



**Wednesday, December 10, 2025
Development Review Committee**

DEVELOPMENT REVIEW COMMITTEE AGENDA

PUBLIC NOTICE is hereby given that the Development Review Committee of Spanish Fork, Utah, will hold a regular meeting at the City Council Chambers at Library Hall, 80 South Main Street, Second Floor, Spanish Fork, Utah, commencing at 10:00 a.m. This meeting is not available to attend virtually.

1. Approval of Minutes

A. November 12, 2025.

B. November 19, 2025.

2. Final Plat

A. ATHENS INDUSTRIAL CONDOMINIUMS PLAT A. This proposal involves the approval of a Final Plat for twenty industrial condominium units to be located at 3586 North Main Street.

3. Site Plan

A. FULLMER EXCAVATION. This proposal involves the development of an industrial building located at 1299 West 3470 North.

B. L&W PARKING EXPANSION. This proposal involves the expansion of a parking lot for an industrial warehouse located at 82 East 3450 North.

4. Concept Review

A. FIRST WATCH RESTAURANT CONCEPT.

B. CANYON CREEK SUBDIVISION CONCEPT.

5. Discussion

A. DISCUSSION ON MILL ROAD CROSS SECTION.

B. DISCUSSION ON SCENIC EASEMENT.

C. DISCUSSION ON CREEKSIDE LAND EXCHANGE.

D. SUNSET VILLAS UTILITY LATERALS.

6. Adjourn

End

Draft Minutes
Spanish Fork City Development Review Committee
80 South Main Street
Spanish Fork, Utah
November 12, 2025

Staff Members Present: Seth Perrins, City Manager; Dave Anderson, Community Development Director; Brandon Snyder, Senior Planner; David Mann, Senior Planner; Kasey Woodard, Community Development Secretary; Ian Bunker, Associate Planner; Vaughn Pickell, City Attorney; Joshua Nielsen, Assistant City Attorney; John Little, Chief Building Official; Byron Haslam, Assistant City Engineer; Josh Wagstaff, Assistant City Engineer; Marcie Clark, Engineering Department Secretary; Jered Johnson, Engineering Division Manager; Kevin Taylor, Senior Power Utility Planner; Jake Theurer, Power and Light Superintendent; Bart Morrill, Parks Maintenance Supervisor; Jason Turner, Fire Marshall.

Citizens Present: Mike Deuel, Jerry Carroll, David Simpson, Nik Simpson, Jose Valle, Daniel Delgado, Barrett Stratton, Morgan Fife, Larvin Pollock, Joseph Earnest.

Dave Anderson called the meeting to order at 10:00 a.m.

MINUTES

November 5, 2025

Seth Perrins moved to approve the minutes of November 5, 2025.

John Little seconded and the motion **passed** all in favor.

FINAL PLAT

RIVER MEADOWS TOWNHOMES AMENDMENT

Brandon Snyder opened his presentation by explaining that this Final Plat approval corresponds with the recently approved Amended Preliminary Plat and Development Agreement Addendum #4, authorized by the City Council, which allows for 24 additional

townhome units. This addition increases the total number of townhomes within the development to 174 units.

He noted that the project features a mix of front-loaded and rear-loaded townhome designs, with the majority being rear-loaded units. Mr. Snyder further stated that the **approval would include the City's standard findings and conditions to ensure full compliance with the Development Agreement.**

Staff reported that they had no further comments on the item.

Joseph Earnest expressed his appreciation to City staff for their time, effort, and attention throughout the course of the project.

John Little **moved** to approve the proposed River Meadows Townhomes Amendment Final Plat based on the following finding and subject to the following conditions:

Finding:

1. That the proposal is consistent with the City's General Plan Land Use Designations and Zoning Map.

Conditions:

1. That the Applicant meets the City's development and construction standards, zoning requirements and other applicable City ordinances.
2. That the Applicant addresses any staff review comments.
3. That the Applicant addresses all items of the development agreement and subsequent addendums.
4. That the Applicant addresses all City Council conditions of approval relating to the Preliminary Plat.

Jake Theurer **seconded** and the motion **passed** all in favor.

SUMMIT BUSINESS PARK PLAT A

Brandon Snyder explained that this is a straightforward proposal to convert the existing structure into eight individual condominium units. He indicated that he was not aware of any outstanding redline comments and noted that staff is recommending approval of the request.

A brief discussion followed regarding the building, during which it was clarified that the structure was originally designed and constructed to allow for subdivision into individual units. It was further noted that the development will be managed by a **homeowner's association (HOA)** responsible for maintaining the common areas.

The applicant stated that the building is currently in shell condition and that interior partition walls have not yet been constructed. He explained that this approach was intentional, as it allows flexibility for future tenants who may wish to purchase multiple units and combine spaces. He added that constructing the walls can cost up to \$50,000, and once the units are purchased, the interior spaces will be subdivided and finished as appropriate.

Jake Theurer **moved** to approve the proposed Summit Business Park Plat A Final Plat based on the following finding and subject to the following conditions:

Finding:

1. That the proposal conforms to the City's Zoning Map.

Conditions:

1. That the Applicant meets the City's development and construction standards, zoning requirements and other applicable City ordinances.
2. That the Applicant addresses any remaining red-lines.

Seth Perrins **seconded** and the motion **passed** all in favor.

MINOR PLAT AMENDMENT

NORTH POINT PROPERTIES SUBDIVISION - FIRST AMENDMENT

Brandon Snyder explained that this proposal involves a two-step process. He described the existing structure on the site and noted plans for a future building to be constructed on the rear portion of the property. Mr. Snyder stated that the applicant has expressed interest in converting the units into condominiums.

He noted there were concerns regarding the existing ditch located at the front of the site and presented the Site Plan layout, highlighting an area identified as future right-of-way, which has not yet been dedicated. Mr. Snyder explained that staff has directed the applicant to amend the existing subdivision plat should they wish to proceed with the condominium conversion. The proposed subdivision would create a non-buildable lot designated for a future road dedication.

Mr. Snyder further noted the City's concern about maintaining the landscaped area on the non-buildable lot. He stated that staff would like a formal maintenance agreement in place to ensure proper upkeep until the right-of-way is officially dedicated to the City. He added that this requirement is identified in the redline comments, although it has not

been listed as a specific condition of approval. Once the condominium plat is recorded, each unit will have separate ownership and associated maintenance responsibilities.

The applicants indicated their understanding that there are long-term plans to widen Main Street and expressed a desire to delineate this area so that any future right-of-way acquisition funds could be returned to the original developer.

Dave Anderson discussed the ongoing maintenance of the development and emphasized the importance of ensuring the property is properly maintained.

Morgan Fife, the legal representative for the development, noted that the building located at the rear of the site will retain common ownership. He suggested implementing a simple Shared Use and Cost Agreement to address maintenance and shared responsibilities. Mr. Anderson agreed that this could be an appropriate and effective solution.

Mr. Snyder reiterated that this represents the first step in a two-step process. Once this plat is recorded, the applicant should proceed with preparation and submittal of the condominium plat.

Mr. Fife concurred with this approach and stated that the next step could be completed promptly.

Mr. Anderson also mentioned the potential for funding to facilitate the purchase of Parcel A, to which Mr. Fife expressed support.

The discussion concluded with staff considering the City's potential role in maintaining the parcel in the future.

Seth Perrins **moved** to approve the proposed North Point Properties Subdivision Minor Plat Amendment based on the following finding and subject to the following conditions:

Finding:

1. That the proposal conforms to the City's General Plan Land Use Designation Map and Zoning Map.

Conditions:

1. That the applicant meets the City's development and construction standards, zoning requirements and other applicable City ordinances.
2. That all remaining redlines are addressed.

Jered Johnson **seconded** and the motion **passed** all in favor.

ZONE CHANGE

SWENSON PROPERTY ZONE CHANGE

Ian Bunker explained that the property was recently annexed into the City with an R-R (Rural Residential) zoning designation; however, the applicant is now requesting a rezone to I-1 (Light Industrial) to align with the surrounding industrially zoned properties. He noted that no formal development plans have been submitted at this time, though there have been preliminary discussions regarding the City's potential purchase of a portion of the property for a future electrical substation. Mr. Bunker stated that staff has no concerns with the proposed rezone.

Dave Anderson acknowledged the rationale for the property's initial annexation as Rural Residential but expressed that, in hindsight, Industrial zoning would have been more appropriate. He stated that the I-1 zone is consistent with the character and land use of the surrounding area. Mr. Anderson also provided brief comments regarding the potential substation and related purchase considerations.

Nik Simpson noted that the City is awaiting a response from Todd Gurney regarding the matter.

Mr. Anderson added that staff plans to reach out to the Port Authority for further discussions related to annexation and coordination, noting that this topic can be revisited later.

Vaughn Pickell **moved** to recommend the approval of the proposed Swenson Property Zone Change based on the following findings:

Findings:

1. That properties in the immediate vicinity have already developed in the Industrial 1 Zone.
2. That plans exist for other properties in the area to develop in the Industrial 1 Zone.
3. That Spanish Fork City has the capacity to serve industrial development on the subject property.
4. That zoning the property I-1 Light Industrial at this time will not have adverse effects on the future development of this property.

John Little **seconded** and the motion **passed** all in favor.

Seth Perrins had brief comments regarding the city's Policy Boundary.

CONCEPT REVIEWS

MEADOW LANE CONCEPT

The applicant for the proposal was not present so the discussion was continued until the applicant could be present.

DAVIS PROPERTY CONCEPT

The applicant for the proposal was not present so the discussion was continued until the applicant could be present.

THE ERA & OAKS TOWHOMES CONCEPT 23:50

Brandon Snyder presented the concept proposal and outlined several development constraints associated with the parcel, including limited access and environmental concerns, as well as the need to remove remnant debris from the property. He noted that although there has been developer interest in the site, no projects have moved forward due to these environmental and access challenges.

Dave Anderson asked the applicants whether they currently own the property, and the applicants confirmed that the parcel is under contract.

Jose Valle requested additional information regarding the extent of environmental constraints on the property. Mr. Snyder stated that environmental assessments have previously been conducted and that he would forward these documents to the applicants for their review.

Mr. Anderson then provided background on the property's history and potential for development, noting that zoning changes would be required. He expressed that the proposed layout appears appropriate but emphasized that further information is needed regarding soil conditions and the debris associated with the former landfill. He explained that EPA grant funding had been used to study the site and develop a remediation plan, but additional data must be gathered before meaningful development review can continue. He concluded that access remains a concern, and that evaluating the proposal in detail at this stage may be premature.

City Manager Seth Perrins asked whether the city currently holds a Phase I Environmental Site Assessment for the parcel. Mr. Snyder stated that he was unsure whether the previous assessment qualified as a full Phase I but would collect the documents and share them with both staff and the applicants. Mr. Perrins advised the applicants to obtain a comprehensive environmental assessment to fully understand the scope and requirements of future development.

Mr. Valle acknowledged and agreed with this recommendation.

Mr. Anderson clarified with Mr. Snyder that EPA grant funds can only be used when the city is working directly with the property owner. Mr. Snyder confirmed this and noted that he serves as the city's primary contact for the administration of environmental grant funds. He added that while the remaining balance of the grant is unknown, he would investigate it. He also noted that the funds may not be used for site cleanup, but rather for research and identification of environmental issues.

Mr. Anderson further explained that to utilize the grant funds, the applicant must own the property or must obtain authorization from the property owner permitting the city to conduct work. Mr. Snyder added that the city's consultant, Terracon, requires an access consent form signed by the property owner.

Josh Wagstaff stated that utility connections are available to support development; however, access remains the primary concern. He noted that tying into the roundabout has been suggested, but with five existing connections, adding a sixth would be undesirable. He also referenced an access easement to the south but expressed uncertainty regarding whether that easement would accommodate the proposed development needs.

Mr. Snyder discussed the upcoming resubmittal for the Ridgeline Townhomes project, which will include a letter from the State and revised plans addressing access. He described the potential for connectivity between the two developments and suggested the applicants review the Preliminary Plat for Ridgeline. Mr. Perrins agreed, emphasizing that some form of roadway connection will be necessary. When asked whether there is a planned future road network for the area, engineering staff confirmed that there should be.

Mr. Anderson asked Mr. Snyder whether road connectivity should be made a condition of approval. Mr. Snyder responded that a challenge has been the developer's preference to keep the roads private to avoid meeting city standards for roadway width and cross-sections. He questioned whether a fully public road connection is achievable but expressed hope that it may be possible.

Staff concluded the discussion by reiterating the need for a public roadway network serving the area. While the environmental history of the parcel raises questions regarding its long-term development potential, ongoing interest from applicants underscores the need for the city to establish a master-planned public road system to ensure appropriate access to the site.

DEVELOPMENT AGREEMENT

EAGLE HAVEN SUBDIVISION PLAT C

Dave Anderson opened the discussion by expressing appreciation to City Attorney Vaughn Pickell for his work on the agreement and noted the unique nature of the proposal.

Vaughn Pickell began his presentation by displaying slides of Plat C for the Eagle Haven Subdivision, explaining that these represent the final three lots requiring platting. He highlighted the differences between this proposal and the previously approved Preliminary Plat. He outlined that, as part of a settlement intended to resolve a land use dispute between the City and the property owner, the City is offering a Development Agreement that would effectively re-approve the original design associated with the Preliminary Plat.

Mr. Pickell provided additional background regarding the phasing plan and lot layout from the initial request. He noted that the new approval would remove the requirement for the 2580 East stub road, thereby eliminating any associated dedication or cost obligations for the property owner. He also pointed out that the driveway on Lot 22 is limited to 12 feet in width due to the lot's configuration, explaining that a standard 20-foot driveway was not feasible. He noted that this accommodation allows room for landscaping between the home and driveway, which helps address water retention concerns.

Mr. Pickell briefly reviewed the status of utilities, confirming with Engineering that culinary water and sewer services should already be stubbed to the lots. Power service, however, is not yet complete. He reported that Kevin Taylor from the Power and Light Department had reviewed the plans and identified the remaining improvements needed, including additional power installations along Spanish Fork Parkway and completion of landscaping work.

Continuing his presentation, Mr. Pickell described the motion before the Commission, which would formalize the settlement by reapproving the Preliminary Plat without the required stub road and granting approval of Plat C. He reviewed Exhibit B, which contains cost estimates provided by Mr. Carroll for the remaining improvements along Spanish Fork Parkway. He explained that these represent future reimbursable costs to the property owner, as outlined in the agreement. Exhibit A includes the Final Plat, revised Preliminary

Plat, and all construction drawings. Reimbursements would be issued as work is completed.

Mr. Pickell concluded by summarizing the findings included in the Community Development Department's staff memo, confirming consistency with the City's General Plan and Zoning Map. He stated that, upon fulfillment of the agreement by both parties, the land use dispute would be fully resolved. He also noted that any future deviations would require compliance with the City's standard approvals process, as stipulated in the agreement, including public hearings and City Council approval for legislative matters. He then reviewed the recommended conditions of approval.

Staff briefly discussed the proposed conditions. Mr. Snyder highlighted the requirement to fence the irrigation ditch for safety purposes. He noted that while the fencing was shown on the plans, the timing of installation was not specified. Mr. Pickell acknowledged the oversight and apologized for not addressing the issue with Mr. Carroll's legal counsel.

Mr. Anderson thanked Mr. Pickell for his thorough explanation and reiterated staff's recommendation for approval based on the findings and conditions presented.

Mr. Pickell invited Mr. Carroll to provide any additional comments.

Jerry Carroll stated that all issues had been thoroughly addressed and he had no remaining concerns. Mr. Pickell expressed appreciation for Mr. Carroll's cooperation and stated he was pleased to see the project moving forward.

Vaughn Pickell **moved** to recommend the approval to City Council of the Reimbursement Development and Settlement Agreement for the Eagle Haven Subdivision Plat C, including a revised Preliminary Plat and Final Plat C based on the following findings and subject to the conditions of the Community Development Memo on November 12:

Findings:

1. That the proposal conforms to the City's General Plan Land Use Map Designation and Zoning Map.
2. The proposed agreement, if fulfilled by both parties, will settle a land use dispute between them, and it represents a final and complete settlement of all disputes between them concerning the Eagle Haven Subdivision, a master-planned development.
3. The revised preliminary plat and the proposed Final Plat C, together with the construction drawings, power design, and landscaping plan, substantially comply with the City's ordinances, Development Standards, and Construction

Standards. Any deviations therefrom are expressly permitted by the Agreement.

Conditions:

1. That the preliminary plat contained in the Reimbursement, Development and Settlement Agreement as Exhibit A is the approved preliminary plat for Eagle Haven subdivision, together with the power design, landscape design, and construction drawings, specifically excluding the extension of 2580 East stub to the north, and that the prior preliminary plat approved is voided and replaced hereby.
2. That the Final Plat contained in Exhibit A of the Reimbursement, Development, and Settlement Agreement is the approved Final Plat for the Eagle Haven Subdivision, Plat "C".
3. That the developer complete all required public infrastructure for the subdivision, including the remaining power improvements on 300 South identified by the Power Division that are necessary for Lots 20-22, finding that they are project improvements, not system improvements, and not subject to any reimbursement.
4. That the developer complete the sidewalk on 300 South for the three lots, as such are needed for those lots, finding that they are project improvements, not system improvements, and not subject to any reimbursement.
5. That the slope from the sidewalk on 300 South towards the existing dwelling on Lot 22 either be graded to a safe ratio or retained at the developer's choice, as such will be private improvements on private property, whichever option is chosen, is to be inspected and approved by the City.
6. That a hard-surface driveway be constructed on Lot 22 as shown on the preliminary plat, with the width reduced to 12 feet, with the intent to allow water to percolate in landscaping between the driveway and the existing house as much as possible.
7. That the existing water service and meter for Lot 22 be removed, and the existing house connected to the water service from 300 South, and that the water service lateral in Spanish Fork Parkway be capped at the main, such work not reimbursable as such is needed only for Lot 22 and to remove the lateral from Lots 20 and 21.

8. That the developer complete the Spanish Fork Parkway improvements to City standards, including asphalt pavement of the roadway, trail, power improvements, landscaping, and precast concrete wall, as outlined in Exhibit A, subject to reimbursement as described in the Development and Reimbursement Agreement.
9. That upon approval of the Reimbursement, Development, and Settlement Agreement and the Final Plat, the City shall record a release of the ROW easements and the Notices of Development Obligations.
10. That the Applicant meets the City's development and construction standards, zoning requirements and other applicable City ordinances.
11. That any remaining redlines are addressed prior to recording the plat.

Jered Johnson **seconded** and the motion **passed** all in favor.

Mr. Pickell informed Mr. Carroll that this item will be on the City Council agenda for Tuesday November 18 for a public hearing to approve the Development Agreement.

Dave Anderson moved to adjourn the meeting at 11:06 a.m.

Adopted:

Kasey Woodard
Community Development Division
Secretary

Draft Minutes
Spanish Fork City Development Review Committee
80 South Main Street
Spanish Fork, Utah
November 19, 2025

Staff Members Present: Cory Pierce, Public Works Director; Seth Perrins, City Manager; Dave Anderson, Community Development Director; Brandon Snyder, Senior Planner; Kasey Woodard, Community Development Secretary; Ian Bunker, Associate Planner; Vaughn Pickell, City Attorney; Joshua Nielsen, Assistant City Attorney; Byron Haslam, Assistant City Engineer; Josh Wagstaff, Assistant City Engineer; Marcie Clark, Engineering Department Secretary; Jered Johnson, Engineering Division Manager; Kevin Taylor, Senior Power Utility Planner; Jake Theurer, Power and Light Superintendent; Bart Morrill, Parks Maintenance Supervisor; Bryton Shepherd, Landscape Architect; Jason Turner, Fire Marshall; Paul Taylor, Assistant Water Division Manager; Garrett Elmer, Power and Light Assistant Superintendent; Matt Romero, Project Manager.

Citizens Present: Cory Anderson, Hyrum Bosserman, Kevin Olsen.

Cory Pierce called the meeting to order at 10:00 a.m.

MINUTES

November 12, 2025

Dave Anderson moved to Continue the minutes of November 12, 2025.

Jake Theurer seconded and the motion **passed** all in favor.

ZONE CHANGE

GILES ZONE CHANGE

Dave Anderson presented the proposal, explaining that the applicant is requesting a zone change from R-1-6 to R-3 with the Infill Overlay to allow for the construction of a two-unit residential structure. Mr. Anderson asked the applicant, Kevin Olsen, whether the proposed structure would be a twin home or a duplex; Mr. Olsen confirmed that it would likely be a

duplex. Mr. Anderson stated that staff views the proposed change as a positive improvement for the area. In response to a question regarding the existing conditions on the site, it was noted that a previous single-family home had been demolished and the property is currently vacant.

Staff reported no significant concerns with the request, stating that the proposed design is compatible with surrounding development.

Josh Wagstaff noted an outstanding engineering comment regarding the rear portion of the property, indicating that plans appeared to show an existing structure that could obstruct access to a side door. He questioned whether the structure was occupied. Mr. Olsen clarified that the structure is an old shed and that no one resides on the property.

Discussion followed regarding the drive aisle configuration and the shared driveway.

Seth Perrins asked whether all parcels involved were under single ownership; Mr. Olsen confirmed that they were. Mr. Perrins commented that, given unified ownership, parcel lines were not a limiting factor and could be addressed as part of the development process. He emphasized the importance of ensuring future access to the property.

Mr. Olsen stated that recent surveys had been completed and lot lines have been corrected as part of the proposed development.

Brandon Snyder inquired about any existing access agreements. Mr. Olsen indicated that he was not aware of any such agreements.

Further discussion was held regarding access needs and whether agreements with neighboring property owners might be required.

Mr. Snyder also noted that plans show three existing driveway approaches that will need to be addressed. Mr. Perrins agreed that this is an appropriate request of the applicant to help prevent future confusion.

Dave Anderson **moved** to recommend the approval of the proposed Giles Zone Change on the following findings and subject to the following conditions:

Findings:

1. That the proposal is consistent with the City's General Plan Designation of High Density Residential.
2. That the proposal meets the intent of the Infill Overlay Zoning District.
3. That this will be a good fit for the subject property and will be an enhancement of the neighborhood.

Conditions:

1. That the Applicant meets the City's development and construction standards, zoning requirements and other applicable City ordinances.
2. That the Applicant addresses any staff review comments.
3. That the Applicant coordinate access and address property line concerns prior to applying for a building permit.

Seth Perrins **seconded** and the motion **passed** all in favor.

Seth Perrins initiated a discussion regarding the use of the Infill Overlay for this project. He asked whether any specific site improvements were being proposed that would justify the application of the Overlay.

Dave Anderson clarified that it is the Development Enhancement Overlay that requires applicants to include site improvements to utilize it. In this case, the request is solely to change the zoning from single-family to multi-family to allow for a duplex, which necessitates the use of the Infill Overlay.

Mr. Perrins stated that the motion should include clear findings explaining why the project qualifies for and is supported under the Infill Overlay. He also noted that, in his opinion, the proposal aligns well with the intended purpose of the Overlay. Mr. Anderson indicated that the motion and findings could be amended to incorporate Mr. Perrins' recommendation. He feels that from what he can see from the aerial imagery and the proposed design of the home, that this proposal would be a good fit for the subject property and it will be an enhancement of the neighborhood.

Brandon inquired whether any fencing is proposed for the project. Staff confirmed that no fencing is currently planned.

TITLE 15 AMENDMENTS

TITLE 15 OLD DOMINION

Dave Anderson provided background information on the fencing proposal and noted that Hyrum Bosserman is serving as the legal representative for the project. He explained that this matter had been previously reviewed, as the fencing constructed on the site does not **meet the city's fencing regulations**. He added that the city and the applicant are working collaboratively to explore a path forward that may allow the fencing to remain in place.

Mr. Bosserman assured the DRC that there was no ill intent on the part of Old Dominion, and that the situation resulted from a misunderstanding related to the building permit and the construction of a fence that does not comply with city standards. He emphasized that the fence was constructed for employee and vehicle safety. **He stated that the city's four-foot height limit is insufficient for their security needs, as employees often work late hours or leave vehicles on-site for extended periods, increasing vulnerability to break-ins.**

Vaughn Pickell noted that the code reference in the proposed language was incorrect. Mr. Bosserman apologized for the oversight and stated he would correct the reference before the proposal advances to the City Council. He reiterated his willingness to work with the city and suggested eliminating patron and overnight parking to reduce the duration vehicles remain on the site.

Staff expressed concern regarding the placement of necessary power and utility boxes on the property and the potential lack of access if the fencing remains as constructed.

Seth Perrins stated that he is not supportive of the aesthetics of an eight-foot chain-link fence with barbed wire, noting that it gives the appearance of a detention facility. He **referenced the Utah County Jail's wrought iron fencing as an example of a more visually acceptable option.** He acknowledged that Mr. Bosserman's client would likely oppose replacing the existing chain-link fence with wrought iron due to cost. He also stated that he would not support the use of a masonry wall around the property.

Dave Anderson commented that, based on prior discussions with the Planning Commission and City Council, he does not feel he can support the current proposal.

The group discussed fencing heights and potential alternatives. Mr. Perrins expressed that relocating the employee parking area during earlier phases of development might have reduced the visibility and impact of the fencing from the roadway.

Staff generally agreed that the current fencing aesthetic is imposing and not aligned with **the city's desired character.** Setback considerations were also discussed.

Staff explored whether the proposed text amendment could specify acceptable fencing materials.

Mr. Bosserman asked whether it would be appropriate to revise the proposed language before the item is presented to the City Council. Mr. Anderson agreed that revisions would be beneficial and stated he would work with Mr. Bosserman to refine the text.

Mr. Anderson recommended that the proposal be reviewed with the Planning Commission in December.

Dave Anderson **moved** to present the proposed amendments to the Planning Commission and City Council in December.

Jake Theurer voiced his concerns that the city will have utility boxes located behind a locked gate the city would not have full access to.

Mr. Bosserman stated they are more than willing to ensure that the city will retain access to the utilities located on the property. Jake Theurer expressed a concern regarding the potential for city utility boxes to be located behind a locked gate, which could impede City access. Mr. Bosserman assured the committee that the applicant is committed to ensuring the City retains full access to the utilities located on the property.

Seth Perrins **seconded** and the motion **passed** all in favor.

Mr. Perrins stated that he did not agree with the motion as suggested by Mr. Anderson; however, he indicated that he would still vote in favor of the proposal. He wished to offer comments to the applicant and directed staff to work more closely with the applicant to revise the proposed language regarding fencing materials. He specified that chain-link fencing with barbed wire should not be permitted. He added that if fencing must be located within the setback area, it should be constructed of higher-quality materials that provide improved aesthetic value.

Mr. Anderson asked for clarification on Mr. Perrins' remarks and whether he intended to amend the motion. Mr. Perrins clarified that he did not wish to modify the motion itself but intended to provide additional guidance regarding the fencing standards.

CONCEPT REVIEW

CANYON COURT LOT 1 CONCEPT

Corey Pierce invited the applicant, Cory Anderson, to present his concept.

Dave Anderson provided background information, noting that the proposal is part of the recently approved Canyon Court development.

Staff reviewed the design layout and site access. It was noted that the original plan included two drive-through lanes—one on the east side of the building and one on the west—but those elements have since been removed. Staff presented the most recent lot configuration submitted to the City in response to redline comments. The layout of the

individual lots was discussed, and it was noted that the corner lot is expected to be purchased by UCCU, while another lot is planned for Chubby's.

Brandon Snyder expressed concerns regarding parking, and staff clarified that a cross-access easement is in place to help accommodate shared parking needs.

Dave Anderson stated that, with developments of this type, staff will be paying close attention to pedestrian crossings, access points, and how the project connects to surrounding trails and streets.

Seth Perrins commented that this project, as part of a Neighborhood Commercial area, will be a valuable addition to the community. He expressed confidence that it will generate excitement and be highly successful.

Projected timelines were reviewed. Construction on Lot 5 is anticipated to begin in spring 2026. Lot 2 is currently under contract with Chubby's and is expected to close within 45 days. Additional discussion followed regarding the intended occupants of other lots, including Harmons Grocery, a high-end preschool, UCCU, and a general retail tenant.

GENERAL PLAN AMENDMENTS

WATER USE & PRESERVATION ELEMENT TO THE GENERAL PLAN

Paul Taylor introduced the proposal, noting it is a mandatory element for all municipalities, stemming from a 2024 Utah State house bill. He provided a summary, explaining that the Water Use and Preservation Element's primary goal is to integrate water use considerations into land use planning to ensure development is sustainable and does not deplete water resources. The amendment requires cities and counties to assess the impact of new development on water demand and infrastructure, and to outline strategies for reducing consumption in both existing and future projects. Overall, this amendment aims to heighten municipal awareness of water usage and promote conservation efforts.

Cory Pierce sought clarification on the mandated deadline, confirming that the element must be adopted by the City before the end of the year. It was noted that the consequences for non-adoption by the deadline have not yet been researched. Staff confirmed that the element will be updated periodically in alignment with the City's water conservation plan, and that much of the new element is consistent with the City's existing code, demonstrating the City is already adhering to conservation principles.

It was further noted that Spanish Fork City possesses greater water access than many other municipalities, and is currently required to maintain a 40-year plan for water rights.

