the Association shall be decided by the votes of the Owners. A change in the ownership of a Lot shall be effective for voting purposes from the time the deed or other instrument effecting such change is recorded. Thereafter, the new Owner shall give the Board written notice of such change of ownership and provide satisfactory evidence thereof. The vote for each Lot must be cast as one vote, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one (1) Owner the vote for the Lot shall be cast as such Owners decide among themselves. In the event such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that such Owner was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one Owner attempts to cast the vote for a particular Lot, the vote for that Lot shall be deemed void and shall not be counted.

3.3 Annual Meeting. During the Declarant Control Period, annual meetings are not required and will only be held in the sole discretion of the Declarant. Thereafter, the annual meeting of the Owners shall be held each year on a day and at a time established by the Board. The purpose of the annual meeting shall be electing Directors and transacting such other business as may come before the meeting. If the election of Directors cannot be held on the day designated for the annual meeting of the Owners, or at any adjournment thereof, the Board shall cause the election to be held either at a special meeting of the Owners to be convened as soon thereafter as may be convenient or at the next annual meeting of the Owners. The Board may from time to time by resolution change the month, date, and time for the annual meeting of the Owners.

3.4 Special Meetings. During the Declarant Control Period, the Declarant shall have the sole right to call a special meeting. Thereafter, special meetings of the Association may be called at any time by the Board, or upon written request of the Owners who are entitled to vote thirty-three percent (33%) of all of the total votes of the Association. Any written request for a special meeting presented by the Owners shall be delivered to the Board and shall include the original signature of each Owner affirmatively supporting such request along with a complete statement of the purpose of the meeting on each page containing signatures. The Board shall then call, provide notice of, and conduct a special meeting within forty-five (45) days of receipt of the request.

3.5 Notice of Meetings. Written notice of each meeting of the Association shall be given by, or at the direction of, the Secretary / Treasurer or person authorized by the Board to call the meeting, by mailing a copy of such notice, postage prepaid, or by email, text message or other mode of electronic or digital communication, to the extent not prohibited by law, at least fifteen (15) days, and no more than sixty (60) days, before such meeting to each Owner entitled to vote, addressed to the Owner's address, email address, number for text messaging, or other mode of electronic or digital communication last appearing on the books of the Association, or supplied by such Owner to the Association for the purpose of notice. Each Owner shall register with the Association such Owner's current email address, phone number (indicating whether the same is capable of receiving text messages), and mailing address for the purposes of notice hereunder. Such registered email, phone number, and mailing addresses may be changed from time to time by notice in writing to the Association. If no address is registered with the Association, an Owner's Unit shall be deemed to be the Owner's registered address and notice to the Unit address may be made by first-class mail or by posting the meeting notice on the front door. Such notice shall specify the place, day and hour of the meeting, and, the purpose of the meeting. The President of the Association will chair meetings of the Owners. The presence of an Owner at a meeting shall be deemed to waive any objection such Owner has to the form and scope of the notice unless such Owner objects at the outset of the meeting.

3.6 Record Date for Notice Purposes. The Board may designate a record date, which shall not be more than sixty (60) nor less than fifteen (15) days prior to the meeting, for the purpose of determining Owners entitled to notice for any meeting of the Owners. If no record date is designated, the last date on which a notice of the meeting is mailed or delivered shall be deemed to be the record date for determining Owners entitled to notice. The persons or entities appearing in the records of the Association on such record date as the Owner(s) of record of Units in the Project shall be deemed to be the Owners of record entitled to notice of the meeting of the Owners.

3.7 Place of Meetings. The Board may designate any place in Davis County that is reasonably convenient for the Owners as the place of meeting for any annual or special meeting. If no designation is made, or if a special meeting is otherwise called, the place of the meeting shall be held at the office of the Association.

3.8 Quorum. Except for meetings addressing an amendment of these Bylaws, an amendment of the Declaration, or other matters for which the affirmative votes of a certain percentage of Owners is required for approval, the Owners present in person or by proxy at a meeting of the Association shall constitute a quorum. Where a certain percentage of affirmative votes of Owners is required to approve an action and such action is to be discussed at the meeting, a quorum shall consist of not less than the number of affirmative votes required to approve such action.

