

CLEARFIELD CITY COUNCIL  
AGENDA AND SUMMARY REPORT  
June 14, 2022 – POLICY SESSION

*Meetings of the City Council of Clearfield City may be conducted via electronic means pursuant to Utah Code Ann. § 52-4-207 as amended. In such circumstances, contact will be established and maintained via electronic means and the meetings will be conducted pursuant to the Electronic Meetings Policy established by the City Council for electronic meetings.*

55 South State Street  
Third Floor  
Clearfield, Utah

**6:00 P.M. WORK SESSION**

Discussion on the Business License Fee Study

Discussion on Agenda and Minutes Software with a Community Engagement Module

Discussion on the Clearfield Flex Antelope Final Subdivision Plat (FSP)

Monthly Reports

*(Any item not fully addressed prior to the Policy Session will be addressed in a Work Session immediately following the Policy Session)*

**\*\*ADJOURN THE CITY COUNCIL WORK SESSION\*\***

City Council Chambers  
55 South State Street  
Third Floor  
Clearfield, Utah

**7:00 P.M. POLICY SESSION**

CALL TO ORDER:

OPENING CEREMONY:

APPROVAL OF MINUTES:

Mayor Shepherd

Councilmember Thompson

April 12, 2022 – Policy Session

April 26, 2022 – Policy Session

April 26, 2022 – Work Session

May 17, 2022 – Work Session

May 24, 2022 – Policy Session

May 24, 2022 – Work Session

May 31, 2022 – Work Session

**PUBLIC HEARINGS:**

1. PUBLIC HEARING TO REVIEW AMENDMENTS TO THE GENERAL PLAN FOR PROPERTY LOCATED AT APPROXIMATELY 1200 AND 1204 EAST 1450 SOUTH FROM COMMERCIAL TO RESIDENTIAL

BACKGROUND: The applicants are requesting a general plan amendment to redevelop a portion of the properties located at approximately 1200 and 1204 East 1450 South with a commercial building and townhomes.

RECOMMENDATION: Receive public comment.

2. PUBLIC HEARING TO REVIEW A REZONE REQUEST FOR PROPERTY LOCATED AT APPROXIMATELY 1200 AND 1204 EAST 1450 SOUTH FROM C-1 (COMMERCIAL) TO R-3 (RESIDENTIAL)

BACKGROUND: The applicants are requesting a rezone amendment to redevelop a portion of the properties located at approximately 1200 and 1204 East 1450 South with a commercial building and townhomes. To approve the rezone request, the future land use designation of the general plan must also be changed to reflect Residential as the future land use designation. These properties and most of the properties to the east and northeast have been designated with a future land use of Commercial in the General Plan and are zoned C-1 and C-2 as an extension of the medical office and professional office around Davis Hospital and Medical Center.

RECOMMENDATION: Receive public comment.

***SCHEDULED ITEMS:***

3. OPEN COMMENT PERIOD

The Open Comment Period provides an opportunity to address the Mayor and City Council regarding concerns or ideas on any topic. To be considerate of everyone at this meeting, public comment will be limited to three minutes per person. Participants are to state their names for the record. Comments, which cannot be made within these limits, should be submitted in writing to the City Recorder at [nancy.dean@clearfieldcity.org](mailto:nancy.dean@clearfieldcity.org).

The Mayor and City Council encourage civil discourse for everyone who participates in the meeting.

4. CONSIDER APPROVAL OF ORDINANCE 2022-15 AMENDING THE GENERAL PLAN FUTURE LAND USE MAP FOR 3.60 ACRES OF THE PROPERTIES LOCATED AT APPROXIMATELY 1200 AND 1204 EAST 1450 SOUTH (TINs: 09-022-0164 AND 09-022-0165) FROM COMMERCIAL TO RESIDENTIAL

RECOMMENDATION: Approve Ordinance 2022-15 amending the General Plan Future Land Use Map for 3.60 acres of the properties located at approximately 1200 and 1204 East 1450 South from Commercial to Residential and authorize the Mayor's signature to any necessary documents.