Dave Anderson **moved** to recommend the approval of the proposed General Plan Amendments to the City Council as discussed.

Vaughn Pickell **seconded** and the motion **passed** all in favor.

Jered Johnson moved to adjourn the meeting at 11:05 a.m.

Adopted:

Kasey Woodard
Community Development Division
Secretary



Athens Industrial Condominiums Plat A
 Final Plat
 3586 North Main Street
 1.83 acres
 I-1 Light Industrial Zone
 General Plan Land Use Map
 Designation Industrial



PROPOSAL

This proposal involves the approval of a Final Plat for twenty industrial condominium units to be located at 3586 North Main Street.

The condominium plat is proposed on Lot 1 of the North Point Properties Subdivision, 1st Amendment. The Development Review Committee (DRC) approved that minor plat amendment on 11-12-2025, to also create Parcel A. Parcel A, which is adjacent to Main Street, is not a building lot. This area will accommodate future road dedication to Spanish Fork City as Main Street is further improved and widened. It is currently also a public utility easement and improved landscaped area. The DRC previously approved a Site Plan for the subject property identifying it as such.

As previously discussed with the minor plat amendment, Parcel A will be owned separately than the common areas called out on the condominium plat. However, it is also necessary to be maintained as a landscaped area connected to the site to meet the Site Plan landscaping requirements. Also, concerns were raised regarding the ongoing maintenance and ownership of Parcel A versus the future condominium association's separate ownership and maintenance responsibilities. The Applicant has proposed an agreement to address the care and maintenance of Parcel A until it is dedicated as right-of-way to Spanish Fork City. The agreement proposes that the Condominium Association shall be responsible for the costs related to the care, maintenance, upkeep, and repair of the xeriscaping and landscaping on Parcel A.

Some of the key issues to consider are: maintenance agreement and timing of the dedication of Parcel A to the City.

STAFF RECOMMENDATION

That the proposed Final Plat for the Athens Industrial Condominiums Plat A be approved based on the following finding and subject to the following conditions:

Finding

1. That the proposal conforms to the City's General Plan Land Use Designation Map and Zoning Map.

Conditions

1. That the Applicant meets the City's development and construction standards, zoning requirements and other applicable City ordinances.
2. That the Applicant addresses any remaining red-lines.
3. That the Applicant records the amended subdivision plat prior to recording the condominium plat.
4. That the Applicant provides the City with a copy of the recorded Easement and Cost Sharing Agreement.

EXHIBITS

1. Area Maps
2. Proposed Condominium Plat
3. Proposed Plat Amendment
4. Existing Subdivision Plat and Site Plan
5. Proposed Agreement
6. Proposed CC&Rs

EXHIBIT 1

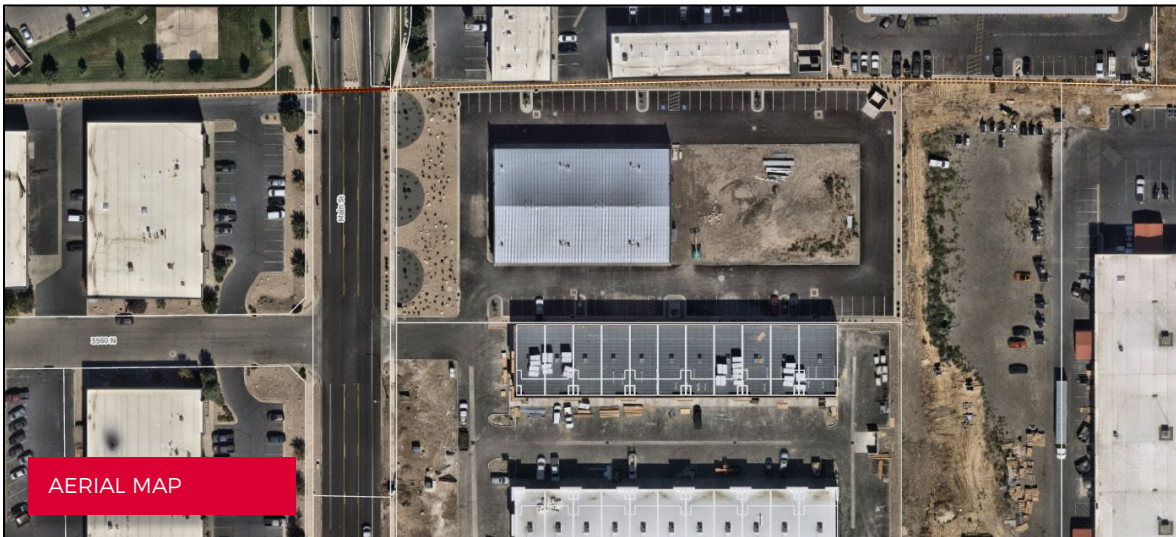
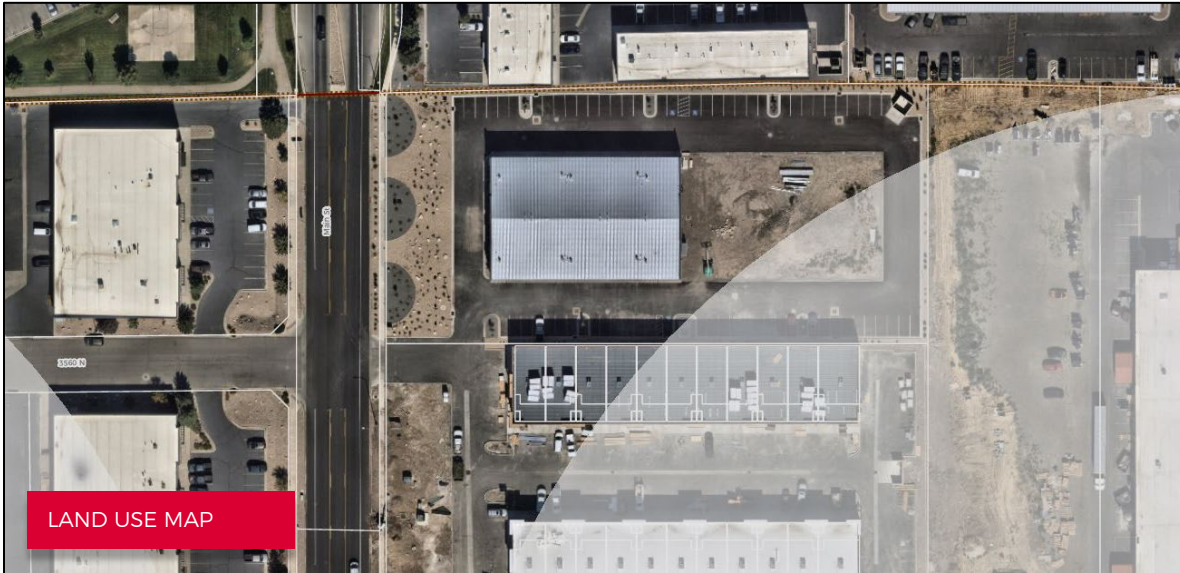
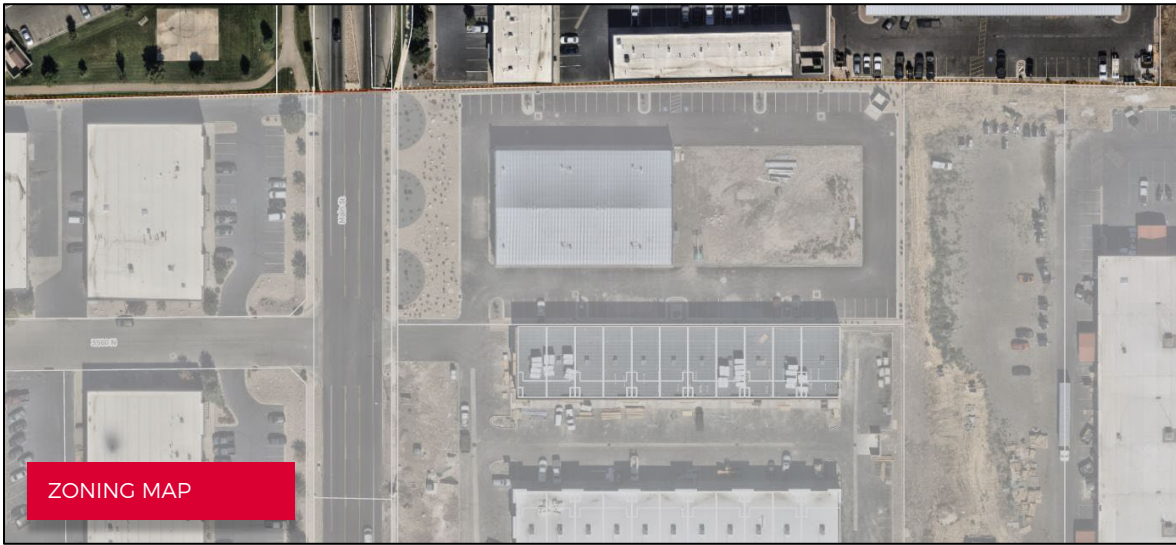


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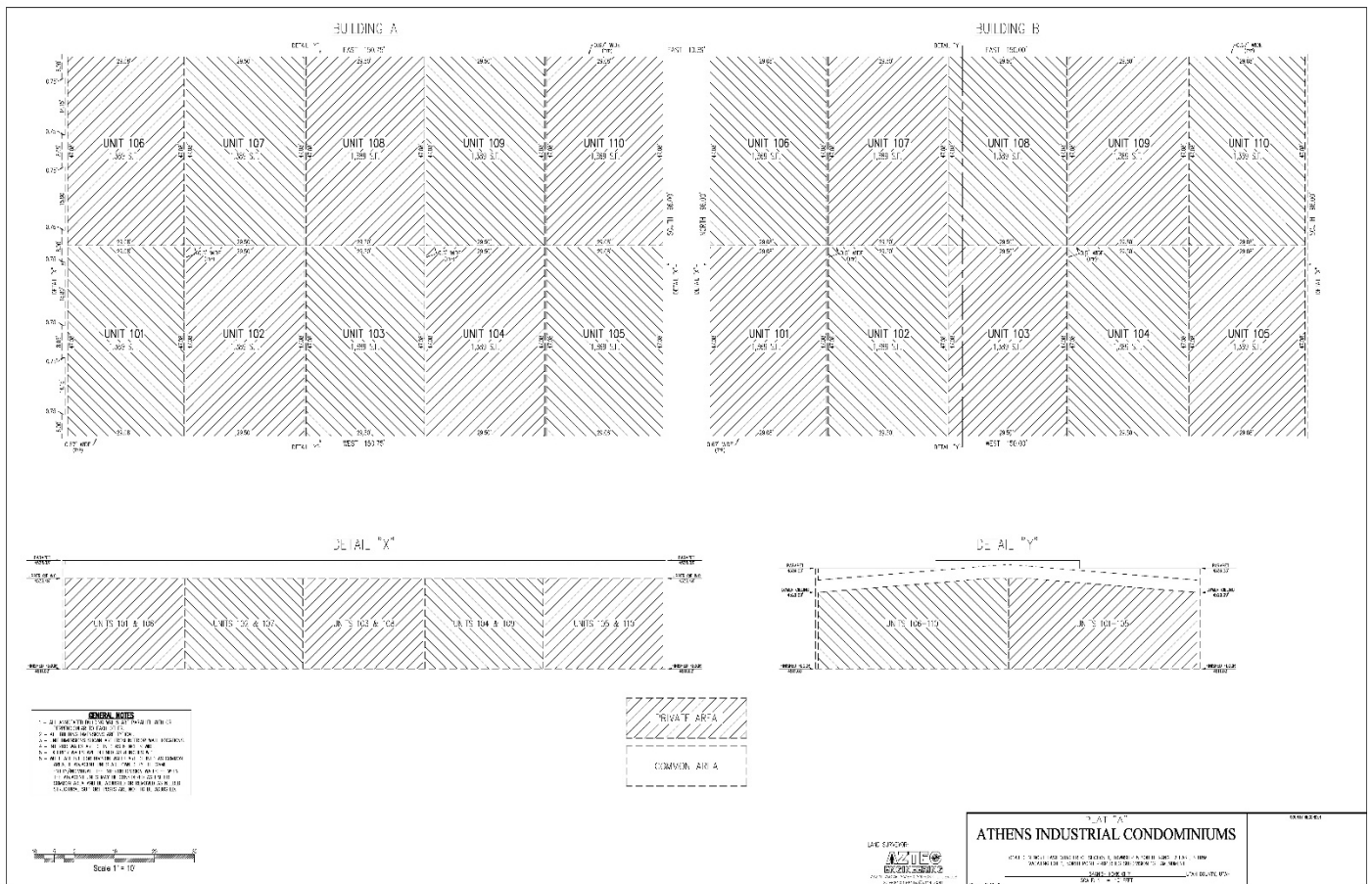
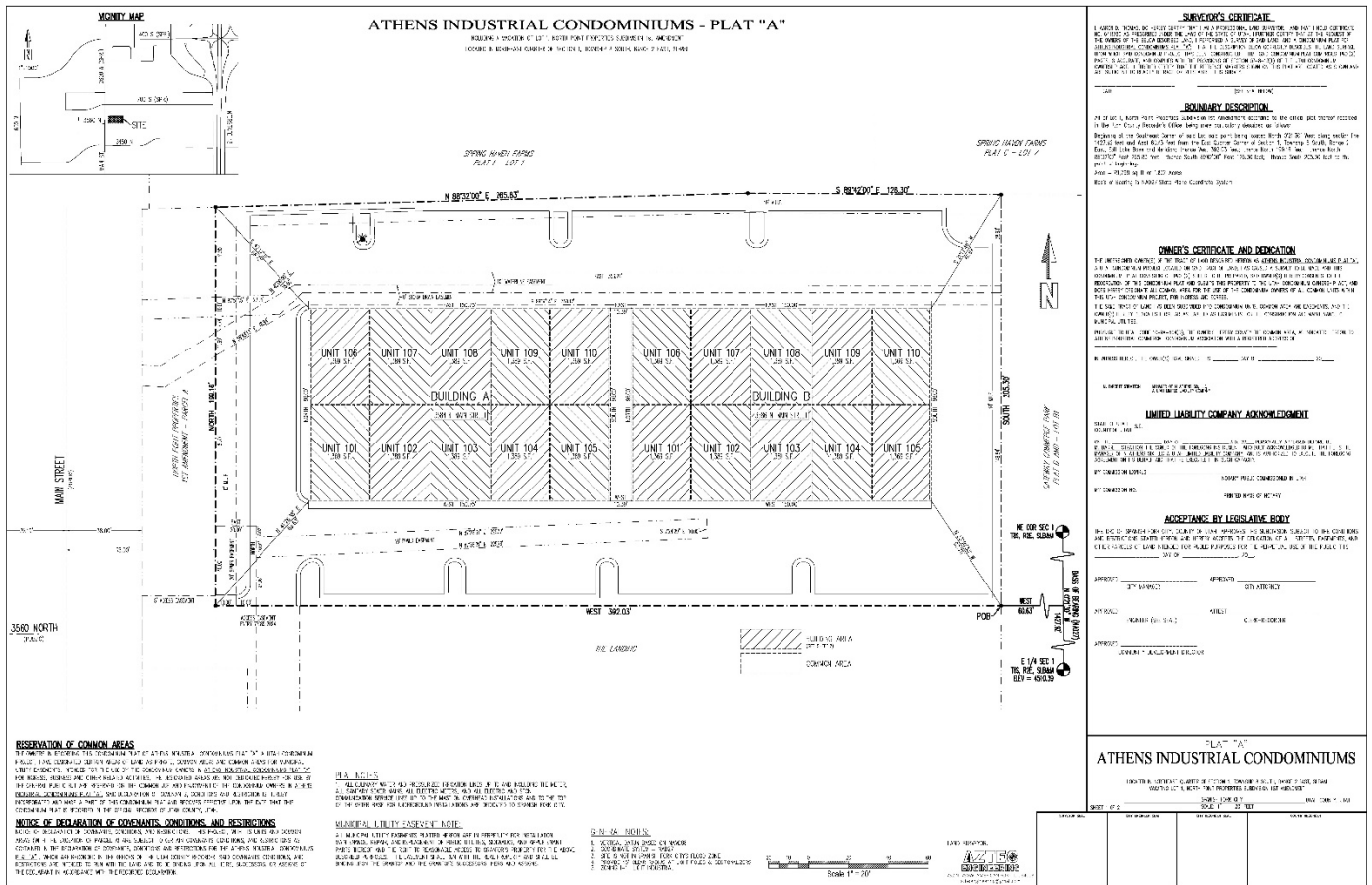


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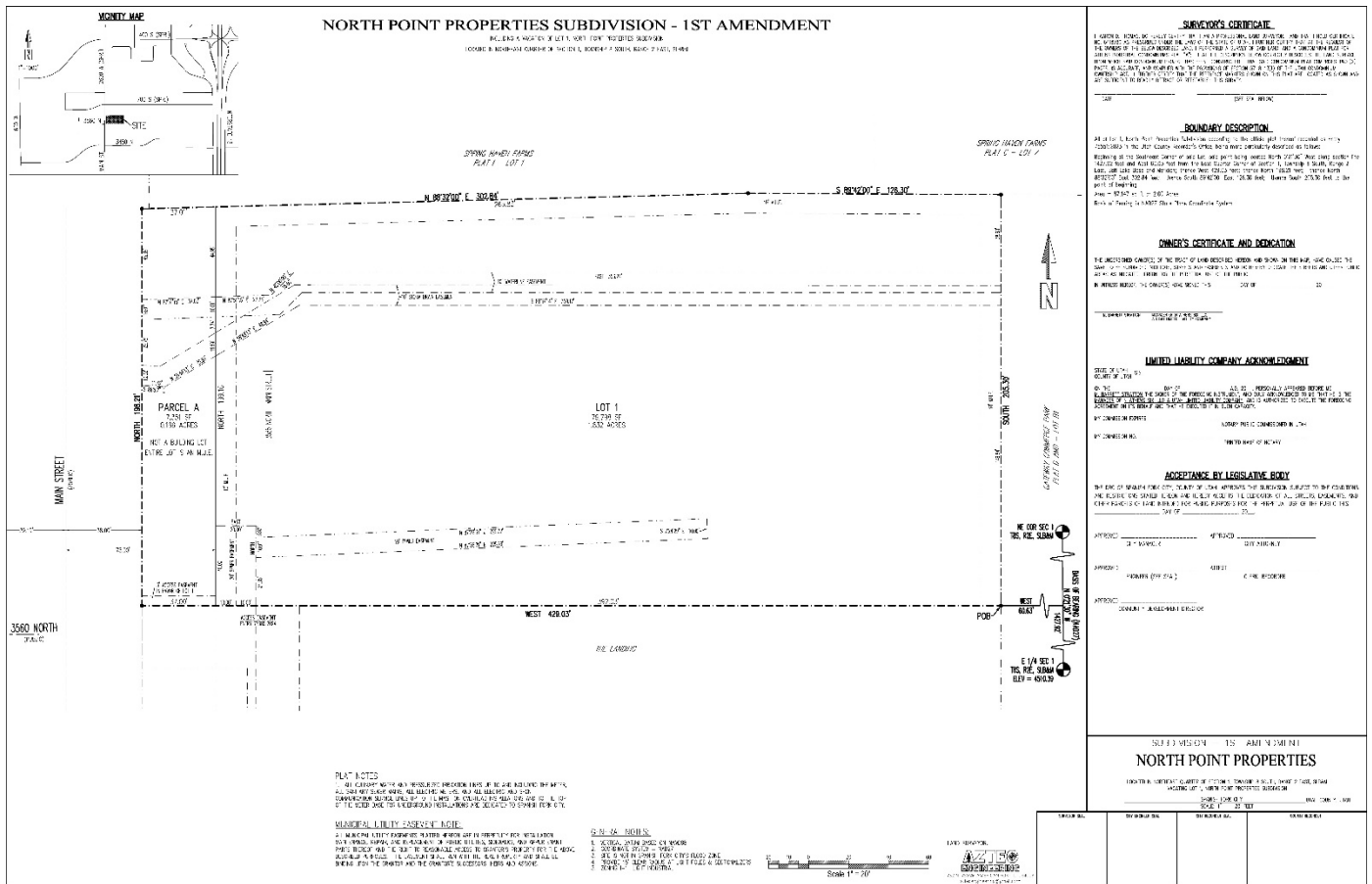


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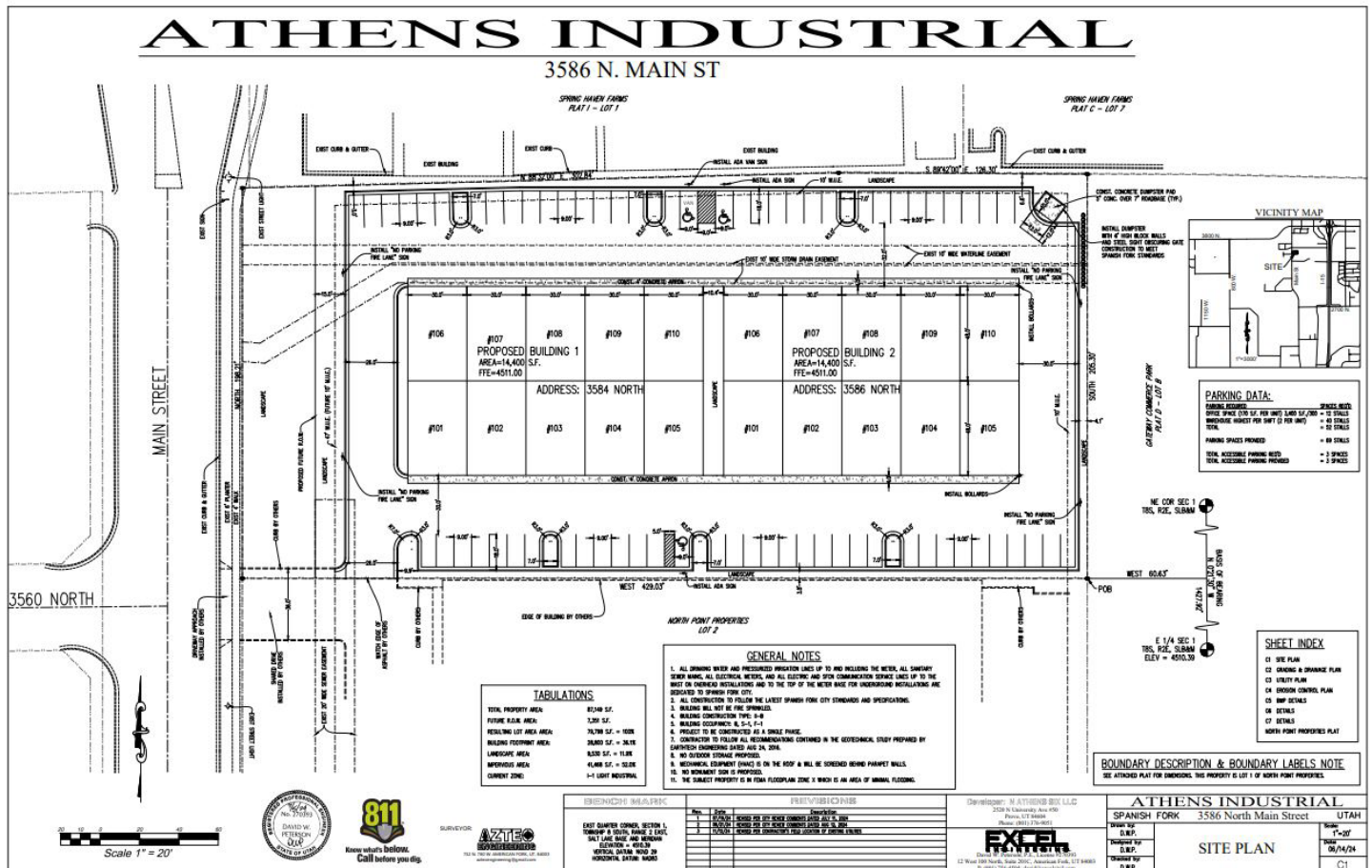
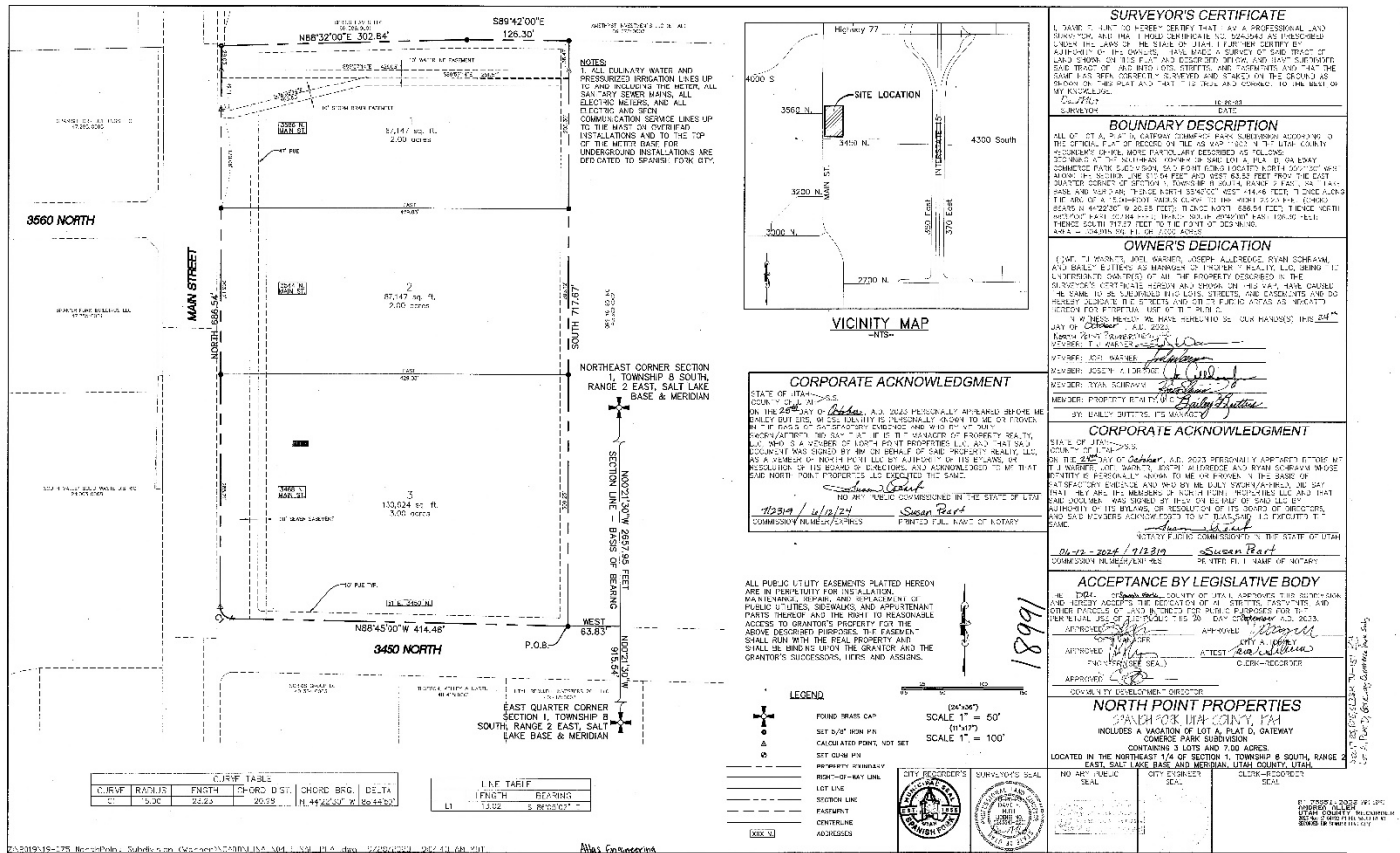


EXHIBIT 5

AFTER RECORDING PLEASE RETURN TO:

N Athens Six, LLC
5282 N. University Ave.
Provo, UT 84604

EASEMENT AND COST SHARING AGREEMENT

This EASEMENT AND COST SHARING AGREEMENT (“Agreement”) is made as of this _____ day of _____, 2025, by and between Athens Industrial Commercial Condominium Association, a Utah nonprofit corporation (“Association”), and N Athens Six, LLC, a Utah limited liability company (“Owner”).

RECITALS

WHEREAS, Association is a condominium owners association created pursuant to the Act and has been created with respect to the condominium development known as Athens Industrial Commercial Condominiums (“Project”) located in Spanish Fork City, Utah County, State of Utah, a legal description of which is attached as **Exhibit A**;

WHEREAS, the Association is governed by the Declaration of Condominium for Athens Industrial Commercial Condominiums (“Declaration”), dated _____, 2025, and recorded in the office of the Utah County Recorder on _____, 2025, as Entry No. _____, and the Athens Industrial Condominiums – Plat “A,” dated _____, 2025, and recorded in the office of the Utah County Recorder on _____, 2025, as Entry No. _____ (“Plat”);

WHEREAS, Owner is the developer of the Project and the owner of Parcel A, located directly to the west of the Project in between Building 1 and Main Street;

WHEREAS, Parcel A is in a prominent location that will be visible to all parties entering and exiting the Project from Main Street, and its maintenance and upkeep is essential to the appearance of the Project;

WHEREAS, Parcel A was originally part of the property on which the Project is located, but was separated from the Project on account of the likelihood that Spanish Fork City will expand Main Street to include all or a part of Parcel A;

WHEREAS, Parcel A is xeriscaped and landscaped in conjunction with common area belonging to the Association, and includes landscaping rock, bushes, trees, and other ornamental vegetation; and

WHEREAS, the Parties desire to ensure the maintenance and care of Parcel A for the purposes of the beautification of the Project and consistent care and maintenance with the Association's own common areas until such time as this Agreement is terminated;

NOW, THEREFORE, in consideration of the foregoing, the mutual agreements and covenants provided herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

ARTICLE I DEFINED TERMS

1.1 Defined Terms. Capitalized terms used but not otherwise defined in this Agreement shall have the meaning ascribed to them in this Article I, unless the context requires otherwise.