3.9 Proxies. At all meetings of the Association, each Owner may vote in person or by proxy. All proxies shall be in writing, signed by the applicable Owner(s) of the Unit(s), and filed with the Secretary / Treasurer or any professional manager the Association chooses to retain. Every proxy shall be revocable and shall automatically cease upon conveyance by the Owner(s) of his or her Lot(s).

3.10 Waiver. All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, in the form of proxies and the method of ascertaining Owners present, and in the decision and votes of the Board or of the Owners shall be deemed waived if no objection is made either at the meeting or within thirty (30) days of the date of the meeting, or within thirty (30) days of notice of any decision by the Board. The presence of an Owner in person at any meeting of the Owners shall be deemed a waiver of any notice requirements.

3.11 Action Taken Without a Meeting. Owners have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of Owners in accordance with the requirements of Utah Code Ann. §16-6a-707 and any other applicable sections of the Acts. Any action so approved shall have the same effect as though taken at a meeting of the Owners.

#### ARTICLE IV BOARD; SELECTION; TERM OF OFFICE

4.1 General Powers. The Project and the affairs and business of the Association shall be managed by the Board. The Board may exercise business judgment and all of the powers of the Association, whether derived from the Declaration, the Bylaws, the Articles of Incorporation, or the Acts except such powers that the Declaration, the Bylaws, the Articles of Incorporation and the Acts vest solely in the Owners.

4.2 Number, Selection and Tenure. The Association will be composed of three (3) Directors. Initially, the Board will have three (3) Directors who will be selected by the Declarant. The Declarant shall decide who serves on the Board during the Declarant Control Period and may increase the number of Directors. After the Declarant Control Period, the Board will consist of three (3) Directors. Within ninety (90) days after the end of the Declarant Control Period, the Association shall hold an election at which the Owners shall be entitled to elect all three (3) Directors. Upon such election, the terms of the Directors will be staggered as follows: the two (2) Directors receiving the highest number of votes in such election shall serve for an initial term of three (3) years, and the one (1) Director receiving the next highest number of votes shall serve for an initial term of two (2) years. After the expiration of the initial terms, all Directors shall serve terms of two (2) years. After the Declarant

Control Period, the Board may change the number of Directors on the Board by the vote of a majority of Directors. In addition, after the Declarant Control Period the Owners may change the number of Directors by the vote of a majority of Owners. Notwithstanding the foregoing, there shall always be an odd number of Director slots and the terms of the Directors shall be staggered. Notwithstanding the foregoing, Declarant may, at Declarant's discretion, allow one (1) or more seats on the Board to be filled by an Owner chosen by the Members of the Association at any time during the Declarant Control Period. Such action shall not be deemed as a termination of the Declarant Control Period or a waiver of any of the rights of Declarant as provided herein.

4.3 Removal and Replacement. After the Declarant Control Period, a Director may be removed with or without cause by a majority vote of the other Directors or by a majority vote of the Owners at a meeting of the Owners called for the purpose of voting on removal. If a Director is removed, the remaining Directors (provided there are at least two (2) Directors serving) shall determine a replacement Director to fill the remainder of the term of the removed Director. If the Board cannot determine a replacement, or if there are not two (2) Directors then serving, the Owners shall fill vacancies on the Board at a meeting called for the purpose of filling vacancies.

4.4 Non-Liability of Officials. To the fullest extent permitted by law, none of the following Persons: (i) every Director and officer of the Association, (ii) every member of the Design Review Committee, or other committees of the Association, (iii) Declarant and the Declarant Related Parties, and (iv) all employees of the Association (collectively, the "Released Persons") shall be liable to any Owner, Occupant, the Association or any other Person for any damage, loss or prejudice suffered or claimed on account of any decision, approval or disapproval of plans or specifications (whether or not defective), course of action, act, inaction, omission, error, negligence or the like made in good faith and which the following Persons reasonably believed to be within the scope of their representative duties. Each Owner, Occupant and other Person having any interest in the Project or entering upon or using any portion of the Project is deemed to acknowledge and accept the following:

(a) None of the Released Persons shall be liable or responsible for, or in any manner be guarantor or insurer of, the health, safety, or welfare of any Owner, Occupant or other Person entering upon or making use of any portion of the Project. Each Owner, Occupant and other Person assumes all risks associated with the use and enjoyment of the Project, including but not limited to, any recreational facilities upon or within the Project.