5. CONSIDER APPROVAL OF ORDINANCE 2022-16 REZONING 3.60 ACRES OF THE 4.75 TOTAL ACRES OF THE PROPERTIES LOCATED AT APPROXIMATELY 1200 AND 1204 EAST 1450 SOUTH (TINs: 09-022-0164 AND 09-022-0165) FROM

C-1 AND C-2 (COMMERCIAL) TO R-3 (MULTI-FAMILY RESIDENTIAL) AND AMENDING THE CLEARFIELD CITY ZONING MAP ACCORDINGLY

RECOMMENDATION: Approve Ordinance 2022-16 rezoning 3.60 acres of the 4.75 total acres of the properties located at approximately 1200 and 1204 East 1450 South from C-1 and C-2 (Commercial) to R-3 (Multi-family Residential) and amending the Clearfield City Zoning Map Accordingly and authorize the Mayor's signature to any necessary documents.

6. CONSIDER APPROVAL OF ORDINANCE 2022-13 AMENDING TITLE 4- BUSINESS AND LICENSE REGULATIONS AND TITLE 7-MOTOR VEHICLES AND TRAFFIC SAFETY ENACTING REGULATIONS FOR MOBILITY DEVICES, MOTOR ASSISTED SCOOTER, AND AMENDING OPERATIONAL RULES AND REGULATIONS GENERALLY

BACKGROUND: On May 6, 2022, Hill Air Force Base launched an E-Scooter/E-Bike Ride Share Program with the goal of providing Airmen and civilians with an affordable means to commute to, from, and around the base. It was determined that the implementation of dockless shared mobility devices within the City not only supports travel to and from the base, but it will also benefit others who seek alternative means of travel around the City and is consistent with many of the goals of the North Davis Active Transportation Implementation Plan (NDATIP).

RECOMMENDATION: Approve Ordinance 2022-13 amending Title 4-Business and License Regulations and Title 7-Motor Vehicles and Traffic Safety enacting regulations for mobility devices, motor assisted scooter, and amending operational rules and regulations generally and authorize the Mayor's signature to any necessary documents.

7. CONSIDER APPROVAL OF ORDINANCE 2022-14 AMENDING THE PUBLIC NOTICE REQUIREMENTS IN TITLE 1, TITLE 2, AND TITLE 14 OF THE CLEARFIELD CITY CODE

BACKGROUND: In 2021, the State Legislature made changes to public notice requirements eliminating the requirement to publish notices in a newspaper of general circulation for most notices. Recently the Council made changes to City Code eliminating the newspaper publication requirements for land use issues. A review of the entire Code identified several other areas that could possibly be amended to reduce costs. The ordinance would remove the newspaper publication requirement from those areas in the Code.

RECOMMENDATION: Approve Ordinance 2022-14 amending the public notice requirements in Title 1, Title 2, and Title 14 of the Clearfield City Code and authorize the Mayor's signature to any necessary documents.

8. CONSIDER APPROVAL OF A PROCLAMATION DECLARING JUNE 2022 AS SMALL CITIES MONTH

BACKGROUND: Small cities and towns under 50,000 population constitute most municipalities across the United States. These small cities and towns strive to strengthen their communities through the utilization of partnerships, programs, and legislation of federal and state governments. The need for renewed intergovernmental partnerships to support essential public services is important to ensure the safety and growth of small-town America during these challenging economic times. The National League of Cities President, and the Small Cities Council of the National League of Cities have declared June 2022 as Small Cities Month and Council is being asked to follow suit to encourage cooperative work this month and throughout the year to invest in small cities and towns to better the lives of all citizens.

RECOMMENDATION: Approve a proclamation declaring June 2022, as Small Cities Month in Clearfield and authorize the Mayor's signature to any necessary documents.