1.1.1 "Act" shall mean the Utah Condominium Act, Utah Code § 57-8-1, *et seq.*

1.1.2 "Association" shall mean the Athens Industrial Commercial Condominium Association, a Utah nonprofit corporation.

1.1.3 "Association Share" shall have the meaning set forth in Article II.

1.1.4 "Costs" shall mean the following costs with regards to Parcel A: (i) all costs of utilities, including without limitation, electric and water; (ii) all costs for labor done or material or equipment supplied for any work done on Parcel A in relation to the maintenance, care, upkeep, and replacement of the xeriscaping and landscaping; and (iii) all costs associated with the management of the maintenance, care, upkeep, and replacement of the xeriscaping and landscaping.

1.1.5 "Declaration" shall mean the Declaration of Condominium for Athens Industrial Commercial Condominiums described in the Recitals above.

1.1.6 "Owner" shall mean N Athens Six, LLC, a Utah limited liability company and its successors and assigns.

1.1.7 "Owner Parties" shall mean the Owner's members, managers, owners, shareholders, officers, directors, employees, contractors, subcontractors, agents, guests, invitees, tenants, tenant guests, and tenant invitees.

1.1.8 "Parcel A" shall mean the property set forth and described in **Exhibit B**.

1.1.9 “Plat” shall mean the Athens Industrial Condominiums – Plat “A,” described in the Recitals above.

1.1.10 “Project” shall mean the Athens Industrial Commercial Condominiums located in Spanish Fork City, Utah County, State of Utah.

ARTICLE II ALLOCATION OF COSTS; MAINTENANCE OF PARCEL A

2.1. Maintenance and Costs. The Association shall be responsible for the Costs related to the care, maintenance, upkeep, and repair of the xeriscaping and landscaping on Parcel A. The xeriscaping and landscaping shall be maintained in a state consistent with its current condition as of the date of this Agreement, unless otherwise agreed by the Parties. The Parties acknowledge that the Association, its owners, and their respective guests, invitees, tenants, customers, and employees directly benefit from the beautification and maintenance of Parcel A in conjunction with its own common areas.

2.2. Only Actual Costs. Association shall only be responsible for the actual Costs incurred as defined above. Association may provide services to Parcel A in conjunction with the maintenance, care, upkeep, and replacement of the Association’s own services for its common areas.

2.3. Use of Parcel A. During the term of this Agreement, Owner shall use Parcel A as a landscaped area for the purposes of beautifying the entry areas in a manner consistent with the Project’s own general common area. Owner shall, with the input and cooperation of Association, make decisions concerning the management and use of Parcel A. In the event that Owner elects to use Parcel A in a manner that is inconsistent with the uses described in this Agreement, either Party may terminate this Agreement by providing written notice to the other.

2.4. Insurance. Association shall maintain commercially reasonable property insurance and commercial general liability insurance policies in relation to Parcel A. The policies do not have to be supplemental or in addition to the other policies maintained by Association, but may be part of Association’s typical and standard policies maintained. Association shall cause Owner to be named as an additional insured on the property insurance and commercial general liability insurance policies maintained by Association. Upon request, Association shall furnish to Owner certificates of insurance evidencing such insurance coverage.

2.5. Indemnification. Association and Owner shall at all times indemnify, protect, defend and hold each other harmless, in an amount equal to each party’s obligations established in Section 2.1 of this Agreement, from all actions, claims, demands, losses, costs, damages and all reasonable

expenses incurred in investigating or resisting the same for injury or damage to person or property resulting from or arising out of the use of Parcel A, unless caused by the indemnified party's gross negligence or willful misconduct.

ARTICLE III ACCESS

3.1 Easement. Owner grants to Association and its employees, agents, and contractors a nonexclusive perpetual easement to access Parcel A for the purposes of performing its duties and obligations under this Agreement during the term of this Agreement.

ARTICLE IV MISCELLANEOUS PROVISIONS

4.1 Entire Agreement. This Agreement constitutes the entire understanding among the parties pertaining to the subject matter hereof, and this Agreement supersedes all prior and contemporaneous agreements, understandings, inducements or conditions, whether express or implied, oral or written, of such parties in connection herewith.

4.2 Amendment. This Agreement may only be modified or amended by written agreement executed by all the Parties hereto.

4.3 Governing Law. This Agreement shall be construed in accordance with, and governed in all respects by, the laws of the State of Utah without giving effect to its conflicts of law provisions.

4.4 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall be deemed to be one and the same instrument.

4.5 Severability. Any provision of this Agreement that is found to be invalid, illegal, or unenforceable in any respect shall be ineffective to the extent of such invalidity, illegality or unenforceability without in any way affecting the validity, legality or enforceability of the remaining provisions hereof, and any such invalidity, illegality or unenforceability shall not invalidate or in any way affect the validity, legality or enforceability of the remainder of this Agreement or of such provision.

4.6 Successors and Assigns. Each and all of the covenants, agreements, terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns and shall run with and bind the land comprising Fossil Cove and

the Expandable Space. Upon assignment by the Parties, the successor-in-interest shall provide written notice to the other Party of the assignment.

4.7 Survival. In the event that Spanish Fork City or a designated governmental authority does not purchase Parcel A to expand Main Street as anticipated, this Agreement shall survive and the parties' respective rights, duties, and obligations hereunder shall continue and survive.

4.8 Notices. Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed to have been duly given (A) on the date of service if served personally, (B) upon receipt, if mailed by first class mail, registered or certified, postage prepaid and return receipt requested, or (C) upon receipt if sent by Federal Express or other overnight courier receipted delivery, and addressed as follows:

If to Association, to: Athens Industrial Commercial Condominium Association
Attn: Murali Moorthy
5282 North University Ave.
Provo, UT 84604

If to Owner, to: N Athens Six, LLC
Attn: M. Barrett Stratton
5282 N. University Ave.
Provo, UT 84604

or at such other place as the respective parties may, from time to time, designate in a written notice to the other party.

4.9 Enforcement of Agreement. If any Party shall seek to enforce or protect its rights under this Agreement or under any document or instrument executed and delivered in connection herewith in any action, suit, arbitration or other proceeding, including all bankruptcy cases and proceedings, the prevailing Party shall be entitled to receive from the other Party payment of its costs and expenses, including reasonable attorney fees incurred (whether such costs or fees are incurred before or after the commencement of the proceeding), including any and all appeals or petitions therefrom.

4.10 Separate Parties. The Parties acknowledge that they will not hold themselves as an agent, partner, or co-venturer of the other and that this Agreement is not intended and does not create an agency, partnership, joint venture or any other type of relationship except the contract relationships established hereby.

4.11. Authority. Each individual executing this Agreement hereby represents and warrants to each person so signing (and to each other entity for which another person may be signing) that he or she has been duly authorized to execute and deliver this Agreement in the capacity of the person or entity set forth for which he or she signs, that the entity's governing documents authorize this

action, that all necessary actions have been taken to secure said authorization from the entity, and that the action was taken consistent with state and federal law.

4.12. Sufficient Basis for Agreement. The consideration stated herein is contractual and not a mere recital. The Parties hereto execute and deliver this Agreement after being fully informed of its terms, content and effect. The Parties executing the Agreement are not relying upon any representation from any attorney, agent or representative of any other Party. The Parties are fully informed and have consented to this Agreement based on their own opinion and the advice of their respective representatives.

4.13. Termination of Agreement. This Agreement shall terminate upon the purchase of Parcel A by Spanish Fork City or any other governmental authority; otherwise, this Agreement shall only terminate by the mutual, written agreement of the Parties or their successors and assigns.

4.14 Recitals. The Recitals are incorporated into this Agreement by reference and are expressly made a part hereof.

**SIGNATURE PAGE FOR
EASEMENT AND COST SHARING AGREEMENT**

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on as of the date first written above.

**ATHENS INDUSTRIAL COMMERCIAL
CONDOMINIUM ASSOCIATION,**
a Utah nonprofit corporation

By: _____
Name: _____
Title: _____

STATE OF UTAH)
 :
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025, by _____, president of Athens Industrial Commercial Condominium Association, and represented that he was duly authorized to do so.

NOTARY PUBLIC

**SIGNATURE PAGE FOR
EASEMENT AND COST SHARING AGREEMENT (CONT.)**

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on as of the date first written above.

N ATHENS SIX, LLC

By: _____
M. Barrett Stratton, Manager

STATE OF UTAH)
 :
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this ____ day of _____, 2025, by M. Barrett Stratton, manager of N Athens Six, LLC, and represented that he was duly authorized to do so.

NOTARY PUBLIC

EXHIBIT A
Legal Description of Project

EXHIBIT B
Legal Description of Parcel A

EXHIBIT 6

**DECLARATION OF CONDOMINIUM
FOR
ATHENS INDUSTRIAL COMMERCIAL CONDOMINIUMS**

a Utah Condominium Project

**DECLARATION OF CONDOMINIUM FOR
ATHENS INDUSTRIAL COMMERCIAL CONDOMINIUMS**
a Utah Condominium Project

This DECLARATION OF CONDOMINIUM FOR ATHENS INDUSTRIAL COMMERCIAL CONDOMINIUMS (“Declaration”) is effective when recorded with the Utah County Recorder's Office by N Athens Six, LLC, a Utah limited liability company (“Declarant”), pursuant to the Utah Condominium Ownership Act.

RECITALS

A. The real property situated in Utah County described in **Exhibit A**, attached to and incorporated in this Declaration by reference, is hereby submitted, together with all buildings and improvements previously, now, or hereafter constructed in the Project, and all easements and rights appurtenant thereto, to a condominium project consisting of commercial Units and related Common Area pursuant to Utah Code § 57-8-1 et seq. (the “Project”).

B. The Project is located within the North Point Properties Subdivision, and is subject to the Declaration of Covenants, Conditions, and Restrictions for North Point Properties Subdivision (“North Point Declaration”), recorded on April 10, 2024, in the Office of the Utah County Recorder as Entry No. 22968:2024, as may be amended.

C. Declarant and/or the undersigned Persons are the owners of the real property subject to this Declaration. By signing this Declaration, Declarant and the undersigned Owners consent to subjecting the Project to the terms, covenants and restrictions contained herein.

D. Declarant hereby desires to establish for the mutual benefit of all future Owners and Occupants of the Project, certain covenants, conditions, restrictions, easements, rights, privileges, assessments, and liens as set forth herein, which shall run with and be a burden upon each Unit within the Project.

E. Declarant desires to create an association of condominium owners, which entity shall possess the power to maintain and administer the Common Areas, collect and disburse assessments and charges hereinafter provided for, and administer and enforce the provisions of this Declaration. It is intended that this Declaration shall serve as a binding contract between the Association and each Owner; however, nothing herein, is intended to create a contractual relationship between Declarant and the Association or Declarant and any Owner, or to inure to the benefit of any third-party. Additionally, it is not intended that this Declaration be read in conjunction with any deed or real estate purchase contract to create privity of contract between Declarant and the Association.

F. Declarant intends that the Owners, Occupants, Lenders, and all other persons hereafter acquiring any interest in the Project shall at all times enjoy the benefits of, and shall hold their interest subject to this Declaration, which is recorded in furtherance of establishing a general plan of condominium ownership for the Project, and for establishing rules for the use, occupancy,

management, and enjoyment thereof.

DECLARATION

NOW, THEREFORE, Declarant hereby declares that the Project is and shall henceforth be owned, held, conveyed, encumbered, leased, improved, used, occupied, and enjoyed subject to the following Restrictions. These Restrictions are in furtherance of, and the same shall constitute a general plan for the ownership, improvement, sale, use, and occupancy of the Project; they are also in furtherance of and designed to accomplish the desires, intentions, and purposes set forth in the recitals above.

ARTICLE I DEFINITIONS

As used herein, unless the context otherwise requires, the following terms and phrases shall have the meaning stated:

1.1 “**Act**” shall mean the Utah Condominium Ownership Act, beginning at Utah Code § 57-8-1 et seq., as the same may be amended from time to time.

1.2 “**Annual Assessment**” shall mean the Assessment described in Section 6.04 of this Declaration.

1.3 “**Articles**” shall mean the Articles of Incorporation for the Association, as may be amended and restated from time to time.

1.4 “**Assessments**” shall mean any charge imposed or levied by the Association against Units including but not limited to Annual Assessments, Special Assessments, Individual Assessments, and all corresponding late fees, fines, and interest, as provided in this Declaration.

1.5 “**Association**” shall refer to the Athens Industrial Commercial Condominium Association, the membership of which shall include each Owner of a Unit in the Project, as required by the Act. The Association shall be incorporated as a Utah nonprofit corporation, which if invalidated for any reason, may be reincorporated at the discretion of the Board of Directors and may utilize such name that the Board of Directors shall select in any such reincorporation or reorganization. In case of the formation of any such entity, “Association” as used in this Declaration shall refer to that entity.

1.6 “**Board Member**” shall mean a duly qualified and elected or appointed member of the Board of Directors of the Association.

1.7 “**Board of Directors**” or “**Board**” shall mean the Board of Directors of the Association elected pursuant to the Bylaws and serving as the management body of the Association. The term Board of Directors, as used herein, shall have the same meaning as “Management Committee” under the Act.

1.8 “**Bylaws**” shall mean the Bylaws adopted by the Association pursuant to § 57-8-15 of the Act for the purpose of regulating the affairs of the Association, as the same may be amended from time to time. The initial Bylaws of the Association are attached hereto as **Exhibit B**.

1.9 “**Common Area**” shall mean, refer to, and include: (a) the land included within the

Project; (b) all foundations, roofs, columns, girders, beams, supports, exterior walls and surfaces, gutters, downspouts, soffit, and fascia of the buildings in the Project; (c) all halls, corridors, stairs, stairways, entrances and exits which are designed for the use of more than one Unit; (d) outdoor grounds and landscape, outdoor lighting, fences, sidewalks, parking spaces, streets, and other installations or facilities existing for common use as set forth on the Plat; (e) all installations of utility services within the Project such as power, light, gas, water, and sewer including all pipes, wires, conduits or other utility lines that serve more than one Unit, including such facilities that may be located within buildings or Units; (f) any mechanical, plumbing, or other equipment, apparatus, and installations serving more than one Unit and existing for common use; and (g) everything included within the Project, excluding the individual Units, as identified on the Plat; all other parts of the Project necessary or convenient to its existence, maintenance, and safety, or normally in common use.

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

1.11 **“Declarant”** shall mean N Athens Six, LLC, and any successor or assign.

1.12 **“Declaration”** shall mean and refer to this Declaration of Condominium for Athens Industrial Commercial Condominiums and shall include any and all amendments and supplements thereto.

1.13 **“Governing Documents”** shall mean collectively, the Declaration, Articles, Bylaws, Plat, and Rules adopted by the Board.

1.14 **“Individual Assessment”** shall mean the Assessment described in Section 6.06 of this Declaration.

1.15 **“Lender”** shall mean a holder of a mortgage or deed of trust on a Unit.

1.16 **“Limited Common Area”** shall mean a portion of the Common Area specifically designated as a Limited Common Area in this Declaration or the Plat and allocated by this Declaration or the Plat for the exclusive use of one or more Units to the exclusion of other Units. Conveyance of a Unit includes the use and enjoyment of the Limited Common Area appurtenant to the Unit. The Limited Common Area shall be appurtenant to each respective Unit where so identified and may not be severed from the ownership of the Unit. The use and occupancy of the Limited Common Areas shall be reserved to their associated Unit; and each Unit Owner is hereby granted an irrevocable license to use and occupy said Limited Common Area. If an Owner's Limited Common Area is not depicted on the Plat, or there is a dispute over its boundaries, the Board shall have the authority and discretion to determine Limited Common Area boundaries and the Board's decision shall be binding.

1.17 **“Manager”** shall mean a person, persons, or entity, if any, selected by the Board of Directors to manage the affairs of the Project.

1.18 **“Occupant”** shall mean any Person, including an Owner, in possession of, or using a Unit within the Project, including, without limitation, tenants, guests, agents, invitees, and

representatives of an Owner or Occupant.

1.19 **“Owner”** or **“Unit Owner”** shall mean the Person or Persons who are vested with record title of a Unit, and whose interest in the Unit is held in fee simple, according to the records of the Utah County Recorder; however, Owner shall not include a Person who holds an interest in a Unit merely as security for the performance of an obligation. If a Unit is subject to an executory purchase contract, the contract purchaser shall be considered the Owner unless the seller and buyer agree otherwise and inform the Board in writing of such alternative arrangement.

1.20 **“Period of Declarant Control”** shall mean the period of time during which the Declarant may appoint and remove Board Members as set forth in § 57-8-16.5 of the Act. The Period of Declarant Control shall commence on the recording date of the first deed transferring title of a Unit from Declarant to a third-party purchaser, and shall terminate on the occurrence of the earliest of the following events: (i) three (3) years from the date the first deed to a Unit is recorded by a purchaser from Declarant, (ii) six (6) months after the date on which more than three-fourths of the Undivided Interests have been conveyed by Declarant, or (iii) the Declarant executes and records a written waiver of its right to control the Association. The expiration of the Period of Declarant Control has no effect on the termination of all other Special Declarant Rights set forth in this Declaration.

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

1.22 **“Plat”** shall mean all of the Athens Industrial Commercial Condominiums plats recorded with the Utah County Recorder. The term Plat shall specifically include any amended or supplemental plat(s) that may be recorded in the future for the Project. The Plat is hereby incorporated into and made an integral part of this Declaration, and all requirements and specifications set forth on the Plat and required by the Act are deemed included in this Declaration. If a conflict exists between the Plat and this Declaration, the Declaration shall control.

1.23 **“Project”** shall include the real property described in Exhibit A, together with the buildings, improvements, and permanent fixtures located thereon, and all easements and rights appurtenant thereto and shall at any point in time mean and refer to the Athens Industrial Commercial Condominiums development.

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

1.25 **“Rules”** shall mean and refer to the rules, resolutions, and/or regulations adopted by the Board of Directors.

1.26 **“Special Assessment”** shall mean the Assessment described in Section 6.05 of this Declaration.

1.27 **“Undivided Interest”** shall mean and refer to the undivided ownership interest of each Unit (which may be expressed as a percentage or fraction in this Declaration) in the Common Areas, the Common Expense liability, and votes in the Association allocated to each Unit as set forth in Article III of this Declaration.

1.28 **“Unit”** shall mean and refer to a separate physical part of the Project intended for independent use, consisting of air spaces located inside a building. Units are shown on the Plat.

The boundaries of each Unit shall be the interior surfaces of the structural members of the exterior walls, ceiling, and floor. Units shall include: (i) nonstructural walls, drywall, and decorated interiors if any; (ii) finished surfaces of interior structural walls, floors and ceilings; (iii) all interior paint and flooring; (iv) all pipes, wires, ducts, conduits, or other utility lines or installations located within the boundaries any one Unit or located without said Unit but designated and designed to serve only the Unit, such as appliances, electrical receptacles and outlets, air conditioners, heaters and the like; (v) exterior windows, doors, garage doors, and all appurtenant hardware and equipment; and (vi) and all fixtures, mechanical equipment, and appliances within any Unit, which are removable without jeopardizing the soundness, safety, or usefulness of the remainder of the building within which the Unit is situated. Except where the context specifically requires otherwise, reference to a Unit shall include reference to the Undivided Interest in the Common Area appurtenant to such Unit.

ARTICLE II THE CONDOMINIUM PROJECT

2.01 Submission. The Declarant hereby submits the real property described with particularity on Exhibit A to the Act. The Declarant hereby declares that the Project and all of the Units shall be held, conveyed, transferred, sold, mortgaged, encumbered, occupied, used, and improved subject to the Restrictions, which Restrictions shall constitute covenants and conditions running with the land and shall be binding upon and inure to the benefit of the Association, and each Owner, including their respective heirs, executors, administrators, personal representatives, successors, and assigns.

2.02 Name and Location. The Project is known as Athens Industrial Commercial Condominiums. The Project is located in the Utah County. The legal description of the real property included in the Project is set forth in Exhibit A. The Project is not a cooperative.

2.03 Interpretation of Declaration and Applicability of the Act. The Declarant intends that the Project shall be governed by the Act, except where the Association has included specific provisions in this Declaration that legally vary, supersede, or supplement the Act, in which event such specific provisions of this Declaration that are contrary to the Act shall govern the Project to the extent allowed by the Act.

2.04 Registered Agent. The Registered Agent, as listed with the Utah State Department of Commerce, Division of Corporations and Commercial Code, shall be the person to receive service of process for the Association pursuant to § 57-8-10(2)(d)(iii) of the Act, unless such time as the Board of Directors duly appoints a new agent. The Board of Directors may change the Registered Agent at any time and without the need for Owner consent.

ARTICLE III DESCRIPTION OF IMPROVEMENTS, UNDIVIDED INTEREST

3.01 Description of Improvements. The Project is intended to include two buildings with commercial condominium Units and flex industrial space. Other major improvements include, asphalt roadways, open parking spaces, fences, pads, and outdoor lighting and landscaping. The Plat and approved construction plans shall supplement the information and descriptions in this Section. It is contemplated that the Project will consist of **20 total Units** when

complete; however, the total number of Units in the Project may vary based on government approvals, building conditions, or other factors outside the control of the Declarant after the recording of this Declaration.

3.02 Description and Legal Status of Units. The Plat shows each Unit's building designation, location, and dimensions from which its area may be determined, those Limited Common Areas which are reserved for its use, and the Common Areas to which it has immediate access. All Units shall be capable of being independently owned, encumbered, and conveyed and consist of a Unit and an appurtenant undivided interest in and to the Common Area.

3.03 Undivided Interests. Each Unit shall have an equal Undivided Interest and is assigned one equal vote, subject to the limitations on voting set forth in this Declaration and other Governing Documents. Any difference in square footage, location, size, value, or other aspect of any Unit shall not be a reason to alter or change the Undivided Interests. The Undivided Interest of each Unit shall be calculated by dividing the number 1 by the total number of Units in the Project.

3.04 Calculating and Altering Undivided Interests. The Undivided Interest appurtenant to each of the Units is based on a par value as set forth below and is displayed as a percentage. Undivided Interests may not uniformly reflect differences in square footage, location, size, value, or other aspect of any Unit; however, such differences shall not be a reason to alter or change the Undivided Interests.

3.04.1

Building 1 Unit 101A = 5%	Building 2 Unit 101B = 5%
Building 1 Unit 102A = 5%	Building 2 Unit 102B = 5%
Building 1 Unit 103A = 5%	Building 2 Unit 103B = 5%
Building 1 Unit 104A = 5%	Building 2 Unit 104B = 5%
Building 1 Unit 105A = 5%	Building 2 Unit 105B = 5%
Building 1 Unit 106A = 5%	Building 2 Unit 106B = 5%
Building 1 Unit 107A = 5%	Building 2 Unit 107B = 5%
Building 1 Unit 108A = 5%	Building 2 Unit 108B = 5%
Building 1 Unit 109A = 5%	Building 2 Unit 109B = 5%
Building 1 Unit 110A = 5%	Building 2 Unit 110B = 5%

3.04.2 The Undivided Interests shall not be changed without the vote or consent of sixty-seven percent (67%) of the total Undivided Interests in the Project. Notwithstanding the foregoing, the Declarant shall have the unilateral authority to change or modify Undivided Interests of all Units during the Period of Declarant Control by recording an amendment to this Declaration with the County.

3.04.3 If any Units are legally added to or withdrawn from the Project, the Undivided Interest shall be recalculated to provide an equal Undivided Interest to all Units remaining within the Project and an amendment to this Section shall be recorded by the Declarant, or following the Period of Declarant Control, by the Association, through the Board. Otherwise, the Undivided Interests shall have a permanent character and shall not be altered without the consent of the Owners expressed through an amendment to this Declaration.

ARTICLE IV MAINTENANCE AND UTILITIES

4.01 **Maintenance of Units.** Each Owner shall furnish and be responsible for, at the Owner's own expense, all of the maintenance, repair, and replacement of all fixtures, items, structures, and other items stated in this Declaration or identified on the Plat to be part of a Unit. Such obligation shall include, without limitation, the obligation to maintain, repair, replace, and keep in proper operating condition, and for any items and areas generally visible from outside of the Unit, to maintain them in a clean, well-maintained, uniform, undamaged, and tidy condition, all of the following:

4.01.1 all windows, window frames, exterior doors, interior doors, overhead doors, and all hardware, openers, or controllers (if any);

4.01.2 all paneling, tiles, paint, finished flooring, and any other materials constituting the finished surfaces of floors, ceilings, or interior walls;

4.01.3 all power, water, gas, sewer, and other utility lines in an Owner's Unit between the points at which the same enter the Owner's Unit and the points where the same join the utility lines serving other Units; and

4.01.4 any of the following whether inside or outside of the Unit, which serve an Owner's Unit exclusively: fans, light fixtures, heaters, air conditioning units, security systems, and such other appliances, fixtures, and decorations as an Owner may install.

4.02 **Modifications to Units.** Owners may make nonstructural alterations within the Owner's Unit that do not impact the uniform appearance of the exterior of the Units, but an Owner shall not make any structural alterations or alterations to any part of the exterior of a building (such as windows, light fixtures, exterior doors, and overhead doors), the Common Area, or the Limited Common Area without the prior written approval of the Board. The Board may require that such repairs or modifications, if allowed, be made in a particular manner, by a particular Person, or that they comply with particular color schemes, material requirements, or other standards.

4.02.1 Remodeling and Extensive Maintenance. An Owner shall be liable for any and all damage and/or liability associated with any remodeling or maintenance work including damage to the Unit, another Unit, or any Common Area, or Limited Common Area. Without prior written permission of the Board, none of the following shall occur in any remodeling: (1) any use of the Common Area for staging, storage, assembly, or construction; (2) the creation or implementation of any visual, audible, or aromatic nuisance or any other nuisance that impacts on the use and enjoyment of any one or more of the other Units; (3) any blocking of the Common Area by vehicles, materials, or persons; or (4) any use of the Association's common garbage and disposal facilities for the disposal of debris, materials, or other items related to the remodeling.

4.03 **Maintenance of Common Area and Limited Common Area.** Except as otherwise provided specifically herein, the Association, through its Board or its fully delegated representative, shall repair, maintain, replace, pay all expenses associated with, and otherwise manage the Common Area as that area is defined in this Declaration and the Plat. This shall include the right to modify, remove fixtures upon, add to, place signs upon, and otherwise modify the Common Area. The Association shall do all such other and further acts that the Board deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with

the general purposes specified in this Declaration.

4.03.1 Maintenance of Limited Common Area. The Association shall repair, maintain, and replace the Limited Common Area. Owners shall be responsible to ensure that the Limited Common Area within their exclusive control is kept in a clean, sanitary, and uncluttered condition.

4.03.2 Equipment and Systems. All shared mechanical equipment and systems that serve or benefit more than one Owner, or an entire building such as HVAC, fire suppression systems, water heaters, or similar facilities shall be maintained by the Association. Owners are required to provide the Association access to maintain such systems at all times.

4.03.3 Standard of Maintenance. The Board shall determine, in its sole discretion, the appropriate standards to be used for the maintenance of the Common Area and Limited Common Area, so long as the Association is maintained in the best interests of the Owners.

4.03.4 Assessment for Maintenance Expenses to Specific Owner. If the need for maintenance or repair is caused through the willful or negligent act of an Owner or an Occupant, the Board may cause the needed maintenance or repair to be made. In such a case, the Association shall assess the Owner the reasonable cost of such maintenance or repair. Failure to timely report the need for maintenance or repair shall be deemed a negligent act for purposes of this Article.

4.04 **Default in Maintenance.** If an Owner or Occupant fails to maintain a Unit or Limited Common Area for which the Owner is responsible, as provided by this Article, or make repairs thereto in such a manner as may be deemed reasonably necessary in the judgment of the Board to preserve and protect the attractive appearance and value of the Project, following written notice from the Association, the Association shall have the right, but not the obligation, at the expense of the Owner and without liability to the Owner for trespass or otherwise, to take the corrective action that the Board deems necessary. Expenses incurred by the Association in taking the corrective action shall be levied against the Unit and treated as an Individual Assessment. The Individual Assessment shall be due and payable immediately and shall be secured by the Assessment lien created in this Declaration.

4.05 **Utilities.** The charges for utilities that are metered separately to each Unit shall be the responsibility of the respective Unit Owners. Utility costs and charges that are metered collectively to the Association shall be a Common Expense. Shared trash collection services provided for the Project shall be a Common Expense.