(b) None of the Released Persons shall be liable or responsible for any personal injury, illness or any other loss or damage caused by the presence or malfunction of any utility line, equipment or substation, adjacent to, near, over, or on the Project. Each Owner, Occupant and other Person assumes all risks of personal injury, illness or other loss or damage arising from the presence of malfunction of any utility line, equipment or substation adjacent to, near, over or on the Project.

(c) No provision of these Bylaws or any other Governing Document shall be construed or interpreted as creating a duty by any of the Released Persons to protect or further the health, safety or welfare of any Person, even if funds of the Association are used for such a purpose.

4.5 Indemnification. In the event that any legal claim or action is asserted or commenced against a Director or Officer for actions undertaken in his role as a member of the Board or as an Officer of the Association, whether or not such Director or Officer is still acting in their official capacity, the Association shall indemnify such Director or Officer for losses or claims, and undertake all costs of defense, until and unless a court of competent jurisdiction determines that such Director or Officer acted with willful or wanton misfeasance or with gross negligence. After such determination, the Association is no longer liable for the cost of defense and may recover costs already expended from the Director or Officer who so acted.

ARTICLE V  
MEETINGS OF THE BOARD OF DIRECTORS

5.1 Regular Meetings. Meetings of the Board shall be held as frequently as the Board deems appropriate, but at least annually, at such place and hour as may be fixed from time to time by resolution of the Board. Should such meeting fall upon a weekend or legal holiday, then that meeting shall be held at the same time on the next day which is not a weekend or legal holiday.

5.2 Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two (2) Directors, after not less than five (5) days written notice to each Director.

5.3 Open Meetings. After the Declarant Control Period, meetings of the Board shall be open to the Owners or Owners' agents except in cases where the Utah Revised Nonprofit Act permits private meetings. After the Declarant Control Period, any Owner may request notice of all meetings of the Board, in which case the Board shall provide notice of all meetings to such Owner not less than forty-eight (48) hours prior to such meeting.

5.4 Quorum and Voting. A majority of the number of Directors shall constitute a quorum for the transaction of business. During the Declarant Control Period, all matters requiring a vote of the Directors or otherwise submitted to a vote of the Directors shall be approved and implemented if, and only if, the Declarant also approves such matters. After the Declarant Control Period, all matters submitted to a vote of the Directors shall be decided by the votes of the Directors. 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 and of the Association.

ARTICLE VI  
POWERS AND DUTIES OF THE BOARD; APPLICABILITY OF THE ACTS

6.1 Powers. The Board shall have power to:

6.1.1 Adopt and publish Rules and Regulations governing the use of the Common Area and Facilities within the Neighborhood or as shown on the Plat Map or identified in the Declaration, and the personal conduct of the Owners and their guests thereon, and to establish penalties for the infraction thereof;

6.1.2 Adopt and publish other Rules and Regulations for the management of the Association as are not in conflict with the Acts, the Declaration, or these Bylaws;

6.1.3 As the Board deems necessary, employ a professional manager, or other independent contractors or employees, to carry out the functions of the Association and exercise the powers of the Board which are properly the subject of delegation; and

6.1.4 Exercise for the Association all powers, duties and authority vested in or delegated to the Association by the Acts, the Declaration, or the Articles of Incorporation.

6.2 Duties. It shall be the duty of the Board to:

6.2.1 Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Owners at the annual meeting of the Association, or at any special meeting when such statement is requested in writing by the Owners who are entitled to vote thirty-three percent (33%) of the total votes;

6.2.2 Supervise any professional manager and all Officers, agents and employees of this Association, and to see that their duties are properly performed;

6.2.3 After the Declarant Control Period, do each of the following in the manner set forth in

the Declaration:

6.2.3.1 Prepare the budget for the Association as provided in the Declaration and Section 10.1 of these Bylaws; and

6.2.3.2 Fix the amount of the annual assessment assessed against each Lot and fix the amount of any supplemental assessments or special assessments applicable to any Lots;