***COMMUNICATION ITEMS:***

Mayor's Report  
City Councils' Reports  
City Manager's Report  
Staffs' Reports

***\*\*ADJOURN AS THE CITY COUNCIL***

Dated this 9<sup>th</sup> day of June 2022.

/s/Joannie Strong, Deputy City Recorder

The City of Clearfield, in accordance with the 'Americans with Disabilities Act' provides accommodations and auxiliary communicative aids and services for all those citizens needing assistance. Persons requesting these accommodations for City sponsored public meetings, service programs or events should call Nancy Dean at 801-525-2714, giving her 48-hour notice.



## STAFF REPORT

**TO:** Mayor Shepherd and City Council Members

**FROM:** Spencer W. Brimley, Community Development Director  
Stacy Millgate, Customer Service Center Manager

**MEETING DATE:** Tuesday, June 14<sup>th</sup>, 2022

**SUBJECT:** Discussion - Business License Fee Discussion/Proposed Fee

---

### **RECOMMENDED ACTION**

Staff is seeking to have a discussion and obtain feedback on the Business License Fee study and the draft of proposed fees. Staff is hoping to include these fees in the upcoming update to the Consolidated Fee Schedule. The consultant has provided the current fees and the costs associated with their analysis which resulted in the proposed fee that are attached.

### **DESCRIPTION / BACKGROUND**

The fee study began February of this year and is anticipated for completion by the end of June. Clearfield City has experienced a great deal of growth since 2008 and proposed this study to evaluate our current fees.

#### **The purpose of this study is to:**

1. Ensure Compliance with Utah Code Annotated §10-1-203:
  1. "Fees charged reflect the amount necessary to reasonably regulate business activity, including the costs of disproportionate or enhanced levels of municipal services required by some business classes, geographic locations, etc."
  2. Evaluate business licensing categories for disproportionate costs
  3. Evaluate enhanced service costs for specific business categories

Staff and the consultant believe the proposed fees are better suited to help achieve a more fiscally sustainable outcome and provide better support for services provided by Clearfield City. Staff and the consultant will provide a presentation during work session and answer questions to help the council understand the proposed changes and obtain direction from the Council accordingly.

### **FISCAL IMPACT**

This project will help the continual improvement of the City's business and rental community by properly evaluating city fees to account for services provided.

### **ATTACHMENTS**

DRAFT Clearfield Business/Rental License Fee

	Maximum Fee	Current Fee
<b>General Business License</b>		
New	\$177.30	\$75.00
Renewal	\$76.30	\$64.00
<b>Rental Dwelling License</b>		
New	\$208.86	\$190.00
Renewal	\$76.30	\$64.00
<b>Temporary or Seasonal Merchant License</b>		
New - 180 Days	\$143.42	\$120.00
Cleaning Deposit	\$101.49	\$100.00
<b>Mobile Food Vendor License</b>		
New - 180 Days	\$125.99	\$120.00
Cleaning Deposit	\$101.49	\$100.00
<b>Solicitor License</b>		
New	\$222.54	\$215.00
Renewal	\$71.57	\$64.00
Identification Badge	\$26.70	\$15.00
<b>Beer License</b>		
New	\$271.57	\$138.00
Renewal	\$76.30	\$64.00
<b>Sexually Oriented Business License/Sexually Oriented Business Employee License</b>		
New	\$306.11	\$200.00
Renewal	\$76.30	\$64.00
<b>Firework Stand License</b>		
New	\$154.07	\$120.00
Cleaning Deposit	\$101.49	\$100.00
<b>Pawnbroker</b>		
New	\$154.07	\$138.00
Renewal	\$76.30	\$64.00
<b>Massage Therapist</b>		
New	\$248.44	\$178.00
Renewal	\$76.30	\$64.00
Identification Badge	\$26.70	\$15.00