ARTICLE V ASSOCIATION MEMBERSHIP, VOTING, MANAGEMENT

5.01 **Organization of Association.** The Association shall serve as the governing body for all Owners. The Association shall make provisions for the maintenance, repair, replacement, administration, and operation of the Common Area and Common Expenses, and other matters as provided in the Act, this Declaration, and the Bylaws. The Association shall have all rights and powers granted to it under the Act and in this Declaration, the Articles, and the Bylaws. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with this Declaration, the Articles, and the Bylaws. Except as specifically authorized in this Declaration, the Articles, or the Bylaws, no Owner or group of Owners shall have authority to take any action on behalf of the Owners, the Association, or the Board.

5.02 Legal Organization. The Association is a nonprofit corporation. In the event the nonprofit corporate status expires or is invalidated in any manner, the Board, in its sole discretion, may renew and/or reincorporate the Association. Any such expiration or invalidation shall not relieve any Owner from paying Assessments and abiding by all Restrictions contained in this Declaration.

5.03 General Powers and Obligations. The Association shall have, exercise, and perform all of the following powers, duties, and obligations: (a) the powers, duties, and obligations granted to the Association by this Declaration, the Bylaws, and the Articles; (b) the powers and obligations of a nonprofit corporation pursuant to the general nonprofit corporation laws of the State of Utah; (c) the powers, duties, and obligations of a condominium association pursuant to the Act; (d) the powers, duties, and obligations not reserved specifically to the Owners; and (e) any additional or different powers, duties, and obligations necessary or desirable for the purpose of carrying out the functions of the Association pursuant to the Governing Documents.

5.04 Membership. Every Owner shall be a member of the Association so long as such Owner owns a Unit. Association membership shall automatically terminate when an Owner ceases to own a Unit. If title to a Unit is held by more than one Person, the membership appurtenant to that Unit shall be shared by all such Persons in the same proportional interest and by the same type of tenancy in which title to the Unit is held.

5.05 Voting. Except as otherwise disallowed in this Declaration or the Bylaws, Owners shall be entitled to vote their Undivided Interest pertaining to the Unit, but only one (1) vote shall be cast per Unit. In the event there is more than one (1) Owner of a particular Unit, the vote relating to such Unit shall be exercised as such Owners may determine among themselves. A vote cast at any Association meeting by any of such Owners, whether in person or by proxy, shall be conclusively presumed to be the vote attributable to the Unit concerned unless an objection is immediately made by another Owner of the same Unit. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever, other than establishing a quorum.

5.06 Board of Directors. The governing body of the Association shall be the Board of Directors. Except where a matter or vote is specifically reserved to the Owners, the Board shall act in all instances on behalf of the Association. Board Members shall be elected pursuant to the provisions set forth in the Bylaws. The Bylaws may set forth qualifications and requirements for serving on the Board. Notwithstanding the foregoing, during the Period of Declarant Control, the Declarant shall have the sole authority to act as the Board of Directors, or to appoint Board Members. Declarant appointed Board Members shall not be bound by the qualification requirements in the Declaration and Bylaws.

5.07 Right to Enter Units. The Association acting through the Board, or its duly authorized agent, shall have the right at all times upon reasonable notice of at least 48 hours, except for in an emergency, to enter upon or into any Unit, without trespass, to inspect, evaluate, assess, and appraise, to abate any infractions, to make repairs or correct any violation of any of the Governing Documents, and in connection therewith shall have the further right to assess all costs incurred against the Owner, such assessment to be secured by a lien provided in Article VII. Notice shall not be necessary in case of an emergency originating in or threatening such Unit or any other part of the Project, including the smell or sight of smoke in a Unit, abnormal or excessive noises, and foul smell. Owners shall maintain up-to-date emergency contact information records with the Association. Owners shall be responsible for any costs incurred by the Association as a result of

entering a Unit under this Section and shall indemnify and hold harmless the Association for all damages related to such entry.

5.08 Rules. The Board may adopt, amend, repeal, enforce, and administer reasonable Rules for the regulation and operation of the Project. The Rules may address any issues including those addressed in this Declaration and the Bylaws. The Rules may supplement, clarify, and add detail to issues otherwise addressed in this Declaration and the Bylaws so long as they do not contradict the same. The Board shall have the sole discretion to determine whether a use or activity being conducted or to be conducted violates or will violate the Rules, and the Board's determination shall be conclusive. The Board may adopt a schedule of fines for Governing Document violations as part of the Rules. Pursuant to Utah Code § 57-8-8.1(12), the requirements of Utah Code §§ 57-8-8.1(1) through (5), except subsection (1)(b)(ii), are hereby modified to not apply to the Association.

5.09 Enforcement. In addition to any other remedies allowed or provided in this Declaration for any violation of the Declaration, Bylaws, or Rules, the Board may adopt any one or more of the following: (1) impose and levy fines for violation of the Governing Documents; (2) terminate an Owner's right to receive utility services paid as a Common Expense; (3) terminate an Owner's right to access and use Common Area facilities; (4) terminate an Owner's voting rights as further provided herein; (5) instigate litigation to enforce the provisions of this Declaration or any other common law or statutory right which the Association is granted; and (6) take any other action or seek any other remedy allowed by the Act or other applicable Utah law. The Board shall have the authority (but shall not be required) to create a reasonable hearing process applicable in case the Board or Association takes adverse action related to any particular Owner or group of Owners. The Board shall not be under any obligation to offer a hearing process, except as required by law or by this Declaration, and in any such process, shall have the absolute authority to designate the procedure related to any such hearing and to make any and all final determinations of issues subject to the hearing process.

5.10 Contracts and Agreements. The Association may employ the services of any person or corporation as managers, hire employees to manage, conduct, and perform the business, obligations, and duties of the Association, employ professional counsel and obtain advice from such persons or firms or corporations such as, but not limited to, community association managers, landscape architects, accountants, recreational experts, architects, planners, lawyers, reserve study specialists, or what is convenient for the management, maintenance, and operation of the Project. The Association shall have the right to enter agreements, as the Board deems appropriate, for the provision of utilities or other services that benefit the Association, including any applicable joint use and easement agreement with neighboring associations or landowners.

5.11 Reserve Fund. The Association shall maintain an adequate reserve fund for the maintenance, repair and replacement of the Common Area, as determined by the Board. Reserve funds may be collected as part of the Annual Assessments. To the extent the Board deems necessary, surplus monies of the Association may be retained as additional reserves rather than refunded to the Owners or credited to future Assessments.

5.12 Records. Owners shall have the right to inspect Association Records within a reasonable time following an Owner's written request. "Association Records" are limited to the following documents and information: (a) Declaration, (b) Bylaws, (c) Articles of Incorporation, (d) minutes of Owner meetings and Board meetings, (e) most recent approved budget, (f) a record

of all actions taken by Owners or the Board without a meeting, (g) a record of all actions taken by a committee of the Board in place of the Board, (h) a record of all waivers of notices for Owner meetings and Board meetings, (i) a list of all Owners in alphabetical order showing their address and the number of votes each Owner is entitled, j) all resolutions adopted by the Board currently in effect, (k) all written communications to Owners generally as Members for a period of three years, (l) a list of Board member names and addresses, (m) a copy of the most recent annual report delivered to the State, (n) the annual financial statements (balance sheet and profit and loss statement) of the Association for the past three years, and (o) the most recent reserve analysis. Association Records shall specifically exclude emails, texts, phone calls, writings, and personal communications between Board Members or Owners and the Association shall have no obligation to keep such information as records. The Board shall have the power and discretion to determine what documents or information are considered Association Records if there is a dispute over the definitions or language provided in this Section. The Association shall have no duty to keep, maintain, produce, or permit inspection of any documents, draft documents, electronic files, or other information not explicitly identified in Utah Code §§ 57-8a-17(1)(a)(ii) and 16-6a-1601. The Board shall have the sole discretion to determine the format in which documents or records are kept. The Association may redact any private, privileged, or sensitive information from Association Records produced herein, in the Board's discretion. The Association may provide additional information or documents to Owners not identified as Association Records herein, in the Board's discretion. The Association may make Association Records available via a website or internet link, and if so provided, then the Association shall have met its record inspection obligations set forth in this Section or other applicable law for all such documents posted thereon.

5.13 Managing Agent. The Board may contract with a professional Manager to assist the Board in the management and operation of the Project and may delegate such of its powers and duties to the Manager as it deems appropriate; reserving the right, however, to control and oversee the administration thereof. Any powers and duties delegated to any Manager may be revoked by the Board at any time, with or without cause.

5.14 Board Indemnification. Each past and present Board Member (including the Declarant and its appointees) shall be entitled to defense and indemnification to the fullest extent permitted by the Utah Revised Nonprofit Corporation Act. The right of any Person to be indemnified shall be subject always to the right of the Association by the Board, in lieu of such indemnity, to settle any claim, action, suit, or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

5.15 Board Liability. To the fullest extent permitted by law, the Declarant and each past and present Board Member shall not be liable for any damage, loss, or prejudice suffered or claimed on account of any decision, approval, or disapproval, course of action, act, omission, payment, error, or negligence.

5.16 Litigation. The Board may instigate litigation to enforce the provisions of this Declaration or any other common law or statutory right which the Association is granted.

5.17 Loans. The Association shall have the authority to obtain loans for the efficient operation of the Association and may pledge its assessment authority or other assets as collateral for financing. A unanimous vote of the Board shall be required prior to obtaining any loan.

5.18 Design Guidelines. The Board may adopt Design Guidelines for the purpose of

maintaining a consistent character and quality of appearance of the improvements within the Project. The Design Guidelines may designate the design, style, model, and manufacturer of any materials to be used for an exterior improvement or alteration that is acceptable to the Board. Such designations shall be for the purpose of achieving uniformity of appearance and preservation of property values. Amendments to the Design Guidelines shall apply prospectively only. They shall not require modifications to or removal of any structures previously approved once the approved construction or modification has begun. However, any new work on such structures must comply with the Design Guidelines as amended.

ARTICLE VI BUDGET AND ASSESSMENTS

6.01 Annual Budget. The Board shall prepare and adopt an annual budget for the Association. The annual budget shall provide, without limitation, for the maintenance of the Common Areas and for the administration, management, and operation of the Association. The Board may revise the budget from time to time as the Board deems appropriate. If the Board fails to adopt an annual budget, the last adopted budget shall continue in effect until the new annual budget is adopted. The budget shall be made available to requesting Owners within thirty (30) days after adoption.

6.02 Covenant to Pay Assessments. Each Owner, by acceptance of a deed or other instrument creating in such Owner the interest required to be deemed an Owner, whether or not it shall be so expressed in any such deed or other instrument, is deemed to covenant and agree with each other Owner and with the Association to pay to the Association such Assessments to be fixed, established, and collected from time to time as provided in this Declaration. The Assessments, together with interest thereon, late fees, third-party or Manager collection charges, attorneys' fees, court costs, and other costs of collection as hereinafter provided shall be secured by a continuing lien upon the Unit against which each such Assessment is made in favor of the Association. Each such Assessment, together with such interest, late fees, collection charges, costs and attorney fees, shall also be the personal obligation of the Owner of such Unit at the time the Assessment becomes due secured by the interest of the Owner in the Unit.

6.02.1 In a voluntary conveyance, the grantee of a Unit shall be jointly and severally liable with the grantor for all unpaid Assessments, together with interest, costs, and reasonable attorney fees against the latter for any Assessments authorized by this Declaration 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.

6.02.2 A lien to secure unpaid Assessments shall not be affected, canceled, or otherwise eliminated by the sale or transfer of the Unit unless foreclosure by a higher priority encumbrance is involved, in which case the foreclosure will extinguish the lien as required by law for any Assessments that were payable before the foreclosure sale, but shall not relieve any subsequent or successor Owner from paying further Assessments or from the lien of any future Assessments.

6.03 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the following purposes: promoting the safety and protection of the Owners and stored contents; effecting the management, maintenance, care, preservation and protection of the Project; and maintaining and enhancing the value of the Project including, without limitation, the

improvement and maintenance of the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area; or in furtherance of any other duty or power of the Association.

6.04 Annual Assessments. Annual Assessments shall be made on a calendar year basis by allocating the applicable portion of the budget based on each Owner's Undivided Interest. The Board shall give written notice of each Annual Assessment not less than fifteen (15) days nor more than sixty (60) days prior to the beginning of the next calendar year. Each Annual Assessment shall be due and payable in monthly installments, on dates established by the Board. At least fifteen (15) days prior to the effective date of any change in the amount of the Annual Assessment, the Association shall give each Owner written notice of the amount.

6.05 Special Assessments. The Board may levy Special Assessments payable over such a period as the Board may determine, for the purpose of defraying, in whole or in part any expense or expenses not reasonably capable of being fully paid with funds generated by Annual Assessments; the cost of any construction, reconstruction, or unexpected repair or replacement of the Common Areas; or for any other expense incurred or to be incurred by the Association. Notice in writing of the amount of any Special Assessments and the time for their payment shall be given as soon as is reasonably possible to the Owners. Payment shall be due on the dates and in the manner provided in the notice.

6.06 Individual Assessments. The Board may levy Individual Assessments against a Unit and its Owner to reimburse the Association for: (a) administrative costs and expenses incurred by the Board in enforcing the Governing Documents against an Owner or its Occupants; (b) costs associated with the maintenance, repair, or replacement of Common Areas caused by the neglect or actions of an Owner or its Occupants; (c) any other charge, fine, fee, expense, or cost designated as an Individual Assessment in the Governing Documents or by the Board, including, without limitation, action taken to bring a Unit and its Owner into compliance with the Governing Documents; (d) nonpayment of a Reinvestment Fee; and (e) attorney fees (regardless of whether or not a lawsuit is filed), court or collection costs, fines, and other charges permitted in the Governing Documents or relating to any of the above, regardless of whether a lawsuit is filed.

6.07 Declarant Assessment Exemption. The Declarant shall not be obligated to pay Assessments on any Units owned by the Declarant, or a Declarant affiliated entity, until such time as the Declarant elects in writing to pay Assessments, and only for so long as the Declarant elects to pay Assessments. The Declarant shall have the sole discretion to determine whether a Unit is owned by one of its affiliates and whether such Unit is subject to assessment.

6.08 Allocation of Assessments. Annual and Special Assessments shall be imposed according to each Unit's Undivided Interest. Individual Assessments shall be allocated separately to each Unit based on the costs incurred by the Association for each Unit.

6.09 Rules Regarding Billing and Collection Procedures. The Board shall have the right and responsibility to adopt Rules setting forth procedures for the purpose of making the Assessments provided for in this Declaration and for the billing and collection of Assessments, provided that such procedures are not inconsistent with the provisions hereof. The failure of the Association to send an invoice to an Owner shall not relieve any Owner of liability for any Assessment or charge under this Declaration, but the Assessment lien therefore shall not be foreclosed or otherwise enforced until the Owner has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement, at the address of the Owner on the records

of the Association, of the Assessment or installment and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. A copy of such notice may also be provided to the Occupant(s) of the Unit if the Owner has leased their Unit.

6.10 Certificate of Payment. The Association shall, within ten (10) business days after written demand for payment to the Association, furnish to any Owner liable for Assessments or to the Lender or a potential Lender for such Unit, a written statement or certificate signed by an officer or authorized agent of the Association setting forth whether the Assessments relating to a specified Unit have been paid and the amount of delinquency, if any. A reasonable charge of twenty-five dollars (\$25) (unless the Act allows for a greater amount, in which event the greater amount may be charged) may be collected by the Association for the issuance of each such certificate. Each certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

6.11 Acceptance of Materials or Services. In the event the Association undertakes to provide materials or services that are not otherwise required in the maintenance of the Project, which benefit individual Units, and which can be accepted or not by individual Owners, such Owners, in accepting such materials or services, agree that the costs thereof shall be an Individual Assessment for such Unit at the discretion of the Board.

6.12 Application of Excess Assessments. In the event the amount budgeted to meet Common Expenses for a fiscal year proves to be excessive in light of the actual Common Expenses, the Board in its discretion may apply the excess to reserves, credit the excess against future Assessments, or pay the excess to the Owners of each Unit, as the Board deems appropriate. The decision of the Board shall be binding and conclusive. In addition, the Association shall not be obligated to reduce the amount of Assessments in succeeding years if an excess exists for a prior year.

6.13 No Offsets. All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount or withholding of any amount shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in this Declaration.

6.14 Reinvestment Fee Covenant. A Reinvestment Fee Covenant is hereby established as permitted under Utah Code § 57-1-46. The Board shall have the right (but shall not be required) to establish a Reinvestment Fee assessment amount in accordance with this Section. The following terms and conditions shall govern Reinvestment Fees:

6.14.1 Upon the occurrence of any Transfer (as defined below) of any Unit as reflected in the office of the Utah County Recorder, regardless of whether it is pursuant to the sale of the Unit or not (as applicable, a "Transfer"), the party receiving title to the Unit (the "Transferee") shall pay to the Association a Reinvestment Fee in an amount to be established by the Board in the Rules or Board resolution, provided that in no event shall the Reinvestment Fee exceed the maximum rate permitted by law. The initial Reinvestment Fee shall be in an amount equal to **One Thousand Dollars (\$1,000.00) or .5%** of the value of the transferred Unit, whichever is less.

6.14.2 No such Reinvestment Fee shall be payable and a transfer shall not be deemed to have occurred with respect to (a) the creation of any Mortgage, (b) any foreclosure of a first-position Mortgage, (c) the exercise of a power of sale available under a first-position Mortgage, (d) the taking of a deed or assignment in lieu of a foreclosure by a mortgagee under a

first-position Mortgage, (e) the conveyance by a mortgagee of a first-position Mortgage of a deed to a Unit, or part thereof or interest therein, to a grantee if such mortgagee shall have obtained title to such Unit, or part thereof or interest therein, pursuant to subclause (b), (c) or (d) above, (f) any transfer, sale or conveyance to Declarant, to an entity wholly-owned or controlled by Declarant, or to the Association, (g) any transfer to a family trust or other closely held entity solely for estate planning purposes, or (h) any other transfer expressly excluded by statute. For purposes of this Section, a “transfer” shall mean, whether in one transaction or in a series of related transactions, any sale, conveyance, assignment, lease, or other transfer of any beneficial ownership of or interest in any Unit, including but not limited to (i) the conveyance of fee simple title to any Unit, (ii) the transfer of more than fifty percent (50%) of the outstanding shares of the voting stock of a corporation which, directly or indirectly, owns one or more Unit, and (iii) the transfer of more than fifty percent (50%) of the interest in net profits or net losses of any partnership, limited liability company, joint venture or other entity which, directly or indirectly, owns one or more Units. The Declarant, prior to the organization of the Association, and thereafter the Board, shall have the right to determine in their respective sole and exclusive judgment whether a “transfer” has occurred for the purposes of levying a Reinvestment Fee.

6.14.3 The Reinvestment Fee shall be due and payable by the Transferee to the Association at the time of the Transfer giving rise to the payment of such Reinvestment Fee and shall be treated as an Individual Assessment for collection purposes.

6.14.4 All transfers of Units from Declarant to a Declarant related entity shall be exempt from a Reinvestment Fee. The Declarant shall have the sole discretion to determine whether such Transferee is a related entity and if a Reinvestment Fee applies.

6.14.5 All transfers of Units from Declarant or from a Declarant related entity to a third party shall be exempt from the Reinvestment Fee. All future transfers from the third party to others shall be subject to the Reinvestment Fee unless otherwise exempted herein.

6.14.6 The Reinvestment Fee shall be used only for the benefit of the property within the Association, as provided by Utah Code § 57-1-46, specifically, for common planning, facilities, and infrastructure; obligations arising from an environment covenant; or association expenses, as the Board may determine in its sole and exclusive discretion.

ARTICLE VII

EFFECT OF NONPAYMENT OF ASSESSMENTS AND REMEDIES

7.01 **Due Date and Delinquency.** Assessments shall be paid in a timely manner. Payments are due in advance on the first day of the month or the first day of such other period established by the Board. Payments are delinquent if received more than ten (10) days from the date that they became due. Whenever an Assessment is delinquent, the Board may at its option invoke any one or more or all of the sanctions granted in this Article.

7.02 **Collection Charge.** If the Association does not otherwise adopt or establish billing and collection procedures in the Rules, the following shall apply. Delinquent accounts shall be charged a twenty-five dollar (\$25) late fee each month until the Owner's account (including all collection charges, costs, and attorney fees) is paid in full. Interest may accrue on all unpaid balances at the rate of eighteen percent (18%) per annum. Collection charges, interest, and/or late fees shall constitute part of the Assessment lien provided above until paid, including all

accompanying charges, costs, and attorney fees. Payments shall be credited first to collection costs (including attorney fees), then to interest and late fees, then to the oldest Assessments, then the most recent Assessments.

7.03 Action at Law. The Association may bring an action to recover a delinquent Assessment either personally against the Owner obligated to pay the same or by foreclosure of the Assessment lien on the Unit of the Owner. In addition, the Association's choice of one remedy shall not prejudice or constitute a waiver of the Association's right to exercise any other remedy. Any attorney fees and costs incurred in this effort shall be assessed against the delinquent Owner and the Owner's Unit, and reasonable attorney fees and court costs will thereafter be added to the amount in delinquency (plus interest, late fees, and collection charges). Each Owner vests in the Association and its successors and assigns the right and power to bring actions at law against such Owner and Owners, or to advance lien foreclosures against the Unit of such Owner or Owners, for the collection of delinquent Assessments.

7.04 Foreclosure Sale. Any foreclosure provided for in this Declaration may be conducted pursuant to a judicial or nonjudicial foreclosure or in compliance with applicable provisions relating to the foreclosure of deeds of trust or realty mortgages in the State of Utah. In any foreclosure and subsequent sale, the Owner of the affected Unit shall pay the costs and expenses of all related proceedings including reasonable attorney fees incurred by the Association. The Association may, through its duly authorized agents including the Board, have and exercise the power of the trustee and the power to bid on a Unit at the foreclosure or other sale thereof, and to acquire, hold, lease, rent, mortgage and convey such Unit.

7.05 Association Responsibility after Foreclosure. If the Association takes title to a Unit pursuant to a foreclosure (judicial or nonjudicial), it shall not be bound by any of the provisions related to the Unit that are otherwise applicable to any other Owner, including but not limited to obligations to pay assessments, taxes, or insurance, or to maintain the Unit and its Limited Common Areas. By taking a security interest in any Unit governed by this Declaration, Lenders cannot make any claim against the Association for nonpayment of taxes, Assessments, or other costs and fees associated with any Unit if the Association takes title to a Unit related to a failure to pay Assessments.

7.06 Trust Deed Provisions. The Declarant and Association hereby convey and warrant pursuant to Utah Code §§ 57-1-20 and 57-8-45 to the Association's attorney, with power of sale, each Unit and all improvements to each Unit for the purpose of securing payment of assessments under the terms of the Declaration. Each Owner by accepting a deed to a Unit hereby acknowledges and accepts this trustee appointment. All notices of default and other communications material to an exercise of the power of sale be sent to the street address of the Owner's Unit or, the last known mailing address of the Owner as shown on the books and records of the Association, if different from the street address of the Unit.

7.07 Suspension of Votes. The Board may suspend the obligated Owner's right to vote on any matter at regular and special meetings of the Association and the Owner's right to use all or any portion of the Common Area (exclusive of the Limited Common Area appurtenant to the Owner's Unit) for the entire period during which an Assessment or other amount due under any of the provisions of the Declaration remains delinquent.

7.08 Termination of Services. If an Owner fails or refuses to pay any Assessment when due, the Board may terminate the Owner's right to receive utility services paid as a Common

Expense and access to and use of the Common Areas. Before limiting, restricting, or terminating any utility or other service provided by the Association or restricting access to or use of the Common Areas, the Association shall notify the Owner and give such Owner at least three (3) business days to pay the past due balance.

7.09 Recovery of Rent From Tenant. If a delinquent Owner is leasing his Unit or any portion thereof, then pursuant to Utah Code § 57-8-53, the Board may, at its option, so long as an Assessment is more than sixty (60) days late, demand and receive from any tenant the rent due or becoming due and the payment of such rent to the Board shall discharge such tenant for rent due, and shall discharge the Owner for such Assessments to the extent of the amount so paid.

7.10 Account Payoff Information. The Association may charge a fee for providing account payoff information in connection with the closing of an Owner's financing, refinancing, or sale of a Unit as provided for in Utah Code § 57-8-6.3. The Board may set the amount of the fee in the Rules, but such fee shall not exceed the maximum amount allowed by Utah law. If not otherwise set forth in the Rules, the Account Payoff Fee shall be fifty dollars (\$50).

ARTICLE VIII PROPERTY RIGHTS IN COMMON AREA

8.01 General Easements to Common Area and Units.

8.01.1 Subject to this Declaration and the Rules, each Owner shall have a right and easement of use and enjoyment in and to the Common Area. Each Owner shall have an unrestricted right of ingress or egress to and from the Owner's Unit over and across such Common Area (exclusive of the Limited Common Area unless stated otherwise), subject to Association Rules. Each Owner shall also have the exclusive right to use and enjoy any Limited Common Area that may be designated for exclusive use by such Owner. Such rights and easements shall be appurtenant to and shall pass with title to each Unit and in no event shall such appurtenant rights be separated therefrom. Any Owner may delegate the right and easement of use and enjoyment described herein to any Occupant.

8.01.2 The Declarant reserves in favor of the Declarant such easements and rights of ingress and egress over, across, through, and under the real property and any improvements now or hereafter constructed thereon as may be reasonably necessary for Declarant: (i) to construct and complete each Unit and all of the other improvements described in this Declaration or in the Plat; and (ii) to improve portions of the real property with such other or additional improvements, facilities, or landscaping designed for the use and enjoyment of all Owners as Declarant may reasonably determine to be appropriate. This reservation shall not expire until after the date on which the Declarant no longer owns a Unit in the Project.

8.01.3 The Declarant reserves in favor of the Declarant and the Association, acting through the Board or its authorized agent, nonexclusive easements with the right of access to each Unit, without trespass, to make inspections and to maintain, repair, replace or effectuate the restoration of the Common Area accessible from such Unit. Such rights shall be exercised in a reasonable manner and at reasonable times with prior notification, unless emergency situations demand immediate access. The Declarant and the Association, acting through the Board or its authorized agent, shall have a nonexclusive right to grant permits, licenses and easements upon, across, over, under and through the Common Area for purposes necessary for the proper operation of the Project; provided, however, such rights shall be exercised in a reasonable manner and at

reasonable times, with proper notification, unless emergency situations demand immediate access.

8.02 Public Utility Easements. The Project is subject to blanket easements and rights-of-way in favor of the Association over, across, above, and under the Common Areas and any other necessary portion of the Project for the installation and maintenance of electricity lines, telephone lines, cable television, water lines, gas lines, sewer lines, drainage facilities, and such other public utilities needed to serve the Project. Such easements and rights-of-way are hereby reserved to the Association, together with the right to grant and transfer the same; provided, however, such easements and rights-of-way shall not unreasonably interfere with the use of the Common Area and the Units by the Owners or Occupants. The Association shall have the power to grant and convey to any municipality, special service district, or Person, in the name of all of the Owners as their attorney-in-fact, easements and rights-of-way in, on, over or under the Common Area or any other necessary area of the Project for the purpose of constructing, erecting, operating or maintaining pipelines, cables, wires, conduits, or other devices for electricity, cable television, power, telephone, public sewers, storm water drains and pipes, water systems, sprinkling systems, water heating and gas lines or pipes and any similar public or quasi-public improvements or facilities, and each Owner in accepting the deed to a Unit expressly consents to such easements and rights-of-way and authorizes and appoints the Association as attorney-in-fact for such Owner to execute any and all instruments conveying or creating such easements or rights-of-way. Such Owner and those claiming by, through or under an Owner agree to execute promptly all such documents and instruments and to do such other things as may be necessary or convenient to effect the same at the request of the Association.

8.03 Easements for Encroachments. If any portion of the Common Area encroaches upon any Unit, or if any Unit encroaches upon any other Unit or the Common Area, as a result of the manner in which the buildings are constructed or due to settling, shifting, alteration, replacement, repair or restoration by the Association, a valid easement for encroachment, and maintenance of such encroachment, shall exist so long as the buildings or improvements stand.

8.04 Limitation on Easement - Suspension of Owner Rights. Each Owner's right and easement of use and enjoyment concerning the Common Area is subject to the following:

8.04.1 The right of the Association to suspend the Owner's voting right in the Association and the Owner's right to the use of any facilities included in the Common Area: (i) for any period during which an Assessment on such Owner's Unit remains unpaid; (ii) for a period not exceeding sixty (60) days for any infraction by such Owner of the Governing Documents; and (iii) for successive 60-day periods if any such infraction is not corrected during any prior 60-day suspension period;

8.04.2 The right of the Association to impose reasonable limitations on the number of guests per Owner or Occupant who at any given time are permitted to use the Common Area; and

8.04.3 The right of any governmental or quasi-governmental body having jurisdiction over the Project to access and to have rights of ingress and egress over and across any street, parking areas, walkway or open areas contained within the Common Area for purposes of providing police and fire protection, transporting school children and providing other governmental or municipal services.