6.2.4 Send written notice of each annual assessment to every Owner subject thereto at least fifteen (15) and no more than sixty (60) days in advance of each annual assessment period and similar notice for imposition of each supplemental assessment or special assessment;

6.2.5 Foreclose the lien (at the option of the Board) against any Lot for which assessments are not paid in the manner provided for in the Association Act and the Declaration or to bring an action at law (at the option of the Board) against the Owner personally obligated to pay the same;

6.2.6 Issue, or to cause an appropriate Officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid and to charge a reasonable fee for the issuance of these certificates;

6.2.7 Procure and maintain insurance as required by the Declaration and the provisions of the Association Act relating to insurance;

6.2.8 Establish a reserve fund and conduct a reserve fund analysis in accordance with the provisions of the Association Act relating to reserve funds;

6.2.9 Cause all Officers or employees having fiscal responsibilities to be bonded, as the Board may deem appropriate; and

6.2.10 Cause the Common Area and Facilities to be properly maintained and managed.

6.3 Legal Action Involving Declarant. Neither the Board nor any other person or entity acting, or purporting to act, on behalf of the Association shall file, commence, or maintain any lawsuits or legal proceedings of any nature 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 Units or Units thereon unless and until all of the "MANDATORY DISPUTE RESOLUTION REQUIREMENTS" set forth in the Declaration have been satisfied. Any Claims against Declarant shall comply with all the terms and conditions of the Declaration.

6.4 Applicability of the Community Association Act. The provisions of the Community Association Act shall apply and govern the Association's rights with respect to levying of assessments, collection of assessments, and remedies that apply in the event of non-payment of assessments.

6.5 Applicability of the Utah Revised Nonprofit Act. The provisions of the Utah Revised Nonprofit Act shall apply and govern the operations and dealings of the Association to the extent not otherwise provided in these Bylaws, the Declaration, or the Articles of Incorporation.

## ARTICLE VII OFFICERS AND THEIR DUTIES

7.1 Enumeration of Officers. The following positions shall constitute the officers of this Association ("**Officers**"): a President, a Vice-President, a Secretary / Treasurer, and such other Officers as the Board may



from time to time by resolution create.

7.2 Selection of Officers. The Declarant shall select the three (3) initial Officers, and the Declarant shall decide who serves as Officers during the Declarant Control Period. After the Declarant Control Period, the Board shall annually, at the next meeting of the Board after the Association's annual meeting, select the Officers. After the Declarant Control Period, all Officers shall be members of the Board.

7.3 Term. After the Declarant Control Period, the Officers of the Association shall be elected annually by the Board and each shall hold office for one (1) year unless they shall sooner resign, or shall be removed, or are otherwise disqualified to serve.

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

7.5 Resignation and Removal. After the Declarant Control Period, any Officer may be removed from office with or without cause by the Board. Any Officer may resign at any time by giving written notice to the Board, the President or the Secretary / Treasurer. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

7.6 Vacancies. After the Declarant Control Period, a vacancy in any office may be filled by appointment by the Board. The Officer appointed to such vacancy shall serve for the remainder of the term of the Officer he or she replaces.

7.7 Multiple Offices. Members of the Board may be Officers in the Association. No person shall simultaneously hold more than one (1) of any of the offices identified above, except in the case of special Officers created pursuant to Section 7.4, above.

7.8 Duties of Officers. The duties of the Officers are as follows:

7.8.1 President. The President shall preside at all meetings of the Board; shall see that orders and resolutions of the Board are carried out; and shall sign all written contracts or agreements of the Association. The President shall execute any amendments to the Declaration and deliver the same to the Secretary / Treasurer for certification and recordation, provided approval for such amendment has been obtained as provided in the Declaration.

7.8.2 Vice-President. The Vice-President shall act in the place and stead of the President in the event of his or her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him or her by the Board.

7.8.3 Secretary / Treasurer. The Secretary / Treasurer shall record the votes and keep the minutes of all things and proceedings of the Board and of the Owners; serve notice of meetings of the Board and of the Owners; keep appropriate current records showing the Owners of the Association together with their addresses; certify that any amendments to the Declaration have received the required approval and have been executed by the President and shall record the same; and shall perform such other duties as required by the Board. The Secretary / Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by the Board; shall sign all checks and promissory notes of the Association; keep the Associations book and accounts; and shall assist the Board with the preparation of the annual budget to be presented to the Owners as provided herein.