**TABLE 17: DISPROPORTIONATE POLICE CALLS FOR SERVICE – BUSINESS CATEGORIES**

Business Category	Disproportionate Police Calls	Disproportionate Cost per Business	Current Fee
AUTOMOTIVE	1.78	\$437	\$115.00
BAR	2.02	\$494	\$800.00
BEAUTY SALON	(0.21)	\$0	\$0.00
CONVENIENCE STORE	21.86	\$5,360	\$500.00
DANCE STUDIO	2.23	\$547	\$0.00
DAYCARE	4.48	\$1,097	\$10.00
ENTERTAINMENT SERVICES	4.02	\$985	\$0.00
FINANCIAL SERVICES	1.28	\$314	\$440.00
GENERAL CONTRACTOR	0.08	\$20	\$0.00
GROCERY STORE	11.02	\$2,701	\$0.00
GROUP HOME	39.02	\$9,565	\$0.00
GYM/TRAINING	1.64	\$403	\$0.00
LODGING	0.36	\$89	\$0.00
MANUFACTURING/ WAREHOUSE/ DISTRIBUTION	0.69	\$170	\$200.00
MASSAGE	(0.48)	\$0	\$0.00
NON-PROFIT/NO FEE	0.77	\$188	\$0.00
PAWNBROKERS	11.52	\$2,823	\$500.00
PERSONAL SERVICES	(0.37)	\$0	\$0.00
PROFESSIONAL/BUSINESS SERVICES	0.01	\$2	\$0.00
RESTAURANT	2.84	\$695	\$150.00
RETAIL	1.22	\$300	\$0.00
STORAGE UNITS	(0.47)	\$0	\$0.00
TOBACCO SHOP	28.52	\$6,991	\$0.00

**TABLE 18: DISPROPORTIONATE POLICE CALLS FOR SERVICE – RENTAL UNITS**

Business Category	Disproportionate Police Calls	Disproportionate Cost per Unit	Current Fee (Per Unit)
Single Family Residential	0.26	\$64	\$66.50
Duplex	(0.16)	\$0	\$12.50
Tri/Quad Plex	0.15	\$37	\$92.00
Multi-Home	0.09	\$21	\$67.00
Mobile Home	0.23	\$56	\$49.50



## STAFF REPORT

**To:** Mayor Shephard and City Council Members

**From:** Nancy Dean, City Recorder  
Shaundra Rushton, Communication Manager

**Meeting Date:** June 14, 2022

**Subject:** Software for Agenda and Minutes Preparation and Community Engagement during meetings

---

### Recommended Action

Discuss the purchase of software to assist with agenda and minutes preparation and community engagement during Council meetings.

### Description / Background

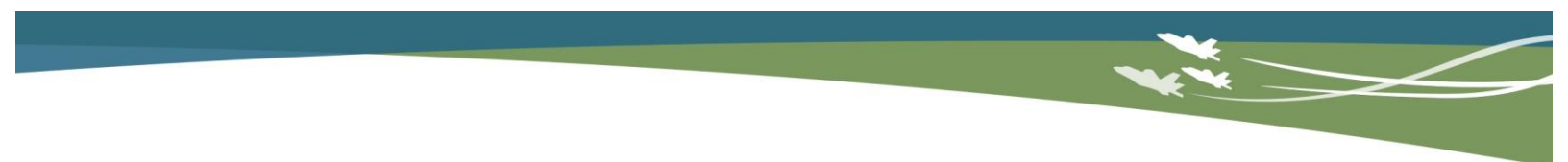
Staff has been working to find solutions to address the backlog in the production of meeting minutes for the organization due to heavy workloads in the city recorder's office, planning division, and community services department. Over the last few years, we have tried to outsource the process with little success, which prompted a search for software that could assist in simplifying the requirement thereby freeing up staff time for other tasks. Five softwares were evaluated to find a product that would benefit all divisions and departments. Staff has identified PrimeGov as the software that would best meet the City's needs. The software also offers a community engagement module that would allow residents to participate with the Council during meetings through text or in person.