8.04.4 Any easement, shared use, maintenance, or access agreement between the Association and the neighboring property owners or owners associations.

8.05 **Joint Use and Cross Access Easements.** The Declarant or the Board may, on behalf of the Association, grant easements over the Common Area roadways and parking facilities to neighboring landowners and may enter into joint use agreements with such landowners for the maintenance, repair, and replacement of Common Area roadways and parking facilities. Such joint use agreements and access easements may, but shall not be required to be, recorded with the Utah County Recorder. Each Owner and Occupant shall comply with the restrictions imposed by any joint use agreement or access easement entered by the Association.

ARTICLE IX USE RESTRICTIONS

9.01 **Rules and Regulations.** The Association has authority to promulgate and enforce such Rules imposing use restrictions that may aid the Association in carrying out any of its functions or to ensure that the Project is maintained and used in a manner consistent with this Declaration and the Bylaws.

9.02 **Use Types.** The Declarant or Board may adopt Rules describing the types of permitted commercial uses allowed in the Project. No Unit shall be used, occupied, or altered in violation of law, zoning or any other ordinance or resolution, to jeopardize the structural integrity of any other Unit, or for any purpose which would render the Project uninsurable.

9.03 **Signs.** The Association may regulate and restrict signs in the Project to the extent permitted by law in the Rules. Signs may only be erected or maintained in the Project, whether in a window or otherwise, with the prior written approval of the Board. The Board may regulate signs in any manner it deems appropriate including, but not limited to, restrictions on size, placement, and lighting. The Association shall have the right to install and maintain such directional, directory, and monument signs as the Board deems reasonably necessary and appropriate for the Project.

9.04 **Nuisance.** No noxious, illegal, or offensive activity shall be carried on upon the Project, nor shall any activity that might be or become an annoyance or nuisance to other Owners or Occupants be permitted to interfere with their rights, increase the rate of any insurance, or decrease the value of the Units. No Owner or Occupant shall engage in activity within the Project in violation of any law, ordinance, statute, rule, or regulation of any local, county, state, or federal body. The Board may adopt Rules that set forth activities or uses that are deemed to be nuisances within the Project. The Board shall have the sole discretion and authority to determine if an activity or condition constitutes a nuisance.

9.05 **Temporary Structures.** No structure or building of a temporary character, including a tent or shack, shall be placed upon the Project or used therein unless the same and its proposed use are approved by the Board.

9.06 **Parking.** Vehicles shall not be parked in a manner that blocks a Unit entrance, overhead doors, or at any other location within the Project, which would impair vehicular access or snow removal. The Board may set forth Rules for parking within the Project, including, without limitation: time limits a vehicle may be parked, charging a fee for the use of Common Area parking stalls, restrictions on the size or types of vehicles permitted to be parked within the Project, the right to remove or cause to be removed any vehicles that are improperly parked, and the assessment of charges to Owners and Occupants who violate, or whose invitees violate, such Rules. In the Board's discretion, the Board may allocate parking spaces among the Units in an equal manner, but shall maintain a minimum number of guest and handicap spaces to comply with law.

9.07 **External Fixtures.** No external items such as, but not limited to, antennas, satellite dishes, flag poles, wiring, air conditioning equipment, fences, awnings, exterior doors, lighting fixtures, windows, skylights, landscaping and planting, other than those approved by the Board, and any replacements thereof, shall be constructed, erected or maintained on the Project without the prior written approval of the Board. The Board may adopt Rules regulating the location, type, color, and design of external fixtures or components. Any damage caused by the installation of any external fixture to the Common Areas (including roofs and exterior surfaces) shall be repaired by the Association, but the Association may assess such repair costs as an Individual Assessment against the Owner who is responsible for installing the external fixture, regardless of whether such fixture was approved in advance by the Board.

9.08 **Unightly Items & Trash.** All rubbish, debris, or unsightly materials or objects of any kind shall not be allowed to be placed or accumulate outside a Unit. Trash and garbage shall be immediately disposed of outside the Project. The Board may adopt additional Rules governing the use and availability of any Common Area dumpsters located in the Project.

9.09 **No Subdivision of Units or Further Restrictions.** No Unit shall be split, subdivided, or separated into two (2) or more Units, and no Owner of a Unit shall sell part of a Unit. No subdivision plat or covenants, conditions or restrictions shall be recorded by any Owner or other Person with respect to any Unit unless the Declarant or Board has first approved the plat or the proposed covenants, conditions, or restrictions, such approval to be evidenced by the Declarant's or a Board Member's signature on the final recorded plat or instrument imposing the covenants, conditions, or restrictions. Any plat or covenants, conditions, or restrictions recorded in violation of this Section shall be absolutely null and void. The Boards review shall be for the purpose of assuring, in the sole and absolute discretion of the Board, that the plat or covenants, conditions and restrictions are consistent and compatible with the overall plan of development of the Project. However, in no event shall the approval of the Board of any plat or covenant, condition or restriction be an abandonment or waiver of any provision of this Declaration. The provisions of this Declaration shall be and remain superior to any such plat or covenants, conditions, or restrictions except to the extent they defer to the Plat.

9.10 **Architectural Control.** No exterior changes whatsoever shall be commenced, erected, maintained, made, or done without the prior written approval of the Board. The Board may designate the design, color, style, model, and manufacturer of any exterior improvement or alteration that is acceptable. No interior structural changes shall be commenced, erected, maintained, made, or done without the prior written approval of the Board. Any structural change may be denied by the Board, or the Board may require the Owner to provide an engineering report demonstrating, in the discretion of the Board, that the structural changes will be constructed in a way to prevent any impact on the building or other Units. By way of illustration, but not of limitation, the following are considered interior structural changes: moving, removing, adding, or altering walls, doorways, overhead doors, and the like.

9.11 **Hazardous Substances.**

9.11.1 The Owners shall comply with applicable environmental laws (as defined below), and shall not cause or permit the presence, use, disposal, storage or release of any hazardous substances (as defined below), on or within the Project that are not properly controlled, safeguarded, and disposed of. Owners shall not do, nor allow anyone else to do, anything affecting the Project that is in violation of any environmental law. The preceding two sentences shall not

apply to the presence, use or storage on the Project of small quantities of hazardous substances that are generally recognized to be appropriate to maintenance of a Unit or the Project.

9.11.2 Each Owner shall indemnify, defend and hold the Association and each and every other Owner harmless from and against any and all claims and proceedings (whether brought by private party or governmental agency) for bodily injury, property damage, abatement or remediation, environmental damage or impairment; or any other injury or damage resulting from or relating to any hazardous substances located under or upon or migrating into, under, from or through the Project, which the Association or the other Owners may incur due to the actions or omissions of an indemnifying Owner. The foregoing indemnity shall apply: (i) whether or not the release of the hazardous substances was caused by an indemnifying Owner, a tenant, invitee or otherwise of an indemnifying Owner; and (ii) whether or not the alleged liability is attributable to the handling, storage, generation, transportation or disposal of hazardous substances on the Project. The obligations of each Owner under this Section shall survive any subsequent sale by an indemnifying Owner.

9.11.3 As used in this Section, "hazardous substances" are those substances defined as toxic or hazardous substances by environmental law and the following substances: gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides, volatile solvents, materials containing asbestos or formaldehyde and radioactive materials. As used in this Section "environmental law" means federal laws and laws of the jurisdiction where the Project is located that relate to health, safety, or environmental protection.

9.12 **Variances.** The Board may, in its sole discretion, upon a showing of extenuating circumstances, grant variances from the Restrictions set forth in this Article if the Board determines in its discretion: (a) that a Restriction would create an unreasonable hardship or burden on an Owner or Occupant, (b) that a change of circumstances since the recordation of this Declaration has rendered such Restriction obsolete; or (c) that the activity permitted under the variance will not have any substantial adverse effect on the Association, the Owners, or the Occupants of the Project and is consistent with the high quality of life intended for Owners and Occupants of the Project. Any such variance shall be unenforceable and without any effect whatsoever unless reduced to writing and signed by every member of the then existing Board. The Board Members and the Board of Directors shall not have any right or authority to deviate from this Declaration except as specifically provided for in this provision. No Owner or any other person may rely upon any permission to deviate from this Declaration by anyone including any Board Member or the entire Board, unless it is reduced to writing and signed as required in this provision.

9.13 **Declarant Exception.** So long as the Declarant owns a Unit in the Project, the Declarant shall be exempt from the restrictions contained in this Article.

9.14 **North Point Subdivision.** THE PROJECT IS SUBJECT TO THOSE RESTRICTIONS, RULES, AND REGULATIONS ADOPTED BY THE NORTH POINT SUBDIVISION AND THE NORTH POINT DECLARATION, AS IT MAY BE AMENDED.

ARTICLE X INSURANCE

NOTICE: THE ASSOCIATION'S INSURANCE POLICY DOES NOT COVER THE PERSONAL PROPERTY OR PERSONAL LIABILITY OF THE OWNERS OR THEIR

OCCUPANTS.

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

10.02 **Property Insurance.**

10.02.1 The Association may maintain a blanket policy of property insurance covering the Project, including the Common Area and all buildings. Pursuant to Utah Code§ 57-8-43(2)(b), the Association may, but shall not be required to, insure fixtures, building service equipment, and other building components. The Association may maintain broader coverage if afforded by the insurance contract. If a property insurance policy is procured by the Association, then the policy shall exclude land and other items not normally and reasonably covered by such policies. The policy may exempt coverage for permanent fixtures, improvements, or betterments installed in Units or Limited Common Areas in the Board's discretion, if such coverage unreasonably increases premiums, or makes the desired policy unavailable.

10.02.2 The Association shall notify Owners if it elects to not maintain a blanket property. insurance policy for all buildings.

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

10.02.3.1 The Association's policy provides primary insurance coverage, and:

10.02.3.1.1 the Owner is responsible for the Association's policy deductible; and

10.02.3.1.2 the Owner's policy, if any, applies to that portion of the loss attributable to the Association's policy deductible.

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

10.02.3.3 If an Owner does not pay the amount required under this Subsection within 30 days after substantial completion of the repairs to, as applicable, the Unit or the Limited Common Area appurtenant to the Unit, the Association may levy an Individual Assessment against the Owner for that amount.

10.02.4 **Claims Under the Deductible.** If, in the exercise of its business judgment, the Board determines that a claim is likely not to exceed the Association's policy deductible, then: (a) the Owner's policy is considered the policy for primary coverage up to the

amount of the Association's policy deductible; (b) an Owner who does not have a policy to cover the Association's property insurance policy deductible is responsible for the loss to the amount of the Association's policy deductible; and (c) the Association need not tender the claim to the Association's insurer.

10.02.5 **Deductible Notice.** The Association shall provide notice to each Owner of the Owner's obligation under Subsection (2) above for the Association's policy deductible and of any change in the amount of the deductible.

10.02.6 **Owner Insurance.** The Association shall have no obligation to obtain or maintain any insurance covering Owners' personal and real property, and each Owner shall be responsible for obtaining and maintaining such personal and real property insurance.

10.03 **Comprehensive General Liability (CGL) Insurance.** The Association shall obtain CGL insurance insuring the Association, the agents and employees of the Association, and the Owners, against liability incident to the use, ownership or maintenance of the Common Area or membership in the Association. The coverage limits under such policy shall not be less than One Million Dollars (\$1,000,000.00) covering all claims for death of or injury to any one person or property damage in any single occurrence. Such insurance shall contain a Severability of Interest Endorsement or equivalent coverage which should preclude the insurer from denying the claim of an Owner because of the negligence acts of the Association or another Owner.

10.04 **Director's and Officer's Insurance.** The Association shall obtain Directors' and Officers' liability insurance protecting the Board, the officers, and the Association against claims of wrongful acts and mismanagement. To the extent reasonably available, this policy shall include coverage for: (1) failure to maintain adequate reserves, (2) failure to maintain books and records, (3) failure to enforce the Governing Documents, (4) breach of contract, (5) volunteers and employees, (6) monetary and nonmonetary claims, (7) claims made under fair housing act or similar statutes or that are based on discrimination or civil rights claims, and (8) defamation. In the discretion of the Board, the policy may also include coverage for the Manager and its employees and may provide that such coverage is secondary to any other policy that covers the Manager or its employees.

10.05 **Theft and Embezzlement Insurance.** The Association may obtain insurance covering the theft or embezzlement of funds by Board Members, officers, employees, Manager, and contractors of the Association in the discretion of the Board.

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

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

10.08 **Named Insured.** The named insured under any policy of insurance shall be the Association. Each Owner shall also be an insured under the Association's insurance policies as required by law.

10.09 **Right to Negotiate Claims & Receive Proceeds.** Insurance proceeds for a loss under the Association's property insurance policy are payable to the Association and shall not be payable to a holder of a security interest. The Association shall hold insurance proceeds in trust

for the Association, Owners, and lien holders. Insurance proceeds shall be disbursed first for the repair or restoration of the damaged property. After any repair or restoration is complete, any remaining proceeds shall be paid to the Association. If the property is not to be repaired or restored, then any remaining proceeds, after such action as is necessary related to the property has been paid for, may be distributed to the Owners or held as future credits according to each Owner's Undivided Interest. Each Owner hereby appoints the Association as attorney-in-fact for negotiating all losses related thereto, including the collection, receipt of, and appropriate disposition of all insurance proceeds; the execution of releases of liability; and the execution of all documents and the performance of all other acts necessary to administer such insurance and any claim. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors, or assigns of the Owner.

10.10 Owner Act Cannot Void Coverage Under Any Policy. Unless an Owner is acting within the scope of the Owner's authority on behalf of the Association and under direct authorization of the Association, an Owner's act or omission may not void an insurance policy or be a condition to recovery under a policy.

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

10.12 Applicable Law. This Article shall not subject the Association to the insurance requirements and provisions in § 57-8-43 of the Act. As a commercial condominium, it is intended that the Association's insurance obligations shall be limited to only those obligations expressly set forth herein.

ARTICLE XI DESTRUCTION OF IMPROVEMENTS

11.01 Reconstruction. In the event of partial or total destruction of a building(s) or any portion of the Common Area within the Project, the Board of Directors shall promptly take the following actions:

11.01.1 The Board shall ascertain the cost of reconstruction by obtaining fixed price bids from reputable contractors, including performance and lien payment bonds where deemed necessary.

11.01.2 The Board shall determine the amount of insurance proceeds, if any, payable by contacting a representative of the insurer for the policy covering the Project.

11.01.3 Pursuant to § 57-8-30 of the Act, if the insurance proceeds are sufficient to reconstruct the building, such proceeds shall be applied to such reconstruction.

11.01.4 If the Board determines: (i) that insurance proceeds will cover eighty-five percent (85%) or more, but not all, of the estimated cost of reconstruction, or (ii) that available insurance proceeds together with available reserves and a special Assessment equal to twenty-five percent (25%) or less of the then aggregate Annual Assessments for all Units will completely cover the estimated cost of reconstruction, then the Board shall cause notice to be sent to all Owners and to all Lenders' encumbering Units within the Project setting forth such findings and informing the Owners and Lenders that the Board of Directors intends to commence

reconstruction pursuant to this Declaration. In the event that Owners representing at least twenty percent (20%) of the Undivided Interests object in writing to such reconstruction as indicated in such notice, the Board shall call a Special Meeting of the Owners pursuant to Section 11.2. In the event that the foregoing requirements are satisfied and the requisite number of Owners do not object in writing to such reconstruction, the Board of Directors shall cause reconstruction to take place as promptly as practicable thereafter. In connection with such reconstruction, the Board shall levy a uniform Special Assessment against each Owner at such time and in such amount as the Board shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.

11.01.5 If the Board determines that any Unit is uninhabitable by reason of its total or partial destruction, the Board may abate Assessments against the Owner thereof until the Board determines that habitability has been restored.

11.02 **Reconstruction by Vote.** If reconstruction is not to take place pursuant to Section 11.1, as soon as practicable after the same has been determined, the Board shall call a Special Meeting of the Owners. Such meeting shall be held not less than ten (10) days and not more than sixty (60) days after the date of such notice. Unless the Owners, by a vote at such meeting or by the written consent of not less than seventy-five percent (75%) of the Undivided Interests determine not to proceed with such reconstruction, reconstruction must take place and the Board of Directors shall levy a uniform Special Assessment against each Owner at such time and in such amount as the Board of Directors shall determine is necessary to cover the costs of reconstruction in excess of insurance proceeds and available reserves.

11.03 **Procedure for Reconstruction.** If the Association elects to reconstruct, then the Board shall contract with a licensed contractor or contractors to rebuild or repair such damaged or destroyed portions of the Project in conformance with the original plans and specifications, or if the Board determines that adherence to such original plans and specifications is impracticable or is not in conformance with applicable laws, ordinances, building codes or other governmental rules or regulations then in effect, then such repairs or rebuilding shall be of a kind and quality substantially equivalent to the original construction of such improvements. The Board may employ a licensed architect to supervise the repair and rebuilding to ensure that all work, services and supplies are in conformity with the requirements of the construction contract.

11.04 **Determination not to Reconstruct without Termination.** If Owners of seventy-five percent (75%) or more of the Undivided Interests vote not to rebuild, and the entire Project is not repaired or replaced, and the Project is not terminated in accordance with the Act, the insurance proceeds shall be distributed as provided by the Act and the Undivided Interests are automatically reallocated as provided by the Act. In such event, the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting the reallocations.

11.05 **Negotiations with Insurer.** The Association shall have full authority to negotiate in good faith with representatives of the insurer of any totally or partially destroyed building or any other portion of the Common Area, and to make settlements with the insurer for less than full insurance coverage on the damage to such building or any other portion of the Common Area. Any settlement made by the Association in good faith shall be binding upon all Owners and Lenders.

11.06 **Repair of Units.** Unless covered by the Association's insurance policy, the installation of improvements to, and repair of any damage to, the interior of a Unit shall be made by and at the individual expense of the Owner of that Unit and, in the event of a determination to

reconstruct after partial or total destruction, shall be completed as promptly as practicable and in a lawful and workmanlike manner.

11.07 **Priority.** Nothing contained in this Article shall entitle an Owner to priority over any Lender under a lien encumbering the Owner's Unit as to any portion of insurance proceeds allocated to such Unit.

ARTICLE XII EMINENT DOMAIN

12.01 **Taking of a Unit.** If a Unit is taken by eminent domain, or sold under threat thereof, then that Unit's Undivided Interest in the Common Area shall automatically be reallocated to the remaining Units in proportion to their respective interests immediately before the taking. Upon such a taking, the Association shall prepare, execute and record an amendment to the Declaration in compliance with the Act. Any remnant of a Unit remaining after part of a Unit is taken shall become part of the Common Area. If only part of a Unit is taken by eminent domain, or sold under threat thereof, so that such Unit may still be practically and lawfully used as a Unit under this Declaration, that Unit's Undivided Interest in the Common Area shall remain unchanged.

12.02 **Taking of Limited Common Area.** If the portion of the Project taken by eminent domain, or sold under threat thereof, is comprised of or includes any Limited Common Area or portion thereof, the portion of the award attributable to the Limited Common Area so taken shall be divided among the Owners of the Units to which such Limited Common Area was allocated at the time of the acquisition.

12.03 **Taking of Common Area.** If the portion of the Project taken by eminent domain, or sold under threat thereof, is Common Area, the Board shall cause the award to be utilized for the purpose of repairing or restoring the portion of the Project so taken, and the portion of the award not used for restoration shall be deposited into the Associations general fund.

12.04 **Taking of Entire Project.** In the event the entire Project is taken by eminent domain, or sold under threat thereof, the Project shall be terminated and the provisions of the Act apply.

12.05 **Power of Attorney.** Each Owner hereby appoints the Association as attorney-in-fact for the purpose of negotiations and settlement with the condemning authority for the acquisition of the Common Area, or any part thereof. In the event the taking involves all or part of any Common Area, the award or proceeds shall be payable to the Association for the use and benefit of the Owners and their Lenders as their interests may appear. This power-of-attorney is coupled with an interest, shall be irrevocable, and shall be binding on any heirs, personal representatives, successors or assigns of an Owner.

12.06 **Parcel A.** The Declarant is the owner of real property described on the Plat as Parcel A, which is not subject to this Declaration nor its provisions in relation to eminent domain. The Association shall not be entitled to any proceeds resulting from any sale, transfer, or conveyance, whether voluntary or otherwise, by the Declarant to the City of Spanish Fork or other governmental entities, nor shall the Association, the Board, or the Owners be entitled to any approval rights in association with the sale, transfer, or conveyance.

ARTICLE XIII

RIGHTS OF LENDERS

13.01 **First Mortgage.** Any first mortgagee who obtains title to a Unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage will not be liable for such Unit's Assessments or charges which accrue prior to the acquisition of title of such Unit by the Lender. However, such first mortgagee shall be responsible for all Assessments levied while it holds title to the Unit.

13.02 **Priority.** No breach of the Restrictions herein contained, nor the enforcement of any lien provision herein, shall affect, impair, defeat, or render invalid the lien or charge of any Lender made in good faith and for value encumbering any Unit, but all of such Restrictions shall be binding upon and effective against any Owner whose title to a Unit is derived through foreclosure or trustee's sale, or otherwise.

13.03 **Relationship with Assessment Liens.** The lien provided for in Article VI for the payment of Assessments shall be subordinate to the lien of any Lender that was recorded prior to the date any such Assessment becomes due. Any Lender of a first mortgage who obtains title to a Unit by reason of any foreclosure, or deed or assignment in lieu of foreclosure, or any Person who obtains title at a private or judicial foreclosure sale, shall take title to such Unit free of any lien or claim for unpaid Assessments against such Unit that accrued prior to the time such Lender or purchaser takes title to such Unit, except for liens or claims for a share of such Assessments resulting from a pro rata reallocation of such Assessments to all Units within the Project.

13.04 **Other Rights.** Any Lender (and such Lender's insurer or guarantor) shall, upon written request to the Association, be entitled to inspect current copies of the Governing Documents and other books and records of the Association during normal business hours; and to receive the most recent annual financial statement of the Association.

ARTICLE XIV TERMINATION

14.01 **Required Vote.** Except as otherwise provided in Articles XI and XII, the Project may only be terminated by unanimous agreement of all Owners.

14.02 **Termination Agreement.** An agreement to terminate shall be evidenced by the execution or ratification of a termination agreement, in the same manner as a deed, by the requisite number of Owners. Such an agreement to terminate shall also be approved by consent of all Lenders with a loan secured by a Unit. The termination agreement shall specify a date after which the agreement will be void unless it is recorded before that date. A termination agreement, including all ratifications of such termination agreement, shall be recorded in the records of the Utah County Recorder and is effective only on recordation.

14.03 **Sale of Project.** A termination agreement may provide that the entire Project shall be sold following termination. If any real estate in the Project is to be sold following termination, the termination agreement shall set forth the minimum terms of the sale.

14.04 **Association Duties.** The Association, on behalf of the Owners, may contract for the sale of real estate in the Project, but the contract is not binding on the Owners until approved pursuant to Sections 14.1 and 14.2 of this Declaration. If any real estate in the Project is to be sold following termination, title to that real estate on termination vests in the Association as trustee for all Owners. Thereafter, the Association has all powers necessary and appropriate to effect the sale.

Until the sale has been concluded and the proceeds of the sale distributed, the Association continues in existence with all powers it had before termination. Proceeds of the sale shall be distributed to Owners and Lenders as their interests may appear, based on the relative value of each Unit and Project. Unless otherwise specified in the termination agreement, as long as the Association holds title to the real estate, each Owner and his or her successors in interest have an exclusive right to occupancy of the portion of the real estate that formerly constituted their Unit in accordance with the terms of this Declaration. During the period of that occupancy right, each Owner and his or her successors in interest remain liable for all Assessments and other obligations imposed on Owners by this Declaration.

14.05 Allocation Upon Termination. Unless provided otherwise herein, upon any liquidation or termination of all or part of the Project, the Association shall represent the Owners in any proceedings, negotiations, settlements or agreements related thereto. Each Owner hereby appoints the Association as attorney-in-fact for such purpose, including the allocation of any losses, awards or proceeds resulting from such termination or liquidation. Any proceeds generated by such a termination or liquidation shall be made payable to the Association, which will hold such proceeds for the benefit of the Owners and their Lenders. Owners shall share in the proceeds of such termination or liquidation in the same proportion as their Undivided Interest in the Common Area (or as otherwise provided by the Act), but in such event, the liens and provisions of all Lenders or Assessment liens encumbering Units within the Project shall extend to each applicable Owner's interest in such proceeds. The interest of an Owner in such proceeds shall not be distributed to such Owner except upon the prior payment in full of any Assessment lien or lien of a Lender encumbering such proceeds.

ARTICLE XV AMENDMENTS

15.01 Amendment by Declarant. During the Period of Declarant Control, the Declaration and the Plat may be amended solely by the Declarant without any additional approval required. In addition, no other amendment shall be valid or enforceable without the Declarant's prior written consent so long as Declarant owns one or more Units in the Project. Declarant's right to amend shall be construed liberally and shall include, without limitation, the right to amend and/or restate this Declaration in part or in its entirety.

15.02 Amendment by Owners. After all of Declarant's Units have been sold to third parties, and the expiration of the Period of Declarant Control (whichever is later), this Declaration may be amended upon the affirmative vote of at least sixty percent (60%) of the Undivided Interests of the Association. No meeting shall be required for an amendment if the required vote for approval is obtained by written consent or ballot. The amendment(s) shall be effective upon recordation in the office of the Utah County Recorder. In such instrument the Board shall certify that the vote required by this Section for amendment has occurred. If a Unit is owned by more than one Owner, the vote of any one Owner shall be sufficient to constitute approval for that Unit under this Section. If a Unit is owned by an entity or trust, the vote of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Unit under this Section. No acknowledgment of any signature used for voting shall be required. Notwithstanding, the foregoing, the Owners' authority to amend the provisions of Articles XVI and XVII of this Declaration is subject to the amendment restrictions set forth therein, and any amendment purporting to modify the provisions of Articles XVI and XVII shall be null and void unless such

amendment is in compliance with the amendment provisions and restrictions therein.

15.03 Necessary Amendments. Declarant or the Association may unilaterally amend this Declaration without Owner vote if such amendment is necessary: (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to satisfy the requirements of any local, State, or Federal governmental agency; or (c) to correct any scrivener's error. However, any such amendment occurring after the Period of Declarant Control shall not adversely affect the title to any Unit unless the Owner shall consent in writing.

15.04 Validity of Amendments. Any procedural challenge to an amendment to this Declaration must be made within six (6) months of its recordation. Notwithstanding the foregoing, an Owner that takes title to a Unit subsequent to the recording of an amendment shall be deemed to have waived any procedural challenge to the validity of any amendments by acceptance of the deed and record notice of any amendment. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

ARTICLE XVI SPECIAL DECLARANT RIGHTS

16.01 Improvements. Declarant hereby reserves the right, without obligation, to construct any improvements shown on the Plat or included in the Project; and any other buildings, structures, or improvements that Declarant desires to construct in the Project, or any other real estate owned by Declarant, regardless of whether the same ever become part of the Project.

16.02 Declarant Control Rights. During the Period of Declarant Control, the Declarant shall have the following rights:

16.02.1 The right to appoint or remove members of the Board, or act as the Board.

16.02.2 The right to exert any right allowed to the Board or the Association pursuant to the Act and this Declaration.

16.02.3 The right to make and adopt Association Rules.

16.02.4 The right to set all assessments for the Association including annual, special, and individual assessments.

16.02.5 The right to set all fines and fees for the Association including but not limited to collection fees, reinvestment fees, architectural review fees, and fines for violations of Association Rules.

16.02.6 Pursuant to Utah Code§ 57-8-7.5(10), Utah Code§§ 57-8-7.5(2) through (9), shall not apply or have any effect during the Period of Declarant Control, and the Declarant shall have no duty whatsoever to obtain a reserve analysis, or to fund any reserve fund during the Period of Declarant Control

16.02.7 The right to deny any matter or action voted upon by the Owners. Any Owner action during the Period of Declarant Control shall not become effective unless the matter or action is approved in writing by the Declarant.

16.03 Special Declarant Rights. Special Declarant Rights are those rights reserved for the benefit of the Declarant in this Declaration and the Governing Documents and shall include, among others, and regardless of anything in the Declaration to the contrary, the following rights

which shall remain in effect for the maximum period allowed by law, which may exceed the Period of Declarant Control:

16.03.1 The right to maintain a sales office and signs advertising the Project or any Unit at any location in the Project until all of Declarant's Units in the Project are sold to third parties.

16.03.2 The right to use easements throughout the Common Areas and the Project as set forth in this Declaration, until all of Declarant's Units in the Project are sold to third parties.

16.03.3 The right to create or designate additional Common Area or assign Limited Common Area within the Project; and the right to cast the votes of all Owners Undivided Interest if necessary for the conveyance or transfer of Common Area pursuant to Utah law.

16.03.4 The right to grant easements over and through the Common Area to neighboring landowners outside the Project boundaries, and the right to enter into joint use agreements governing the maintenance and use of the Common Areas with such neighboring landowners.