## ARTICLE VIII

## COMMITTEES

8.1 Committees Authorized. The Board may appoint Committees as it deems appropriate for carrying out the purposes of the Association.

## ARTICLE IX BOOKS AND RECORDS

9.1 Open Records. Notwithstanding Section 6.2.1, above, the books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Owner. The Declaration, the Articles of Incorporation, the Bylaws, and any Rules promulgated by the Board shall be available for inspection by any Owner at the principal office of the Association, where copies may be purchased at a reasonable cost.

## ARTICLE X BUDGET AND ASSESSMENTS

10.1 Budget. The Board shall prepare an annual budget showing the estimated expenses of the Association and the anticipated annual assessment for the following year attributable to each Lot. The budget shall be completed and distributed to the Owners on or before December 1 of each year.

10.2 Fiscal Year. The fiscal year of the Association shall begin on January 1 and end on December 31 of every year, except that the first fiscal year shall begin on the date of incorporation.

10.3 Payment of Assessments. As more fully set forth in the Declaration, and subject to the exemptions set forth in the Declaration, each Owner is obligated to pay to the Association all assessments, and the Owner's obligation to pay such assessments is secured by a continuing lien upon the Owner's Lot. Any assessment which is not paid when due is delinquent. If the assessment is not paid on time, then the Board has the authority to establish late fees and collect the same from the delinquent Owner. The Board, in the name of the Association, may bring an action at law against the Owner personally obligated to pay the assessments and late fees or foreclose the lien against the Lot in the manner provided by the Association Act, and interest, costs, and reasonable attorney fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments and late fees provided for herein or provided in the Declaration by nonuse of the Common Area and Facilities or abandonment of his or her Lot.

10.4 Set-up Fee. In addition to the assessments identified in the Declaration, the Association may charge an administrative set-up fee whenever a new Owner takes title to a Lot. The amount of any set-up fee will be determined by the Board in accordance with these Bylaws and may be adjusted by the Board from time to time. The set-up fee will be used to offset the administrative, data entry, and recordkeeping costs associated with the change of ownership from one Owner to another.

## ARTICLE XI AMENDMENTS

11.1 Amendment. During the Declarant Control Period, the Declarant shall have the right to amend these Bylaws without the consent of the Association or any Owner. After the Declarant Control Period, these Bylaws may be amended, at a regular or special meeting of the Association, by an affirmative vote, in person or by proxy, of the Owners entitled to cast at least sixty-seven percent (67%) of the total votes of the Association; provided, however, that no amendment to the Bylaws shall be adopted that is inconsistent with or contradicts any provisions of the Declaration unless and until the Declaration is also amended (in accordance with the amendment requirements of the Declaration) to resolve such inconsistency or contradiction. No amendment to these Bylaws shall be effective until they are recorded in the office of the Davis County Recorder.

11.2 Conflict. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE XII  
MISCELLANEOUS

12.1 Governing Law. These Bylaws shall be governed by, and interpreted in accordance with, the laws of the State of Utah, without regard to conflict of law provisions.

12.2 Severability. If any section, term, or provision of these Bylaws is determined to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the remaining sections, terms, and provisions of this Declaration which shall all remain in full force and effect.

12.3 No Waiver. The failure by the Declarant or the Association to enforce any term or provision of these Bylaws shall not be deemed as a waiver of the right to thereafter enforce such term or provision.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, on the 7 day of MARCH, 2022, the Incorporator of the Company has executed and adopted these Bylaws.

**CW THE ALICE, LLC,**  
a Utah limited liability company

  
By: DARLENE CARTER  
Its: Manager

STATE OF UTAH                                    )  
  §  
COUNTY OF DAVIS                            )

On the 7 day of MARCH, 2022, personally appeared before me DARLENE CARTER who by me being duly sworn, did say that he/she is the manager of CW THE ALICE, LLC, a Utah limited liability company, and that the foregoing instrument is signed on behalf of said company and executed with all necessary authority.

  
\_\_\_\_\_  
(Notary Public)

(Seal)