The software is completely web-based and anyone with permissions can access the agendas, minutes, and supporting documents from any device that has a web browser. The product displays and scales appropriately depending on the device the user chooses to view the materials.

The following modules are being considered:

- 1) Agenda Automation - manages the entire agenda process for submitting an agenda item for a meeting to making sure that the item has all the necessary supporting materials. Agenda items can be moved or copied to another meeting with a full legislative history available. It includes electronic forms and a workflow module that allows the users to track items through the entire agenda process. It includes a meeting viewer so users can view different document types without having to have the native application on their device and allows users to annotate their copy of the agenda so they have their copy of notes for reference during the meeting. Cost - **\$9,670**
- 2) Meeting Management – provides a single interface that allows all aspects of the meeting to be managed by a single user. Assists with managing community involvement in the meetings, can display votes on the screen and through the public portal. All comments, conversations, and information about the meeting and specific agenda items can be archived and stored or made available to the public post meeting as part of the meeting page or legislative history. A





speaker management system is built in that automates the in person public comment period. This feature will also project the meeting and presentations on the screen. Cost - **\$6,503**

- 3) Community Engagement – creates a public portal for citizens to comment on individual agenda items. The comments are text based and can be established to replicate the time limit used for public speakers when meetings are in person. Those wishing to comment would be able to fill out a form through the public portal prior to the meeting or during the meeting, if desired. The software will manage the sign-up and provide an ordered list of speakers that can be called on during the meeting. All comments will be aggregated into a simple report and provided to the council or commission. Cost - **\$3,468**.
- 4) Laserfiche Integration – Laserfiche is the City’s records management software. The module would allow to access archived records immediately when needed on store the records created during the meeting automatically. Cost - **\$1,500**
- 5) Swagit Video Streaming – integrated into the live meeting module and allows the video to be easily started, items to be timestamped, and video to be embedded into the public portal and legislative history. It runs through the same interface that is used for running the meeting and can also allow viewing of the live meeting through the public portal and Facebook like the City already does. This module is key to accomplishing the goal or minimizing time on meeting minutes and allows greater participation from the public. Cost - **\$5,202**
- 6) Swagit Encoder – hardware associated with the ability video stream meetings. The City would outfit the executive conference room and council chambers with this ability to provide maximum benefits. **One time cost** - \$2,990 each. Total **\$5,980**.

The software is a subscription and the first-year total cost would be \$32,260. Staff has identified FY22 budget savings from the city recorder, community development, and community services budget of \$17,000 that would require a budget amendment. The remainder has been identified to be paid from the FY23 city recorder budget by using the software to replace the funds allocated for outsourcing the minutes and savings in the public notice budget. The vendor is willing to bill the purchase in two separate invoices over two fiscal years.

### **Corresponding Policy Priorities**

- Providing Quality Municipal Services – Currently staff is struggling to meet the statutory requirements for the availability of draft minutes due to heavy workloads. The software would be a resource to meet those requirements while freeing up staff time to focus on other important tasks.

- Improving Clearfield’s Image, Livability, and Economy – The software has the capability of enhancing the City’s transparency by providing better communication in a timelier manner with its residents, especially during meetings.
- Maintaining a Highly Motivated and Well-Trained Workforce – The software has the potential to assist in making the workloads more manageable for the city recorder’s division, planning department, and community services freeing up time for other professional responsibilities.

### **Hedgehog Score**

It scores in the “high value” of the hedgehog model.

### **Fiscal Impact**

The first-year fiscal impact is neutral. The ongoing costs would be \$26,280 annually, which would be offset by the budget savings from professional services for outsourcing the minutes and the reduction in the public notice budget.