16.03.5 Nothing contained in this Declaration shall be deemed to affect or limit in any way whatsoever the right of the Declarant, its successors or assigns, to sell or to change the location, design, method of construction, grade, elevation, or any other part or feature of a Unit prior to the contracting for the conveyance of the Unit to a purchaser.

16.03.6 Until such time as the earlier of the following events occur: (a) seven (7) years after the Declaration is recorded, or (b) such time as Declarant chooses, neither the Association nor the Board shall, without the written consent of Declarant, make any improvement to or alteration in any of the Common Areas created or constructed by Declarant, other than such repairs, replacements, or similar matters as may be necessary to properly maintain the Common Areas as originally constructed or created by Declarant.

16.03.7 So long as Declarant owns one or more Units in the Project, any amendments to the Declaration and Bylaws shall require the written consent and approval of the Declarant.

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

16.04 Exercising Special Declarant Rights. Declarant may exercise its Special Declarant Rights until the expiration of the earlier of the maximum period allowed by law, or the maximum period set forth in this Declaration. The Declarant may execute and record a written waiver of its Special Declarant Rights, which rights may be waived in whole or in part. Declarant may exercise its Special Declarant Rights in any order, and no assurance is given as to the order in which Declarant will exercise them. If Declarant exercises any Special Declarant Right with respect to any portion of the Project, Declarant may, but is not obligated to, exercise that Special Declarant Right with respect to any other portion of the Project. Notwithstanding anything to the contrary contained in this Declaration, Declarant may exercise any Special Declarant Right described in this Article and any other right reserved to the Declarant in this Declaration, without the consent of the Association or any of the Owners.

16.05 Interference with Special Declarant Rights. Neither the Association nor any Owner may take any action or adopt any Rule that interferes with or diminishes any Special Declarant right contained in this Declaration without Declarant's prior written consent. Any action taken in violation of this Section shall be null and void and have no force or effect.

16.06 Transfer of Declarant Rights. The Declarant may transfer, convey, or assign its rights created or reserved under this Declaration to any Person in whole or in part. The Declarant's successor shall enjoy any and all Declarant rights set forth in the Declaration regardless of whether such rights are stated to be transferable. All references in the Governing Documents to Declarant shall equally apply to its successor. A contract transferring a Declarant's rights may, but shall not be required to, be recorded in the office of the Utah County Recorder.

16.07 Easements Reserved to Declarant.

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

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

16.07.3 The reservation to the Declarant and its successors and assigns, of a nonexclusive easement and right-of-way in, through, over and across the Common Area for the purpose of the storage of building supplies and materials, and for all other purposes reasonably related to the completion of construction and development of the Project and the provision of utility services, and related services and facilities.

16.07.4 The Declarant reserves unto itself and its successors and assigns, the right to dedicate all of said roads, streets, alleys, rights of way, or easements, including easements in the areas designated as "open space" and storm water management reservation, to public use all as shown on the Plat. No road, street, avenue, alley, right of way or easement shall be laid out or constructed through or across any building or Unit in the Project except as set forth in this Declaration, or as shown on the Plat, without the prior written approval of the Declarant.

16.08 No Modification of Declarant Rights. The Declarant Rights and Easements in this Declaration or other Governing Documents, and specifically in this Article, shall not be substantively or procedurally altered, amended, or removed without the written consent of the Declarant until at least six (6) years have passed after the Period of Declarant Control has ended, at which time the Declarant's approval shall no longer be required. Any document or amendment attempted without obtaining proper consent shall be void ab initio to the extent it attempts to alter the rights of the Declarant or any provision of this Article without the consent of the Declarant.

**ARTICLE XVII
DISPUTE RESOLUTION**

17.01 Alternative Dispute Resolution Without Litigation.

17.01.1 Bound Parties. The Declarant; the Association; the Owners; the officers, directors, managers, members, employees, representatives, agents, successors and assigns of any of the foregoing; any other person subject to this Declaration; and any other person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, “Bound Parties”), agree that it is in the best interest of all Bound Parties to encourage the amicable resolution of Claims without the emotional and financial costs of litigation or the toll or market taint such litigation can have on the value of the Project and/or the Units that may be involved or impacted. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 17.02 in a good faith effort to resolve such Claim.

17.01.2 Claims. As used in this Article, the term “Claim” means any claim, grievance, or dispute arising out of or relating to:

17.01.2.1 the interpretation, application, or enforcement of the Governing Documents;

17.01.2.2 the rights, obligations, and duties of any Bound Party under the Governing Documents; or

17.01.2.3 the design or construction of improvements on the Project, other than matters of aesthetic judgment to be determined by the Declarant or Association, which shall not be subject to review and shall not be subject to this Article.

17.01.3 Exclusion from Definition of Claims. The following shall not be considered “Claims” unless all Parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 17.02:

17.01.3.1 any suit by the Association to collect assessments or other amounts due from any Owner;

17.01.3.2 any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration (relating to Architectural Control);

17.01.3.3 any suit that does not include the Declarant, any affiliate of the Declarant, or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

17.01.3.4 any dispute that affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 17.02;

17.01.3.5 any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 17.02.1, unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this Article;

17.01.3.6 any suit or dispute between the Declarant or an affiliate of Declarant and a builder, developer, contractor(s), subcontractor(s), or any other party

contracted by the Declarant or an affiliate of the Declarant in connection with the development of the Project; and

17.01.3.7 any suit or dispute involving a governmental entity as a party.

17.02 Dispute Resolution Procedures.

17.02.1 Notice. The Bound Party asserting a Claim (“Claimant”) against another Bound Party (“Respondent”) shall give written notice (“Notice”) by mail or personal delivery to each Respondent and to the Board, stating plainly and concisely:

17.02.1.1 the nature of the Claim, including the persons involved and the Respondent's role in the Claim;

17.02.1.2 the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

17.02.1.3 the Claimant's proposed resolution or remedy;

17.02.1.4 that the person alleged to be responsible for the acts giving rise to the Claim shall have six (6) months to cure or resolve the Claim; and

17.02.1.5 the Claimant's desire to meet with the Respondent to discuss, in good faith, ways to resolve the Claim.

17.02.2 Right to Cure. For any Claim arising from a dispute over the construction of improvements within the Project, the Claimant shall provide Respondent six (6) months to rectify, alter, or fix the claimed defect(s) in the improvements. The expiration of this six-month cure period shall be a prerequisite to Claimant's ability to initiate litigation as permitted under Section 17.03 below. For all Claims involving alleged defects in construction, the negotiation, mediation, and settlement requirements shall remain in effect during the cure period, however, the mediation deadline set forth in subsection (d) below shall be extended to expire on the same date the cure period expires.

17.02.3 Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

17.02.4 Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the Notice (or within such other agreed upon period), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an individual or entity designated by the Association (if the Association is not a party to the Claim) or to an independent mediator providing dispute resolution services predominately in Utah. Each Bound Party shall present the mediator with a written summary of the Claim or will otherwise comply with the mediator's proscribed procedures and requirements for mediating claims.

17.02.4.1 Waiver of Claim for Failure to Appear or Participate. If the Claimant does not submit the Claim to mediation within such time, or does not appear for and participate in good faith in the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

17.02.4.2 Termination of Mediation Proceedings. If the parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

17.02.4.3 Costs of Mediation. Each Bound Party shall bear its own costs of the mediation, including attorney fees, and each Party shall pay an equal share of the mediator's fees.

17.02.5 Settlement. Any Claim settlement through negotiation or mediation shall be documented in writing and signed by the Parties. If any Party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate such proceedings as are necessary to enforce such agreement without the need to comply again with the procedures set forth in this Article. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorney fees and court costs.

17.02.6 Period of Limitation. The exclusive period of limitation for any of the Parties to bring any Claim of any nature against Declarant, or its contractors, including, but not limited to, a Claim of construction defect or defective design of a building or Unit, shall be the earliest of: (i) for Claims alleging construction defect or defective design, two (2) years and one (1) day from the date that the Claimant discovered or reasonably should have discovered evidence of the Claim; (ii) for Claims other than those alleging construction defect or defective design, two (2) years and one (1) day after the date Declarant obtained a certificate of occupancy of a building or Unit, or other shorter period specified in any written agreement between Declarant and the Party to whom the Declarant initially conveyed the building or Unit.

17.03 Initiation of Litigation by Association. The requirements of this Section are intended to be in addition to those requirements set forth in § 57-8-58 of the Act. After expiration of the Period of Declarant Control the Association may not bring a legal action against a Declarant, a Board of Directors, an employee, an independent contractor, an agent of the Declarant, or the previous Board of Directors related to the Period of Declarant Control unless:

17.03.1 The Right to Cure period set forth in Section 17.02.2 above has expired;

17.03.2 the legal action is approved in advance at a meeting by Owners holding at least 51% of the total Undivided Interests in the Association:

17.03.2.1 Owners may be represented by a proxy specifically assigned for the purpose of voting to approve or deny the proposed legal action at the meeting. Any such proxy shall not be valid unless the proxy is notarized with each Owner certifying that they have received and reviewed the information required by Section 17.04.1 and .2 below.

17.03.3 the Association provides each Owner with the items described in Section 17.04.1 and .2, below;

17.03.4 the Association establishes a trust account, described in Section 17.4(c) below; and

17.03.5 the Association first goes through the procedures described in Section 17.2 above, giving notice and an opportunity to resolve the dispute that is the basis of the Claim and proposed legal action.

17.03.6 The procedures and approval required in the preceding subsections (.1) through (.5) shall not be required for actions or proceedings:

17.03.6.1 initiated by Declarant during the Period of Declarant Control on behalf of the Association;

17.03.6.2 initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;

17.03.6.3 initiated to challenge ad valorem taxation or condemnation proceedings (including bringing an action for inverse condemnation);

17.03.6.4 initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

17.03.6.5 to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended without the written consent of the Declarant for a period of 10 years following the expiration of the Period of Declarant Control. Any such amendment shall also be approved by a vote of 67% of the total votes of the Association.

17.04 Informed Vote. Before the Owners, as Members of the Association may vote to approve the filing of a legal action for a Claim, the Association shall first provide each Owner with:

17.04.1 A written notice stating:

17.04.1.1 that the Association is contemplating legal action;

17.04.1.2 the percentage vote required for approval of the litigation;

17.04.1.3 the date, time, and location of any Owner meeting that has been scheduled to discuss the litigation or to vote on the approval of the litigation;

17.04.1.4 a description of the claims that the Association desires to pursue in sufficient detail to permit each Owner to reach an informed decision on the litigation matter; and

17.04.2 A written report from an attorney licensed to practice in Utah, which provides an assessment of:

17.04.2.1 The likelihood that the legal action will succeed;

17.04.2.2 The likely amount in controversy in the legal action;

17.04.2.3 The likely cost of resolving the legal action to the Association's satisfaction; and

17.04.2.4 The likely effect the stigma of a legal action will have on value or on an Owner's ability to market for sale, or a prospective Unit buyer's ability to obtain financing for a Unit due to a pending legal action.

17.04.2.5 In providing this report, the attorney shall obtain and rely on reports and assessments from experts in their field such as construction, real property, sales, or any other relevant factor in the contemplated litigation.

17.04.3 Before the Association commences any legal action as authorized above, the Association shall:

17.04.3.1 allocate an amount equal to 25% of the cost estimated to resolve the legal action not including attorney fees; and

17.04.3.2 place the 25% allocated funds in a trust account that the Association may only use to pay the costs to resolve the Claim.

Sections 17.03 and 17.04 do not apply to an Association that brings a legal action that has an amount in controversy of less than \$25,000.00.

17.05 Strict Compliance Required. Any post-turnover litigation involving the Bound Parties shall strictly comply with each provision in this Article. The Bound Parties hereby covenant, stipulate, and agree that in the event the Bound Parties fail to satisfy the prerequisites set forth herein, the non-compliant Party will indemnify, defend, hold harmless, and exculpate the other Bound Party to the fullest extent permissible by law, and the nonbreaching Bound Party shall be entitled to recover any and all attorney fees and costs expended as a result of enforcing this Article, which fees and costs may include, without limitation, pre-litigation attorney fees, costs incurred in connection with investigation of potential claims, including expert and consultant fees, testing fees, contractor fees, and insurance deductibles. If any claims or actions falling within the scope of this Article are filed without satisfying all of the requirements set forth above, such claims or actions shall be dismissed without prejudice and shall not be re-filed unless and until all such requirements have been satisfied.

17.06 Owner Warranties. The Declarant may provide certain warranties to the Owners related to a Unit purchased. The first Owner of a Unit to whom any warranty is issued, or with whom a legal warranty arises, and only that Owner, shall have the right to directly enforce and seek performance from the Declarant of any terms of the warranty, and only consistent with the warranty itself. The Association shall have no right to seek the performance of or take assignment of any rights in any warranties against the Declarant, and the Owner shall have no right to assign any rights of any kind to the Association related to pursuing litigation against the Declarant.

17.07 Unless specifically set forth in this Declaration, no action may be brought by the Association, its Board of Directors, or its Officers on behalf of an Owner, as its respective interest may appear, with respect to any cause of action against the Declarant relating to the Common Areas and facilities.

17.08 ALL PARTIES HEREBY AGREE TO RESOLVE ANY CLAIM ACCORDING TO THE PROVISIONS OF THIS ARTICLE AND SUCH PARTIES WAIVE THEIR RESPECTIVE RIGHTS TO PURSUE THE CLAIM IN ANY MANNER OTHER THAN AS PROVIDED IN THIS ARTICLE.

17.09 The dispute resolution restrictions contained in this Article shall not be amended, altered, or eliminated from the Declaration without the written consent of the Declarant for a period of 10 years after the expiration of the Period of Declarant Control.

ARTICLE XVIII GENERAL PROVISIONS

18.01 Enforcement. The Association or any Owner shall have the right to enforce, by proceedings at law or in equity, all Restrictions and other provisions now or hereafter imposed by this Declaration, or any amendments thereto, including the right to prevent the violation of any such Restrictions, and the right to recover damages and other sums for such violation. The Association or any Owner shall also have the right to enforce by proceedings at law or in equity the provisions of the Bylaws and the Rules and any respective amendments thereto.

18.02 No Waiver. No delay or failure by the Association or by any Owner to enforce any Restriction, right, remedy, power, or provision herein contained, or contained in other Governing Documents, in any certain instance or on any particular occasion (or partial exercise thereof) shall be deemed a waiver of such right of enforcement as to any such future breach of the same or any other Restriction, right, remedy, power, or provision. No Association delay or failure to demand strict adherence to the terms, Restrictions or provisions of this Declaration or other Governing Document shall be deemed to constitute a course of conduct inconsistent with the Association's right at any time, before or after an Owner violation or breach, to demand strict adherence to the terms, Restrictions, or provisions of this Declaration or other Governing Document.

18.03 Cumulative Remedies. All rights, options and remedies of the Association, the Owners or the Lenders under this Declaration are cumulative, and no one of them shall be exclusive of any other, and the Association, the Owners and the Lenders shall have the right to pursue any one or all of such rights, options and remedies or any other remedy or relief that may be provided by law, whether or not stated in this Declaration.

18.04 Severability. Invalidation of any one or a portion of the Restrictions or provisions set forth in this Declaration by judgment or court order shall in no way affect any other Restrictions or provisions contained herein, which shall remain in full force and effect.

18.05 Covenants to Run with the Land. The Restrictions and other provisions of this Declaration shall run with and bind the Project as covenants running with the land and shall inure to the benefit of and shall be enforceable by the Association or any Owner, their respective legal representatives, heirs, and successors. By acquiring an interest in a Unit, or in a Limited Common Area, or in the Common Area, such Owner consents to, and agrees to be bound by, each and every provision of this Declaration.

18.06 Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a plan for the development of commercial condominium Units and for the maintenance of the Project. The Article and Section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. References in this Declaration to Articles and Section numbers, unless otherwise expressly provided, are to the Articles and Sections of this Declaration.

18.07 Gender and Number. Whenever the context of this Declaration requires, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and the neuter, and vice versa.

18.08 Nuisance. The result of every act or omission whereby any provision or Restriction contained in this Declaration or any provision contained in the Bylaws or the Rules is violated in whole or in part is hereby declared to be and shall constitute a nuisance, and every remedy allowed

at law or in equity against a nuisance, either public or private, shall be applicable with respect to the abatement thereof and may be exercised by the Association or any Owner. Such remedy shall be deemed cumulative to all other remedies set forth in this Declaration and shall not be deemed exclusive.

18.09 Attorney Fees. If the Association obtains legal counsel to enforce or interpret (i.e. defending declaratory actions) any of the provisions contained in this Declaration or other Governing Documents, the Association may assess all reasonable attorney fees, fines, and costs associated with such legal counsel to the party against whom enforcement is sought as an Individual Assessment, regardless of whether a lawsuit is initiated. The term “costs” as used in this Section shall include all costs including but not limited to copying costs, deposition costs, expert witness fees, investigative costs, service costs, and filing fees paid to courts. “Costs” is specifically defined in this Section to be broader and to include costs that are not included in costs as the term is used in the Utah Rules of Civil Procedure.

18.10 Notices. Any notice required or permitted to be given to any Owner according to the provisions of this Declaration shall be deemed to have been properly furnished if personally delivered, emailed, texted, or mailed via USPS to the Person who appears as an Owner in the records of the Association at the time notice is sent. Email shall be the primary means for delivering notice, and it is the responsibility of each Owner to provide an accurate email address to the Association for notice purposes. If no email, phone number, or mailing address has been provided, the physical address of the Unit owned by said Owner shall be used for notice purposes. The use of the terms “notice” or “written notice” in this Declaration or other Governing Document shall include notices sent via email, text, facsimile, or other electronic communication; or notices printed on paper and sent by hand-delivery, regular mail, or otherwise physically received by an Owner.

Unless a Unit Owner notifies the Association in writing that they desire to receive notices via USPS mail, each Owner shall provide to the Declarant, Board, or Association's Manager, an email address that the Association may use to affect notice as described herein, along with a telephone number that can receive texts. Any notice sent via email or text shall be deemed to be delivered once the notice has been sent to the email address or phone number on file with the Association. Any notice sent by mail shall be deemed delivered when deposited in the United States mail. In the case of co-Owners, any such notice may be delivered or sent to any one of the co-Owners on behalf of all co-Owners and shall be deemed delivered to all such co-Owners. The declaration of an officer or authorized agent of the Association declaring under penalty of perjury that a notice has been sent to any Owner or Owners, in any manner that this Section allows, shall be deemed conclusive proof of such delivery.

Notice to the Association shall be delivered by registered or certified United States mail postage prepaid, addressed to the office of the Manager of the Association (if any); or if there is no Manager, the Registered Agent with the Utah Department of Commerce (if any); or if there is none, to the President of the Association. The Association shall have the right to designate an email or USPS mailing address for receipt of notices hereunder by Rule.

18.11 Noncompliance Notice. Any construction, alteration, or other work done in violation of this Declaration shall be deemed to be in noncompliance. By acquiring title to a Unit in the Project, all Owners agree and consent that upon any act of noncompliance, the Board, at its

discretion, may record a “Notice of Noncompliance” on an offending Unit or property in the records of the Utah County Recorder. Upon receipt of a Notice of Noncompliance, Owners shall, at their own cost and expense, remove such non-conforming construction, alteration, or other work and shall restore the land and property to substantially the same condition as existed prior to the non-conforming construction, alteration, or other work. Should an Owner fail to act as required hereunder, the Board or their designee, without liability for trespass or nuisance, shall have the right to enter the property or Unit, remove the violation, and restore the property or Unit to substantially the same condition as existed prior to the change. All costs incurred by the Association pursuant to enforcement of this Section shall be an Individual Assessment.

18.12 Effect of Declaration. This Declaration is made for the purposes set forth in the recitals in this Declaration and the Association makes no warranties or representations, express or implied, as to the binding effect or enforceability of all or any portion of this Declaration, or as to the compliance of any of these provisions with public laws, ordinances, regulations and the like applicable thereto. The Association shall have no liability whatsoever if any of the provisions of this Declaration, the Bylaws, or the Rules are determined to be unenforceable in whole or in part or under certain circumstances.

18.13 Changes to Plat or Boundaries of the Association. The Association may adopt an amended Plat, supplemental Plat, correction to the Plat, or boundary agreement related to any boundary in or around the Association, including any boundary to any Unit or Units upon the approval of the number of Owners required to amend this Declaration. During the Period of Declarant Control, the Declarant may unilaterally make any amendments or changes to any Plat. All changes to a Plat during the Period of Declarant Control shall be approved in advance and in writing by the Declarant. Failure to do so shall make any amended Plat invalid and void.

18.14 Use of Funds Collected by the Association. All funds collected by the Association, including Assessments and contributions to the Association paid by the Owners, if any, shall be held by the Association in a fiduciary capacity to be expended in their entirety for nonprofit purposes of the Association in managing, maintaining, caring for, and preserving the Common Area and for other permitted purposes as set forth in this Declaration. No part of said funds shall inure to the benefit of any Owner (other than as a result of the Association managing, maintaining, caring for and preserving the Common Area and other than as a result of expenditures made for other permitted purposes as set forth in this Declaration).

18.15 Consent in Lieu of Meeting. In any case in which this Declaration requires authorization or approval of a transaction the affirmative vote of a stated percentage of the votes present or represented at a meeting, such requirement may be fully satisfied by obtaining, with or without a meeting, consents in writing to such transaction from Members entitled to cast the required percentage of membership votes. The Association may use any method allowed under Utah law and the Utah Revised Nonprofit Corporation Act for voting or consent purposes.

18.16 Owner Liability and Indemnification. Each Owner shall be liable to the remaining Owners and to the Association for any damage to the Common Area that may be sustained by reason of the negligence of that Owner or such Owner’s family members, tenants, guests, or invitees. Each Owner, by acceptance of a deed for a Unit, agrees personally and for family members, tenants, guests and invitees to indemnify each and every other Owner, and to hold such other Owners harmless from, and to defend such Owners against, any claim of any person for personal injury or property damage occurring within the Unit of that particular Owner,

including Limited Common Area, if any, except to the extent that: (a) such injury or damage is covered by liability insurance in favor of the Association or any other Owner, or (b) the injury or damage occurred by reason of the willful or negligent act or omission of the Association or other Owner or other Person temporarily visiting such Unit.

18.17 Conflicting Provisions. In the case of any conflict between this Declaration and the Bylaws, or the Rules, this Declaration shall control. In the case of any conflict between this Declaration and the Act, to the extent the Act does not legally allow this Declaration to contain provisions contrary to the Act, the Act shall control, and this Declaration shall be deemed modified accordingly. Notwithstanding the above, this Declaration shall be deemed modified only to the extent necessary to come into compliance with the Act.

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

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

18.20 Effective Date. This Declaration, and any amendment or supplement hereto, shall take effect upon its being filed for record in the office of the Utah County Recorder.

[THIS PORTION LEFT BLANK INTENTIONALLY.]

**SIGNATURE PAGE FOR
DECLARATION**

IN WITNESS WHEREOF, the Declarant has caused this Declaration to be executed by a duly authorized representative this ____ day of _____, 2025

DECLARANT

N ATHENS SIX, LLC
a Utah limited liability company

By: _____
M. Barrett Stratton, Manager

STATE OF UTAH)
 :ss.
COUNTY OF UTAH)

On the ____ day of _____, 2025, personally appeared before me M. Barrett Stratton, Manager of N Athens Six, LLC, who signed the foregoing instrument and did so as the authorized representative of the Declarant.

NOTARY PUBLIC

EXHIBIT A
LEGAL DESCRIPTION

All of the ATHENS INDUSTRIAL COMMERCIAL CONDOMINIUMS PLAT according to the official plat thereof, recorded in the office of the Utah County Recorder.

More particularly described as:

Beginning at the Southeast Corner of Lot 1, North Point Properties Subdivision, said point being located North 0°21'30" West along section line 1427.92 feet and West 60.63 feet from the East Quarter Corner of Section 1, Township 8 South, Range 2 East, Salt Lake Base and Meridian; thence West 392.03 feet; thence North 199.16 feet; thence North 88°32'00" East 265.83 feet; thence South 89°42'00" East 126.30 feet; thence South 205.30 feet to the point of beginning.

EXHIBIT B
BYLAWS OF ATHENS INDUSTRIAL
COMMERCIAL CONDOMINIUM ASSOCIATION

These BYLAWS OF THE ATHENS INDUSTRIAL COMMERCIAL CONDOMINIUM ASSOCIATION are effective upon recording in the Utah County Recorder's Office pursuant to the Utah Condominium Ownership Act and the Utah Revised Nonprofit Corporation Act (collectively the "Acts").

RECITALS

A. The Association is organized for 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 and Articles of Incorporation.

B. These Bylaws are adopted 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 commercial Project known as Athens Industrial Commercial Condominiums.

ARTICLE I
DEFINITIONS

1.01 Except as otherwise provided herein or as may be required by the context, all capitalized terms used herein shall have the same meaning and effect as used and defined in the Declaration of Condominium for Athens Industrial Commercial Condominiums.

ARTICLE II
APPLICATION

2.01 All present and future Owners, Mortgagees, Occupants, and their invitees and guests, and any other persons who may use the facilities of the Project in any manner are subject to these Bylaws and the Governing Documents. The mere acquisition or rental of any of the Units or the mere act of occupancy or use of any said Units or the Common Areas will signify that these Bylaws and the Governing Documents are accepted, ratified, and will be complied with by said Persons.

ARTICLE III
OWNERS

3.01 **Annual Meetings.** The Annual Meeting of the Owners shall be held each year on a day and time established by the Board. The purposes of the Annual Meeting may include the election of Board Members, the distribution of financial reports and budget, a review of any revisions to the Rules, distributing the most recent reserve study, and to transact such other business as may come before the meeting. If the election of Board Members cannot be held during the Annual Meeting, 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. The Board may, from time to time, change the date, and time of

the Annual Meeting. Annual Meetings shall not be required during the Period of Declarant Control, but the Declarant may hold Annual Meetings at its discretion.

3.02 Special Meetings. Special Meetings of the Owners may be called by a majority of the Board, the Declarant, the President, or upon the written request of Owners holding not less than fifty percent (50%) of the voting interests of the Association. Any written request for a Special Meeting presented by the Owners shall be delivered to the President 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 President shall then call, provide notice of, and conduct a Special Meeting within 45 days of receipt of the Owner request. Notwithstanding the foregoing, during the Period of Declarant Control, Special Meetings may only be called by the Declarant.

3.03 Place of Meetings. The Board may designate any place in Utah County that is reasonably convenient for the Owners as the place of any Owner meeting. In addition, the Association may hold and conduct Owner meetings through any type of electronic means that allows Owners to communicate orally in real time including telephone and video conferencing.

3.04 Notice of Meetings. The Board shall cause written or printed notice of the date, time, and location (and in the case of a Special Meeting, the purpose or purposes) for all Owner meetings. Such written or printed notice shall be delivered to each Owner of record entitled to vote at such meeting not more than sixty (60) nor less than ten (10) days prior to the meeting. Such notice may be sent via email, text, hand-delivery, or regular mail. If sent by email or text, such notice shall be deemed delivered and effective on the date transmitted to the Owner's email address or telephone number registered with the Association. If mailed, such notice shall be deemed to be delivered and effective on the date deposited in the U.S. mail if addressed to the Owner's address registered with the Association. Each Owner shall register with the Association such Owner's current email address, phone number, and mailing address for purposes of notice hereunder. Such registered email, phone number, and mailing address 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 posting the meeting notice on the Unit door. An Owner may opt out of receiving notices from the Association via email or text by giving written notice to the Board stating that the Owner will not accept notices by way of email or text.

3.05 Qualified Voters. An Owner shall be deemed to be in "good standing" and "entitled to vote" at any meeting if he or she has fully paid their Assessment account (together with any interest and/or late fees) at least forty-eight (48) hours prior to the commencement of the meeting and is not in violation of any provision of the Governing Documents.

3.06 Record Date. The Board may designate a record date, which shall not be more than sixty (60) nor less than ten (10) days prior to the meeting, for the purpose of determining Owners entitled to meeting notice and allowed to vote. 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 appearing in the records of the Association on such record date as the Owners of record of Units in the Project shall be deemed to be the Owners of record entitled to notice and to vote at the Owner meeting.

3.07 Quorum. Any number of Owners present in person or by proxy at a meeting duly called and held in compliance with the requirements of these Bylaws, shall constitute a quorum

for the transaction of business and adoption of decisions.

3.08 Proxies. Owners shall be entitled to vote in person or by proxy at each meeting provided, however, that the right to vote by proxy shall exist only where the instrument authorizing such proxy to act shall have been signed by the Owner or by the Owner's attorney. A proxy may be written on paper or received via email, facsimile, text, or any other electronic or physical means. A signature as required herein shall mean any indication that the document is from and consented to by the person who is purported to have sent it. If a Unit is jointly owned, the instrument authorizing a proxy to act may be executed by any one (1) Owner of such Unit or the Owner's attorney when duly authorized in writing. A proxy given by an Owner to any person who represents the Owner at meetings of the Association shall be in writing, dated, and signed by such Owner. Such instrument may allow the proxy to vote on any issue arising at any particular meeting or meetings or may set forth the specific matters or issues upon which the proxy is authorized to act. Proxies shall be filed with the Secretary (or with such other officer or person who may be acting as Secretary of the meeting) before the meeting is called to order. The Secretary shall make a record of all proxies in the meeting minutes.

3.09 Votes. Owners shall be entitled to vote on each matter submitted to an Owner vote in person, by proxy, or by any type of written or electronic ballot. Owners shall have the number of votes appertaining to the Undivided Interest of such Unit Owner, as set forth in the Declaration. The affirmative vote of a majority of the votes entitled to be cast by the Owners present or represented by proxy at a meeting at which a quorum was initially present shall be necessary for the adoption of any matter voted on by Owners, unless a greater proportion is required by the Articles of Incorporation, these Bylaws, or the Declaration. When a Unit is jointly owned, any Owner may exercise the vote for such Unit on behalf of all Co-Owners of the Unit. In the event of two (2) conflicting votes by Co-Owners of a Unit, no vote shall be counted for that Unit. In no event shall fractional or cumulative votes be exercised with respect to any Unit. Only those Owners whose accounts with the Association are not delinquent and are paid in full at least 48 hours prior to the start of the meeting shall be entitled to vote.

3.10 Waiver of Irregularities. All inaccuracies and irregularities in calls or notices of meetings and in the manner of voting, in the form of proxies and the method of ascertaining Owners present, and in the decision and votes of the Board or of the Owners shall be deemed waived by those Members in attendance if no objection is made at the meeting. For those Members who are not in attendance at the meeting, the right to challenge inaccuracies and irregularities in calls, notices, voting, and decisions shall be waived if no objection is made within thirty (30) days of the date of the meeting or date of the action taken outside of a meeting. The presence of an Owner in person at any Owner meeting shall be deemed a waiver of all 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 through ballot, written consent, or otherwise. The Association may also use any method permitted for actions without a meeting in accordance with the requirements of Utah Code § 16-6a-707 or § 16-6a-709 and any other applicable section of the Acts. Any action so approved shall have the same effect as though taken at an Owner meeting. Ballots or written consents may be obtained via any electronic or physical means including but not limited to email, facsimile, text, or paper document.

3.12 Minutes of Meetings. The Secretary, or their designee, shall take minutes of all

meetings of the Owners. The minutes shall include, at a minimum, (1) the identification of the Persons present in person and by proxy, (2) the meeting date, (3) the identification of any issue that is voted on or decided in the meeting, (4) the number of votes cast for and against any issue decided upon, and (5) the exact wording of any resolution passed at the meeting. The failure to take appropriate minutes or otherwise comply with this Section does not invalidate any action taken at a meeting. Draft meeting minutes for each meeting of the Owners shall be available to requesting Owners within sixty (60) days of the meeting.

ARTICLE IV BOARD OF DIRECTORS

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

4.02 Number and Qualifications. Following the Period of Declarant Control, the Board of Directors shall be composed of at least three (3) individuals, but not more than seven (7). Board Members must be at least 18 years old and must be an Owner of a Unit in the Project. Only one (1) Board Member is permitted per Unit owned. If an Owner is a corporation, partnership, limited liability company, or trust, an officer, partner, member, manager, agent, trustee, or beneficiary of such Owner may be a Board Member. If a Board Member ceases to meet any required qualifications during the Board Member's term, such Person's membership on the Board shall automatically terminate. During the Period of Declarant Control, the qualification requirements of these Bylaws shall not apply and the Declarant may exercise all powers of the Board as permitted by law.

4.03 Election. During the Period of Declarant Control, Board Members (if any) shall be appointed by Declarant. Following the Period of Declarant Control, the election of Board Members shall be made by the Owners. At such election, the Owners or their proxies may cast, with respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The Association may accept written ballots for Board Member election voting purposes from those Members unable to attend a meeting in which an election is held. The persons receiving the largest number of votes shall be elected. The election of Board Members may be conducted through open voting or by secret ballot. Cumulative voting is not permitted. Ties in Owner voting shall be resolved by a vote of the current Board Members.

4.04 Term of Office. During the Period of Declarant Control, Board Member terms shall be determined exclusively by Declarant. Following the Period of Declarant Control, the Owners shall elect Board Members for two (2) year terms. The terms shall be staggered and overlap so that elections for Board Member positions are held each year at the Annual Meeting. Board Members may serve consecutive terms if elected.

4.05 Regular Meetings. The Board shall hold meetings at least annually or more often at the discretion of the Board. During the Period of Declarant Control, Board Meetings shall be held at the discretion of the Declarant so long as at least one Board Meeting is held each year and a Board Meeting is held each time the Association increases a fee or raises an Assessment.

4.06 Special Meetings. Special meetings of the Board may be called by the President or

a majority of Board Members on at least two (2) business days' prior notice to each Board Member and to those Owners who have requested notice.

4.07 **Meeting Notice.** Notice of Board meeting date, time and location shall be delivered personally, by email, by text, or by telephone to all Board Members and any Owners who have requested notice of Board meetings at least forty-eight (48) hours in advance of the meeting. Board Members may waive their rights to notice of a meeting and attendance at a Board meeting shall be deemed a waiver of any alleged deficiencies of notice. By unanimous consent of the Board, Board meetings may be held without call or notice to the Board Members, but notice shall always be provided to Owners who have requested notice of Board meetings.

4.08 **Quorum.** A majority of the Board Members shall constitute a quorum for the transaction of business at Board meetings. The act of a majority of the Board Members present at any meeting at which a quorum is present and for which proper notice was provided shall be the act of the Board. The Board Members shall act only as the Board of Directors, and individual Board Members shall have no powers as such.

4.09 **Owner Attendance.** Any Owner may request notice of Board meetings by requesting such notice from a Board Member and providing a valid email address or text messaging number at which the Owner will receive notice. Owners who have requested notice of Board meetings shall be given notice along with the Board Members and shall be provided any call-in number or other means of attendance by electronic communication that is provided to Board Members. If Owners attend a Board meeting, the Board may select a specific period of time during the meeting and limit Owner comments to such time period. The Board in its sole discretion may set a reasonable length of time that each Owner may speak.

4.10 **Open Meetings.** Except as provided in (a) through (f), following the Period of Declarant Control, Board meetings shall be open to Owners. The Board may hold a closed executive session during a meeting of the Board if the purpose of the closed executive session is to:

- 4.10.1 Consult with an attorney for the purpose of obtaining legal advice;
- 4.10.2 Discuss ongoing or potential litigation, mediation, arbitration, or administrative proceedings;
- 4.10.3 Discuss a personnel matter;
- 4.10.4 Discuss a matter relating to contract negotiations, including the review of a bid or proposal;
- 4.10.5 Discuss a matter that involves an individual if the Board determines that the discussion is likely to cause the individual undue embarrassment or violate the individual's reasonable expectation of privacy; or
- 4.10.6 Discuss a delinquent assessment or fine.

During the Period of Declarant Control, Board meetings may be closed to Owners, unless the Board, in its sole discretion and without obligation, determines to open the meeting (or a portion thereof) to the Owners.

4.11 **Board Meetings Generally.** The Board may designate any place in Utah County as the place of meeting for any regular or special Board meeting. The Board may allow attendance

and participation at any Board meeting by telephone, video conference, or any other electronic means that allows for Board Members to communicate orally in real time. Following the Period of Declarant Control, if a Board meeting is held by telephone or video conference, the Association shall provide the call-in or internet link information such that Owners may call-in to access the meeting.

4.12 Board Action. Notwithstanding noncompliance with any provision within these Bylaws or other Governing Document, Board action is binding and valid unless set aside by a court of law. A person challenging the validity of a Board action for failure to comply with these Bylaws, the Governing Documents, or any other irregularity, may not bring the challenge more than sixty (60) days after the Board has taken the action in dispute.

4.13 Compensation. No Board Member shall receive compensation for any services that such member may render to the Association as a Board Member; provided, however, that a Board Member may be reimbursed for expenses incurred in performance of such duties as a Board Member to the extent such expenses are approved by a majority of the other Board Members. Nothing herein shall be construed to preclude any Board Member from serving the Project in any other capacity and receiving compensation therefore, so long as approved in advance by a majority of disinterested Board Members.

4.14 Resignation and Removal. A Board Member may resign at any time by delivering a written resignation to another Board Member. Unless otherwise specified therein, such resignation shall take effect upon delivery. Any Board Member who is appointed by the Declarant may only be removed by the Declarant. The Declarant may remove a Board Member it appoints at any time. A Board Member elected by the Owners after the Period of Declarant Control may be removed at any time, with or without cause, at a Special Meeting of the Owners duly called for such purpose upon the affirmative vote of more than fifty percent (50%) of the entire voting interests of the Association. At such a meeting, the Owners shall vote for a new Board Member to fill the remaining term of the removed Board Member. Board Members may also be removed by a majority vote of the other active Board Members upon the occurrence of any of the following: failure to attend three (3) consecutive Board meetings, failure to remain current on Assessments, or a violation of the Governing Documents. If removal occurs based on the preceding sentence, then the remaining Board Members may appoint a replacement to serve the remaining term of the removed Board Member.

4.15 Vacancies. If vacancies occur during the Period of Declarant Control, the Declarant shall appoint a Board Member to fill the vacancy. Following the Period of Declarant Control, if vacancies occur in the Board for any reason (including death, resignation, or disqualification) except removal by the Owners, the Board Members then in office shall continue to act, and such vacancies shall be filled by a majority vote of the Board Members then in office, though less than a quorum. Vacancies occurring by reason of removal of a Board Member by the Owners may be filled by election of the Owners at the meeting at which such Board Member is removed. Board Members elected or appointed hereunder to fill a vacancy shall serve for the unexpired term of his predecessor. Except by reason of death, resignation, disqualification, or removal, Board Members shall continue to serve until their successors are elected.

4.16 Action Without a Meeting. Board Members have the right to take any action in the absence of a meeting which they could take at a Board meeting if a majority of the Board Members consent to the action in writing. The term “in writing” shall specifically include email

and text messaging. Additionally, the Board Members may also take action without a meeting if the Board complies with any applicable provisions of the Acts. Any action so approved shall have the same effect as though taken at a Board meeting.

4.17 **Waiver of Notice.** Before or at any meeting of the Board, any Board Member or Owner may waive notice of such meeting and such waiver shall be deemed the equivalent of proper notice. Attendance by a Board Member or Owner at any meeting thereof shall be a waiver of notice by that Board Member or Owner of the time, place, and purpose thereof.

4.18 **Adjournment.** The Board may adjourn any meeting from day to day for such other time as may be prudent or necessary, provided that no meeting may be adjourned for longer than thirty (30) days.

4.19 **Meeting.** A Board meeting does not include a gathering of Board Members at which the Board does not conduct and vote on Association business.

ARTICLE V OFFICERS

5.01 **Officers.** The officers of the Association shall be a President, Secretary, Treasurer, and such other officers as may be appointed by the Board. Officers shall not be required during the Period of Declarant Control.

5.02 **Election, Tenure, and Qualifications.** Officers shall be elected by the Board at the first Board meeting following each Annual Meeting of the Owners. Each officer shall hold such office until a successor has been elected and qualified, or until such officer's death, or until resignation, disqualification, or removal in the manner provided in these Bylaws, whichever first occurs. Any person may hold any two (2) or more of such offices, except that the President may not also be the Secretary. No person holding two (2) or more offices shall act in or execute any instrument in the capacity of more than one (1) office.

5.03 **Subordinate Officers.** The Board may appoint such other officers or agents as it may deem advisable, each of whom shall have such title, hold office for such period, have such authority, and perform such duties as the Board may from time to time determine.

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

5.05 **Vacancies.** If a vacancy occurs in an office for any reason, or if a new office is created, such vacancies or newly created offices may be filled by majority vote of the Board at any regular or special Board meeting.

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

other acts and things as required by the Board.

5.07 **Secretary.** The Secretary shall keep the minutes of the Association and shall maintain such books and records as these Bylaws, the Declaration, Rules, or any resolution the Board may require. The Secretary shall also act in the place of the President in the event of the President's absence or inability or refusal to act. The duties of the Secretary may be delegated to the Manager.

5.08 **Treasurer.** The Treasurer shall have the custody and control of the funds and financial accounts of the Association, subject to the action of the Board, and when requested by the President, shall report the state of the finances of the Association at each meeting of the Owners and at any meeting of the Board. The Treasurer shall perform such other duties as required by the Board. The duties of the Treasurer may be delegated to the Manager.

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

ARTICLE VI COMMITTEES

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

6.02 **Proceeding of Committees.** Each committee may appoint its own presiding and recording officers and may meet at such places and times and upon such notice as such committee may determine. Each such committee shall keep a record of its proceedings and shall regularly report such records to the Board.

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

6.04 **Resignation and Removal.** A committee member may resign at any time by delivering a written resignation to a Board Member or the presiding officer of such committee. Unless otherwise specified therein, such resignation shall take effect upon delivery. The Board may at any time, with or without cause, remove any committee member.

6.05 **Vacancies.** If a vacancy occurs in a committee for any reason, the remaining members shall, until the filling of such vacancy by the Board, constitute the then total authorized

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

ARTICLE VII INDEMNIFICATION

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

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

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

7.04 Settlement by Association. The right of any person to be defended and indemnified shall be subject always to the right of the Association through the Board, in lieu of

such defense and indemnity, to settle any such claim, action, suit or proceeding at the expense of the Association by the payment of the amount of such settlement and the costs and expenses incurred in connection therewith.

ARTICLE VIII RULES AND REGULATIONS

8.01 **Rules.** The Board shall have the authority to adopt Rules and a schedule of fines for violations as it deems necessary for the maintenance, operation, management, and control of the Project by resolution or similar document. The Board may from time to time, by resolution, alter, amend, and repeal such Rules and use their best efforts to see that they are strictly observed by all Owners and Occupants. Owners are responsible to ensure that their lessees, invitees, and guests strictly observe the Rules then in effect as well as the covenants and restrictions of the Declaration and shall be jointly and severally liable for their violations and resulting fines. Copies of all Rules adopted by the Board shall be sent to all Owners at least fifteen (15) days prior to the effective date thereof.

ARTICLE IX AMENDMENTS

9.01 **Amendments by Declarant.** During the Period of Declarant Control, or so long as the Declarant owns one or more Units in the Project, the Declarant acting alone may amend the Bylaws for any reason, without Owner approval. Declarant's unilateral amendment right as designated herein may continue past the expiration of the Period of Declarant Control. No other amendment shall be valid or enforceable during the period Declarant owns at least one Unit unless the Declarant has given written consent to such amendment. Any amendment during the period Declarant owns at least one Unit shall be executed by Declarant on behalf of the Association and shall become effective upon recordation in the office of the Utah County Recorder.

9.02 **Amendments by Association.** After Declarant has sold all of the Units to third parties, and the Period of Declarant Control has expired, the Bylaws may be amended by the Owners upon the affirmative vote of more than fifty-one percent (51%) of the Undivided Interests of the Association. Any amendment(s) shall be effective upon recordation in the office of the Utah County Recorder. In such instrument a Board Member shall execute the amendment and certify that the vote required by this Section has occurred. If a Unit is owned by more than one Owner, the vote of any one Owner shall be sufficient to constitute approval for that Unit under this Section. If a Unit is owned by an entity or trust, the vote of any one officer, trustee, or agent of the entity shall be sufficient to constitute approval for that Unit under this Section. No acknowledgment of any Owner signature shall be required. No amendment shall restrict, limit, or impair any Declarant rights without the express written consent of the Declarant.

ARTICLE X MISCELLANEOUS PROVISIONS

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

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

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

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**SIGNATURE PAGE FOR BYLAWS OF
ATHENS INDUSTRIAL COMMERCIAL CONDOMINIUM ASSOCIATION**

IN WITNESS WHEREOF, the Declarant has executed and adopted these Bylaws on behalf of the Association this _____ day of _____, 2025.

DECLARANT

N ATHENS SIX, LLC
a Utah limited liability company

By: _____
M. Barrett Stratton, Manager

STATE OF UTAH)
 :ss.
COUNTY OF UTAH)

On the _____ day of _____, 2025, personally appeared before me M. Barrett Stratton, Manager of N Athens Six, LLC, who signed the foregoing instrument and did so as the authorized representative of the Declarant.

NOTARY PUBLIC



Fullmer Excavation
Site Plan
1299 West 3470 North
1.41 acres
I-1 Zone
Industrial General Plan Designation



PROPOSAL

The Applicant applied for Site Plan approval to construct an industrial building on the subject property. Offices and warehousing are listed as permitted uses in the I-1 Zone. The site will have access from 3470 North and 1340 West.

The proposed building is shown near the center of the property with parking on the north side adjacent to 3470 North. A cross-access easement was recorded along the east side of the property, but it will not be used due to the layout of the neighboring site. An outdoor storage area is shown on the east half of the subject property. A 6-foot-tall masonry wall will be constructed around the yard with gate access. The wall will be set back 10 feet from the sidewalk and 23 feet from curb on the south and north sides to allow for clear-vision, with landscaping between the wall and sidewalk. The driveways providing access to the storage area will be paved. The storage area will be lit according to the requirements for outdoor storage areas.

Some of the key issues to consider are: outdoor storage, clear vision, ;ut.

STAFF RECOMMENDATION

That the proposed Fullmer Excavation Site Plan be approved based on the following finding and subject to the following conditions:

Finding

1. That the proposal conforms to the City's General Plan Designation and Zoning Map.

Conditions

1. That the Applicant meets the City's development and construction standards and other applicable City ordinances.
2. That any remaining redlines are addressed prior to a building permit being issued.
3. That the gate and wall adjacent to the storage yard access on the north east corner be setback 10 feet with landscaping.
4. That the conditions for storage areas outlined in §15.3.24.090.I of the Spanish Fork Municipal Code be met.

EXHIBITS

1. Area Maps
2. Site Plan
3. Landscape Plan
4. Building Elevations

EXHIBIT 1

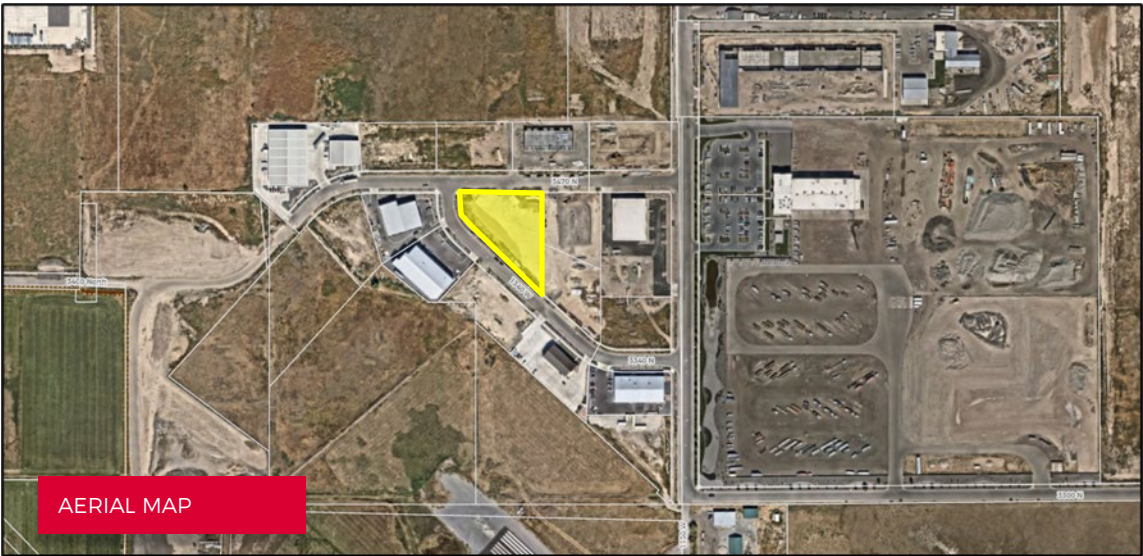
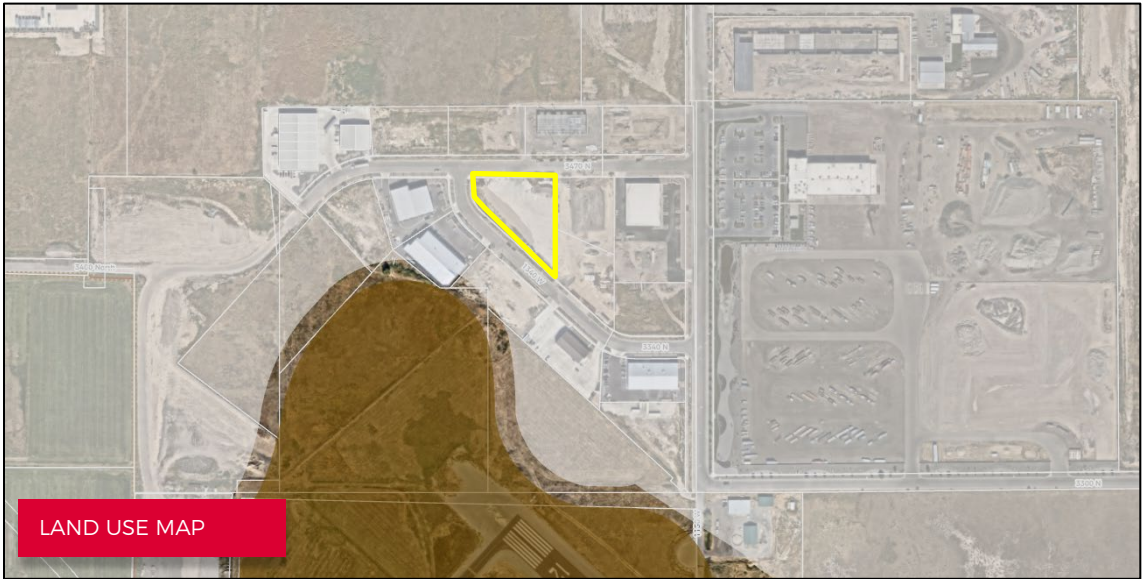