### **Alternatives**

- 1) Keep the status quo – The Council should be aware there are demanding workloads in the divisions mentioned above. Staff has had difficulty meeting the statutory requirements related to the availability of draft minutes.
- 2) Increase the professional services budget for the outsourcing of minutes to attract a more professional and prepared individual.
- 3) Hire an individual to help with the workload challenges that would provide services to the three divisions.
- 4) Many of the module pieces are interrelated but the community engagement piece could be removed from the purchase as an alternative and would reduce the cost about \$5,000 annually.

### **Schedule / Time Constraints**

For the vendor to be able to split the invoices over two budget years is it important to address this as quickly as possible.



# Planning Commission

## STAFF REPORT

AGENDA  
ITEMS  
**#1 & 2**

**TO:** Clearfield City Planning Commission

**FROM:** Tyson Stoddard, Planner I  
[tyson.stoddard@clearfieldcity.org](mailto:tyson.stoddard@clearfieldcity.org)  
 (801) 525-2718

**MEETING DATE:** Wednesday, June 1<sup>st</sup>, 2022

**SUBJECT:** Discussion and Possible Action on **PSP & FSP 2022-040043**, a preliminary and final subdivision plat request by Mark Garza with Clearfield Flex for a 15-lot subdivision to create commercial condominiums at the subject location. **Location:** 340 West 1700 South (Antelope Dr.) (TIN: 12-940-0001). **Project Area:** 3.95 Acres **Zone:** C-2 (Commercial) (**Administrative Action**).

### RECOMMENDATION

Staff recommends that the Planning Commission move to **approve as conditioned, PSP 2022-040043**, a preliminary subdivision plat request by Mark Garza with Clearfield Flex for a 15-lot subdivision to create commercial condominiums at the property located at 340 West 1700 South (Antelope Drive) (TIN: 12-940-0001). This recommendation is based on the subdivision discussion and findings in the Staff Report.

Staff recommends that the Planning Commission forward a **recommendation of approval** to the Clearfield City Council for **FSP 2022-040043 as conditioned**; a final subdivision plat request by Mark Garza with Clearfield Flex for a 15-lot subdivision to create commercial condominiums at the property located at 340 West 1700 South (Antelope Drive) (TIN: 12-019-0025). This recommendation is based on the subdivision discussion and findings in the Staff Report.