EXHIBIT 2

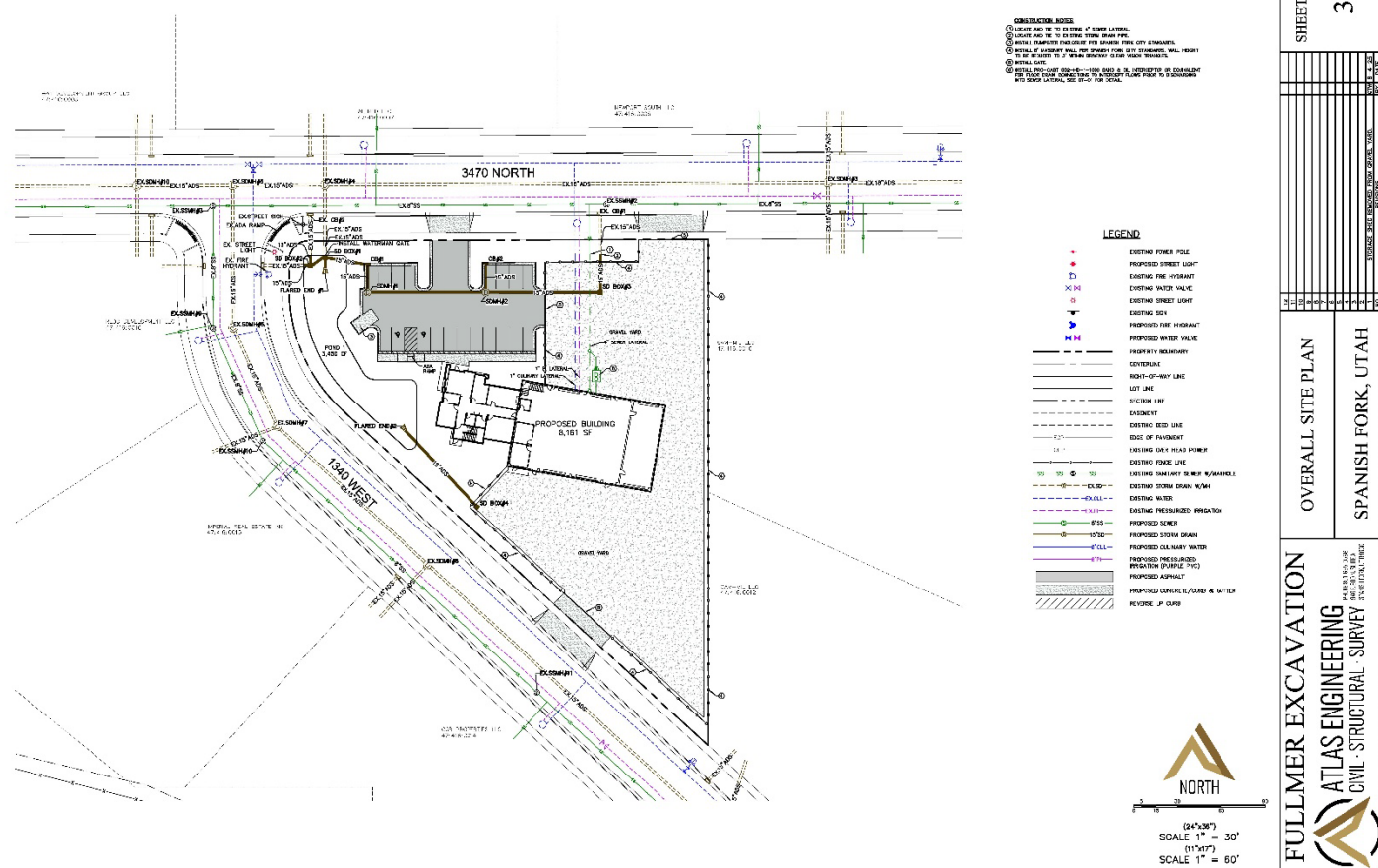


EXHIBIT 3

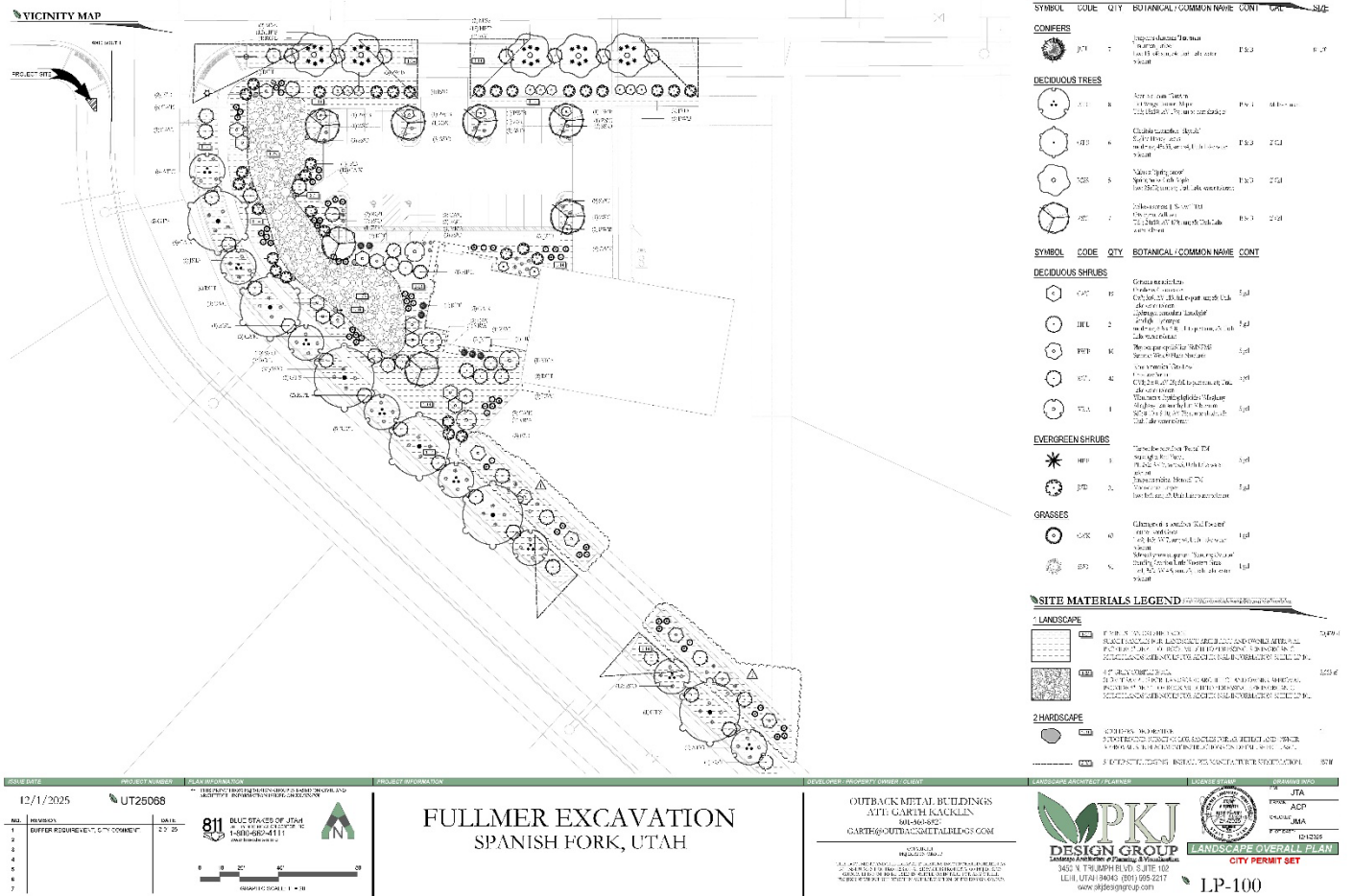
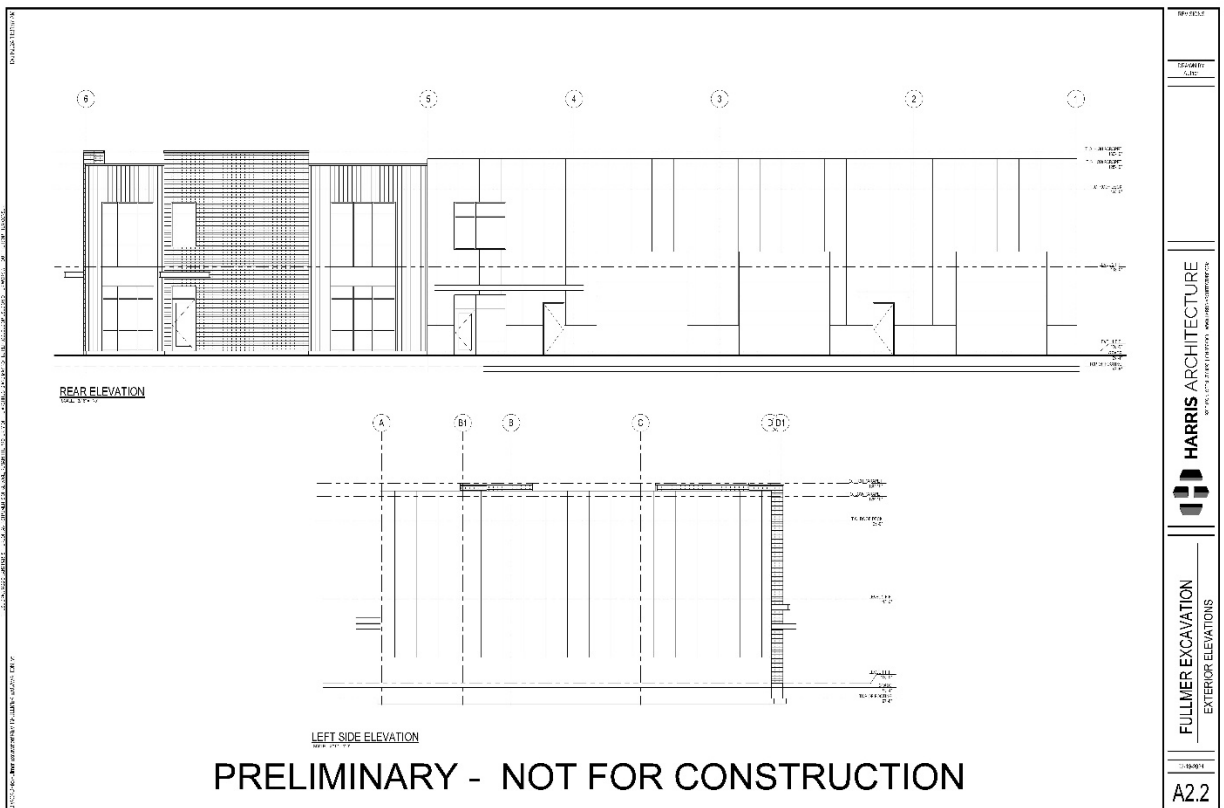
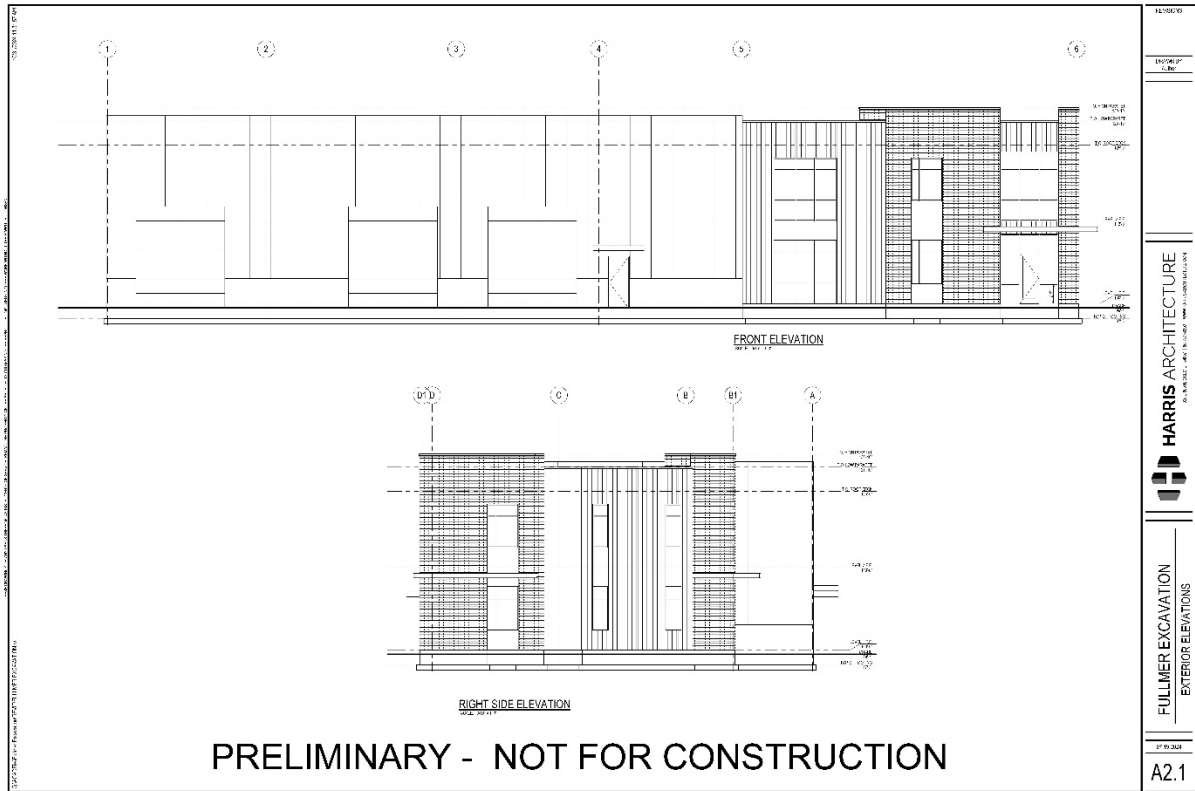


EXHIBIT 4





L&W Parking Expansion
Site Plan
82 East 3450 North
3.89 acres
I-1 Zone
Industrial General Plan
Designation



PROPOSAL

The Applicant has applied for Site Plan approval in order to expand the parking area of an existing site. Today, the site has 29 stalls and this proposal is to add 14 stalls, bringing the total to 43 stalls. This includes 42 standard stalls and 1 ADA stall.

In order to accomplish this, the Applicant is proposing to remove some of the grass landscaping in the front of the property. They will be adding 3 landscaped parking lot islands with shade trees, along with some additional trees around the perimeter, to bring the total tree count to 20.

Some of the key issues to consider are: existing landscaping, future uses and utilities.

STAFF RECOMMENDATION

That the proposed L&W Parking Expansion Site Plan be approved based on the following finding and subject to the following conditions:

Finding

1. That the proposal conforms to the City's General Plan Designation and Zoning Map.

Conditions

1. That the Applicant meets the City's development and construction standards, zoning requirements and other applicable City ordinances.
2. That any remaining redlines are addressed.

EXHIBITS

1. Area Maps
2. Proposed Site Plan
3. Landscaping

EXHIBIT 1

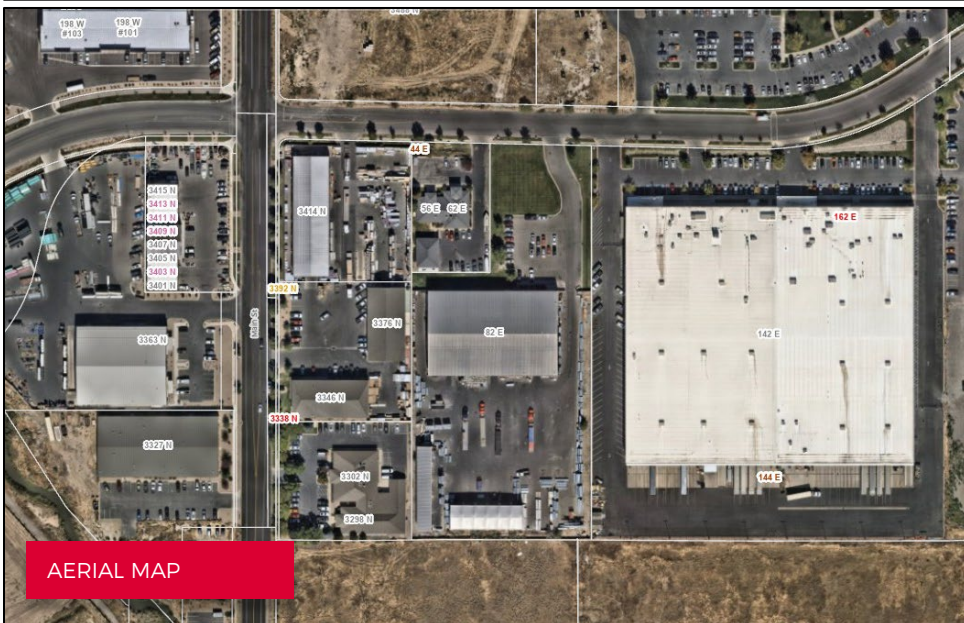


EXHIBIT 2



[illegible]

GRAND TOTAL VOTES

[illegible]

GENERAL CLAIMS AND GRADING NOTES

[illegible][illegible]

PLATE 10

[illegible]

L&W PARKING EXPANSION
SPANISH FORK, UTAH
GENERAL NOTES

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2	
1	
0	
2	2020-03-14
1	2020-03-12
0	2020-03-10
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1	2020-03-06
0	2020-03-04
2	2020-03-02
1	2020-02-28
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0	2020-02-20
2	2020-02-18
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CIVIL
STRUCTURAL
SURVEY

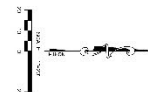
J.D. D. M. Bland, R. A. Bland,
Squid Ink Publ., 2004.
Phone: 800-769-5005
Fax: 603-730-9393
Website: www.squidpub.com

2023-10-27 14:00

L&W PARKING EXPANSION
SPANISH FORK, UTAH
DEMOLITION PLAN

[illegible]

C102



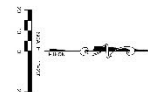
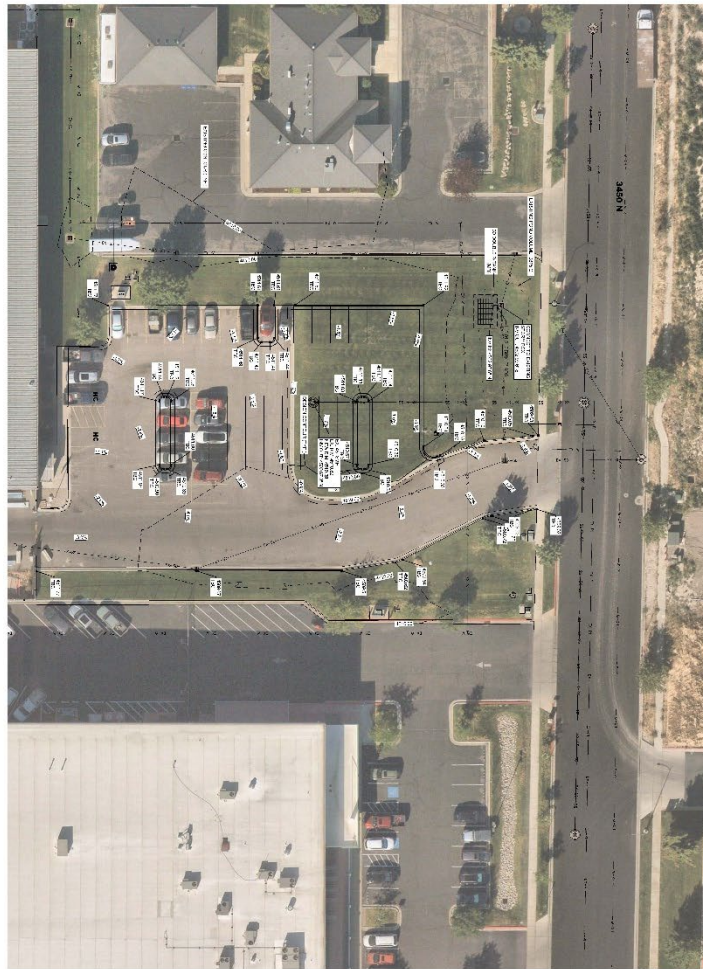
CIVIL
STRUCTURAL
SURVEY

Spurlock Park, 27 (4-69) 2
Phone: 408-798-5055
Fax: 408-798-9373
alt@spurlockpark.org
www.spurlockpark.org

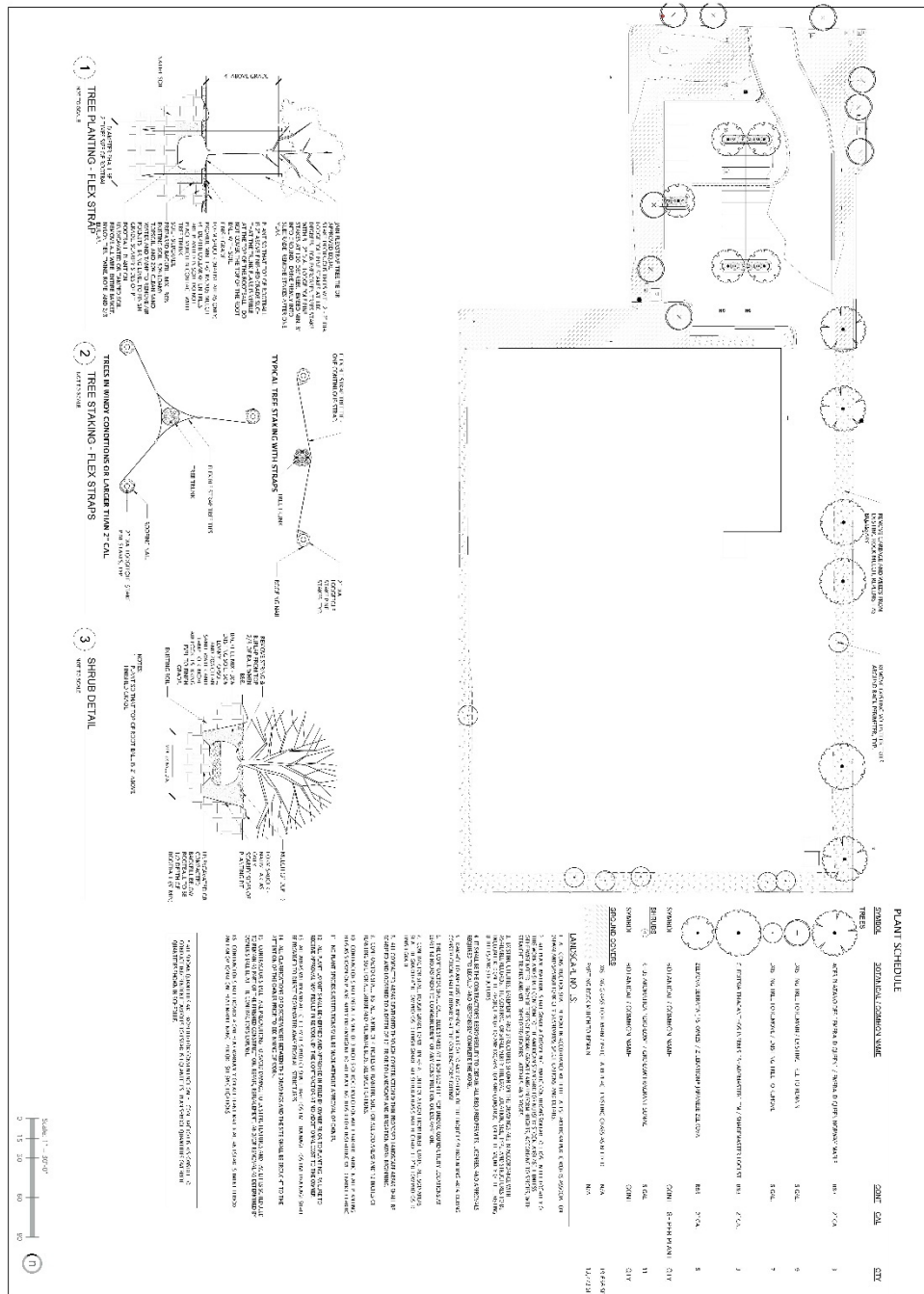
L&W PARKING EXPANSION
SPANISH FORK, UTAH
SITE/UTILITY PLAN

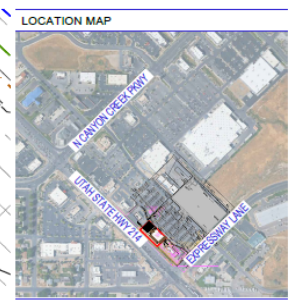
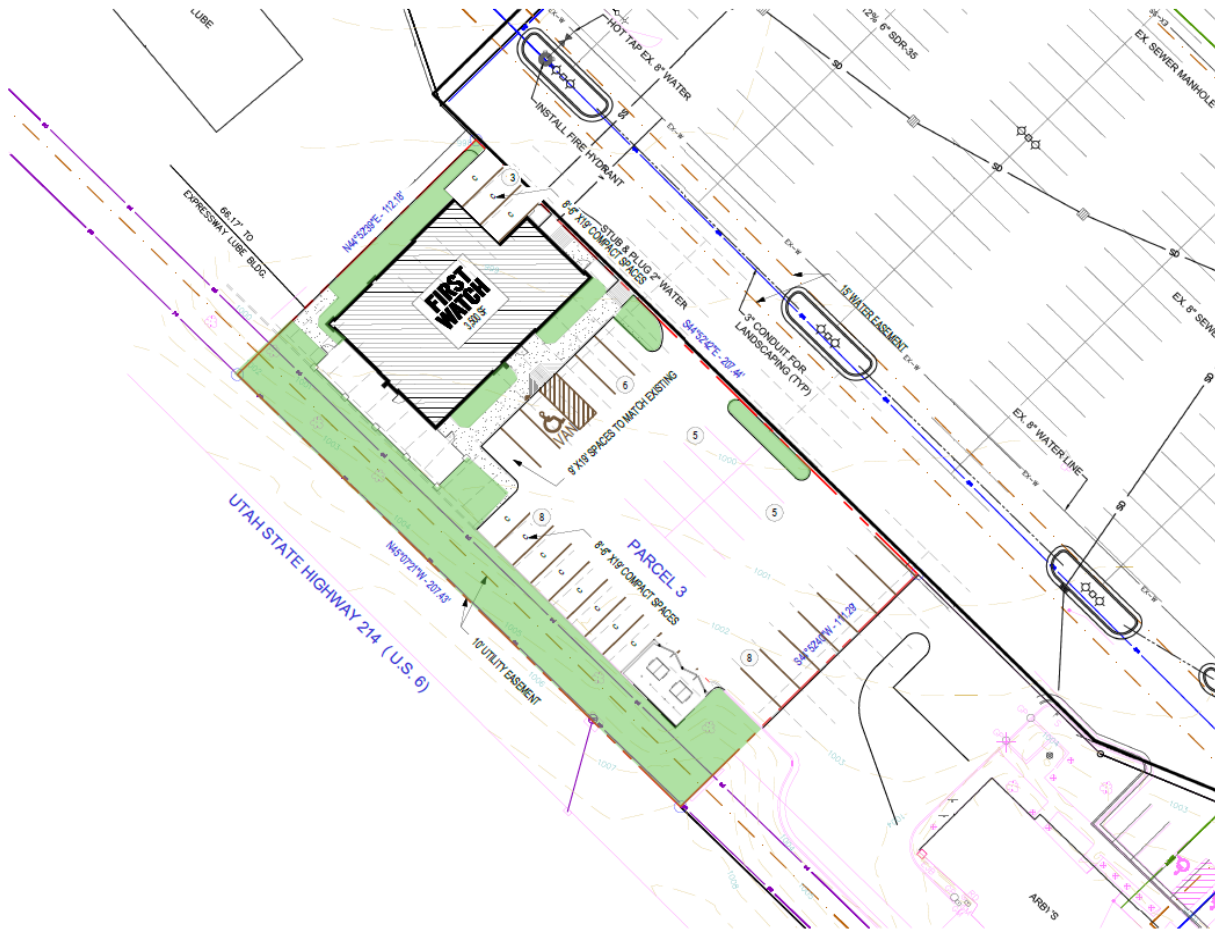
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C201



L&W PARKING EXPANSION
SPANISH FORK, UTAH
GRADING PLAN





GENERAL NOTES

1. PROPERTY AREA: 23,178 SF - 0.532 ACRES
2. BUILDING: 3,500 SF
3. PARKING: 35 SPACES PROVIDED

JOB NUMBER 25-0903

SCHEME 1 SITE PLAN

ISSUED: 07/23/25 REV #1: 07/28/25

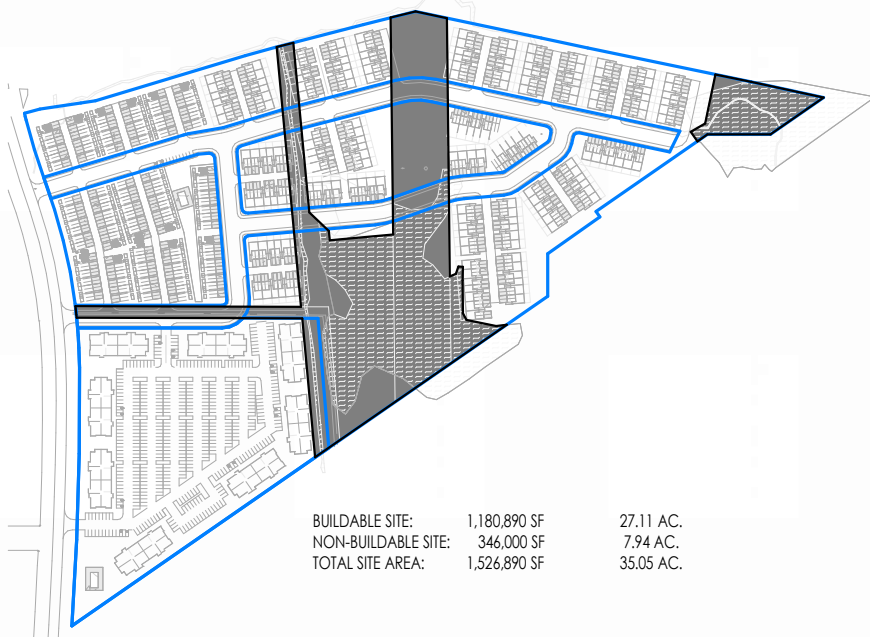
CANYON CREEK
SPANISH FORK, UT

TRUE NORTH SCALE: 1" = 30'-0"

CDS
Consolidated Development Services

16775 Addison Road Suite 550
Addison, TX 75001
Ph: (409) 897-5880

CANYON CREEK
CONCEPT PLAN
ADDRESS
SPANISH FORK, UT



BUILDABLE SITE: 1,180,890 SF
7.74 AC.
NON-BUILDABLE SITE: 346,000 SF
7.74 AC.
TOTAL SITE AREA: 1,526,890 SF
35.05 AC.

PARKING	
AREA	QTY
APARTMENTS	490
DRIVEWAY	512
GARAGES	512
VISITOR	11
TOTAL STALLS	1525

2.83 STALLS PER UNIT

UNIT SCHEDULE		
BLDG QTY	BLDG TYPE	UNIT QTY
3	4-PLEX (2-STORY)	12
3	5-PLEX (2-STORY)	15
22	6-PLEX (2-STORY)	132
8	6-PLEX (3-STORY)	48
2	7-PLEX (2-STORY)	14
2	7-PLEX (3-STORY)	14
6	8-PLEX (3-STORY)	48
8	32-PLEX (4-STORY)	256
		539

19.9 UNITS PER ACRE

SITE PLAN NOTES
WETLANDS TO BE DELINEATED WITH THE CORE OF ENGINEERS
PUBLIC ROAD WIDTHS PER SPANISH FORK CITY CODES
TOWNHOUSES OVER THE MAX OF 6 TO BE ADDRESSED IN A DEV AGREEMENT
GARAGE DEPTHS ACCOMMODATE 1-TON TRUCK LENGTHS (22')

Easement Modification Request

Joint Applicants:

Dave Millheim, 1596 E. 1900 S. Spanish Fork davemillheim13@gmail.com 801-735-9022
Ammon McBride, 1612 E. 1900 S. Spanish Fork

REQUEST: Move the existing easement line on the north side a few feet to the south consistent with the width of the easement at the southeast corner of Lot 22 which is **87.53 feet**. This would affect only lots 20, 21 and 22 of the plat. The proposed new easement line is shown on the plat drawing we attached to this request.

BACKGROUND: On the southern side of both of our lots (#20 & 21) there is what is labeled a "Scenic Easement" on the plat within our lots and other lots abutting River Bottom Road. The easement was created to protect the hillside and mostly contains native grass's (weeds) and lots of sagebrush. There also is some scrub oak to the west and east of our respective lots within the easement. The entire easement area is a significant fire risk to the abutting property owners.

Immediately south of the easement is ground owned by Spanish Fork City for the eventual extension of a public trail and road right of way (See the Pioneer Ridge Estates Plat map which identifies this city parcel as Lot B). Note the City owned (Lot B) is virtually parallel to the alignment of River Bottoms Road as shown on the plat and is 67.48 feet wide at its narrowest point. The easement width on the plat is currently 87.53 wide feet at its narrowest point of lot 22 and 181.59 feet at its widest point on the east side of lot 20.

We originally proposed to the DRC to build a large (high) retaining wall on our lots which are 20 and 21. Lot 22 already has an existing retaining wall at the point where the new easement line would be placed. Several lots other than ours along the easement line already have retaining walls south of the easement line and are consistent with our request. The proposed new easement boundary line would be at the same (already existing) 87.53 width within Lot 22 and staying at that width in an easterly direction to the east side of Lot 20. This would also be consistent with the layout of Lot B (city parcel). The new retaining wall(s) would be placed north of the easement line for the purpose of better retention of the hillside and fire protection in relationship to our backyards.

This would allow for better use of the lot area we already own than the existing weed patch on the south side of our lots. We would add improved and irrigated landscaping to our lots thereby lowering the associated fire risk from the River Bottom Road area. It would provide consistent widths of the easement parallel to River Bottom Road. The city would still own and/or control a combined 155 feet of width abutting River Bottoms Road to the proposed easement line. This is way more width than needed for future road or utility placement and still allows for a large open space area within the easement area to protect the hillside area. We should also point out that we discovered staff feel the better location of the trail

extension planned for the area should be on the south side of River Bottom Road due to a variety of issues. We agree with that idea, and it further reinforces our desire for a smaller protected width area on the north side of the road, abutting our lots.

We first met with the DRC on January 15, 2025, and provided the information as described above. Based on our proposal at that time, we were asked to provide more information. We spent the next several months doing some costly engineered plans subsequently provided to the city and then an additionally requested slope analysis. Our original proposal consisted of a high 12-20-foot-high retaining wall which was frowned on by City staff during their review. In subsequent meetings both on site and with City staff in Public Works, all staff strongly encouraged us to construct shorter four-foot-high staggered walls to better protect the slope with less complicated construction. Such walls do not require more detailed engineering, city approval and the review process than the proposed higher wall would have needed. Staff said they would recommend adjusting the easement line if we used the shorter wall approach. Engineering staff also wanted us to address a slope cut made across our property (outside of the easement area). After a lot of review and analysis we are now in agreement with those recommendations. We have begun bringing in fill-dirt to compact for construction of the smaller walls and to address the slope issues. Our new proposal calls for constructing 4 spaced four-foot-high walls. Some, but not all, of those new walls and landscaping would be a few feet within the existing easement area and thus creates the request to adjust the easement boundary accordingly.

To the north of these new walls, we would add additional play and garden areas to our lots as well as several fruit trees on the lower portion of Lot 21. We believe this will improve the scenic nature of the hillside as well as better retain the hillside. Earlier this summer (after we made our first proposal) there was an extremely large and dangerous fire on the hillside not more than a few hundred yards to the east of our location. We sincerely appreciate the efforts of Spanish Fork and other local fire departments in containing that blaze which did destroy some agricultural buildings. Had there been strong east winds at that time which do occur frequently in our area, it is likely that several homes including ours may have been lost. Obviously, this event further encourages us to better protect the area within the easement from such risks. We strongly believe our proposal does that and we want to mitigate such risk before next fire season.

In discussions with the contractor, we will likely use for building the shorter walls, they also strongly suggest building the walls from the bottom up for safety and compaction reasons. This will require some trucks and equipment crossing the easement area abutting River Bottom Road to access our property from the south. There is already a break in the fence we would use for this purpose approximately 150 feet south of the existing trail crossing.

Respectfully submitted:

Dave Millheim

Ammon McBride