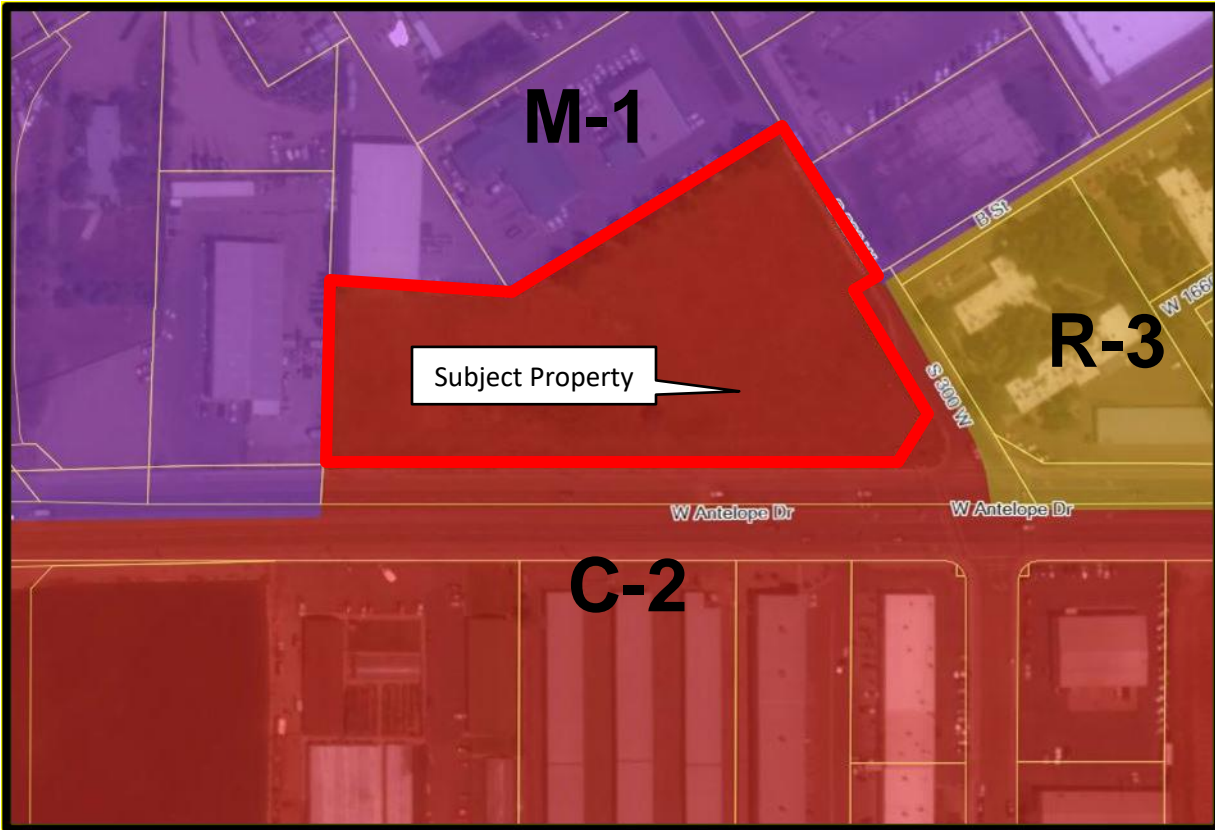
### PROJECT SUMMARY

Project Information	
Project Name	Clearfield Flex Condominiums
Site Location	340 West 1700 South (Antelope Drive)
Tax ID Number	12-940-0001
Applicant	Mark Garza
Owners	Clearfield Flex LLC
Proposed Actions	Preliminary and Final Subdivision Plat Approval
Current Zoning	C-2 (Commercial)
General Plan Land Use Classification	Commercial
Gross Site	3.95 Acres

Surrounding Properties and Uses:	Current Zoning District	General Plan Land Use Classification	
North	Manufacturing	M-1 (Manufacturing)	Manufacturing
East	Residential	R-3 (Residential)	Commercial

South	Commercial	C-2 (Commercial)	Commercial
West	Manufacturing	M-1 (Manufacturing)	Commercial

**Aerial Image & Zoning**



**BACKGROUND & OVERVIEW**

In July of 2020, the Planning Commission granted site plan approval for a three (3) building office/warehouse development at the subject location. The construction is nearing completion and the applicant is now requesting to subdivide the existing lot to create 14 (fourteen) commercial condominium lots, and a common area for the parking lot and landscaping. The proposed condominium units would range in size between 3,300 and 5,100 square feet.

The proposed plat would maintain a ten foot (10') wide public utility easement around the perimeter of the property and will maintain all existing storm drain, electric, sewer, water, and natural gas easements. The request does not include the vacation or dedication of any public streets.

**General Plan and Zoning**

The subject property is identified in the General Plan as commercial and is zoned C-2 (Commercial). The request to create condominiums does not contradict or impede the goals and objectives of the General Plan. Each commercial condominium will be subject to the permitted and conditional use requirements of the C-2 Zone.

**SUBDIVISION PLAT APPROVAL**

Because this property exists in an approved one-lot subdivision, it will require an amendment to the subdivision to accomplish the proposal. The request is also subject to Title 11, Chapter 13, and Section 24 of the Clearfield City Municipal Code, which requires the review of private covenants and restrictions related to developments that will include separate ownership and common areas. The Covenants, Conditions, and Restrictions (CC&R’s) shall be approved by the City Attorney, Planning Commission, and City Council, and shall be recorded with the County Recorder.

Staff has reviewed the applicant’s submittal of the proposed Articles of Incorporation, CC&R’s and accompanying By-laws. A summary of the review is provided as outlined in the table below.

Specific Provision		Inclusion in CC&R’s
<p><i>All covenants, conditions and restrictions shall include management policies which shall set forth the quality of maintenance that will be performed and who is to be responsible for said maintenance within said condominium development. Said document shall, at a minimum, contain the following:</i></p>		
1)	<p>The establishment of a private association or corporation responsible for all maintenance, which shall levy the cost thereof as an assessment to each unit owner within the condominium development.</p>	<p>Included and identified as “Clearfield Flex Industrial Commercial Association, Inc.”</p>
2)	<p>The establishment of a management committee, with provisions setting forth the number of persons constituting the committee, the method of selection and the powers and duties of said committee and including the person, partnership or corporation with property management expertise and experience who shall be designated to manage the maintenance of the common areas and facilities in an efficient and quality manner.</p>	<p>Included. A Board is established with further provisions included in the By-Laws of Clearfield Flex Industrial Commercial Association, Inc.</p>
3)	<p>The method of calling a meeting of the members of the corporation or association, with the members thereof that will constitute a quorum authorized to transact business.</p>	<p>Included. Meetings of the Association are established in the By-Laws of Clearfield Flex Industrial Commercial Association, Inc.</p>

4)	The manner of collection from unit owners for their share of common expenses and the method of assessment.	Included. The “Assessments” section includes the provisions for collection from unit owners.
5)	Provisions as to percentage of votes by unit owners which shall be necessary to determine whether to rebuild, repair and restore or sell property in the event of damage or destruction of all or part of the project.	Included. Voting procedures are included in the By-Laws of Clearfield Flex Industrial Commercial Association, Inc.
6)	The method and procedure by which the declaration may be amended.	Included. The declaration may be amended upon voting procedures as established in the CC&R’s and accompanying By-laws.

**Department Review**

The proposed condominium plat was shared with Public Works, the Building Division, and the North Davis Fire District for review. The Staff Engineer provided comments in a review letter dated May 10<sup>th</sup>, 2022. The letter is included as an attachment to this report.

**Public Comment**

A public notice sign was posted on May 20<sup>th</sup>, 2022. As of the date of this report, no comments have been received.

---

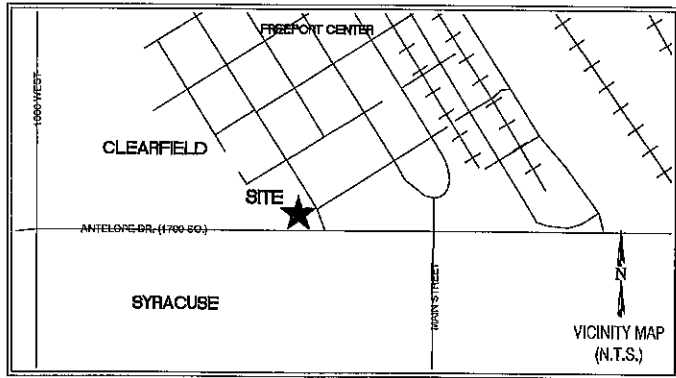
**PRELIMINARY AND FINAL SUBDIVISION PLAT - CONDITIONS OF APPROVAL**

Based upon review of Clearfield City ordinances and the proposed subdivision, Staff recommends that the Planning Commission **approve** the preliminary subdivision plat and recommend **approval** of the final subdivision plat to the Clearfield City Council, subject to the following conditions:

- 1) The plat shall be revised to include addresses for the condominiums.
- 2) Plans shall be revised to address Clearfield City Planning and Engineering comments and requirements prior to obtaining final signatures and recording the plat.
- 3) The final subdivision plat shall include any necessary changes as outlined in this report or required by applicable local agencies.
- 4) The private covenants and restrictions required (pursuant to 11-13-24 of the city Land Use Ordinance), any amendment, and any instrument affecting the property or any unit therein, shall be approved by the city attorney, planning commission, and city council, and shall be recorded with the county recorder.

**ATTACHMENTS**

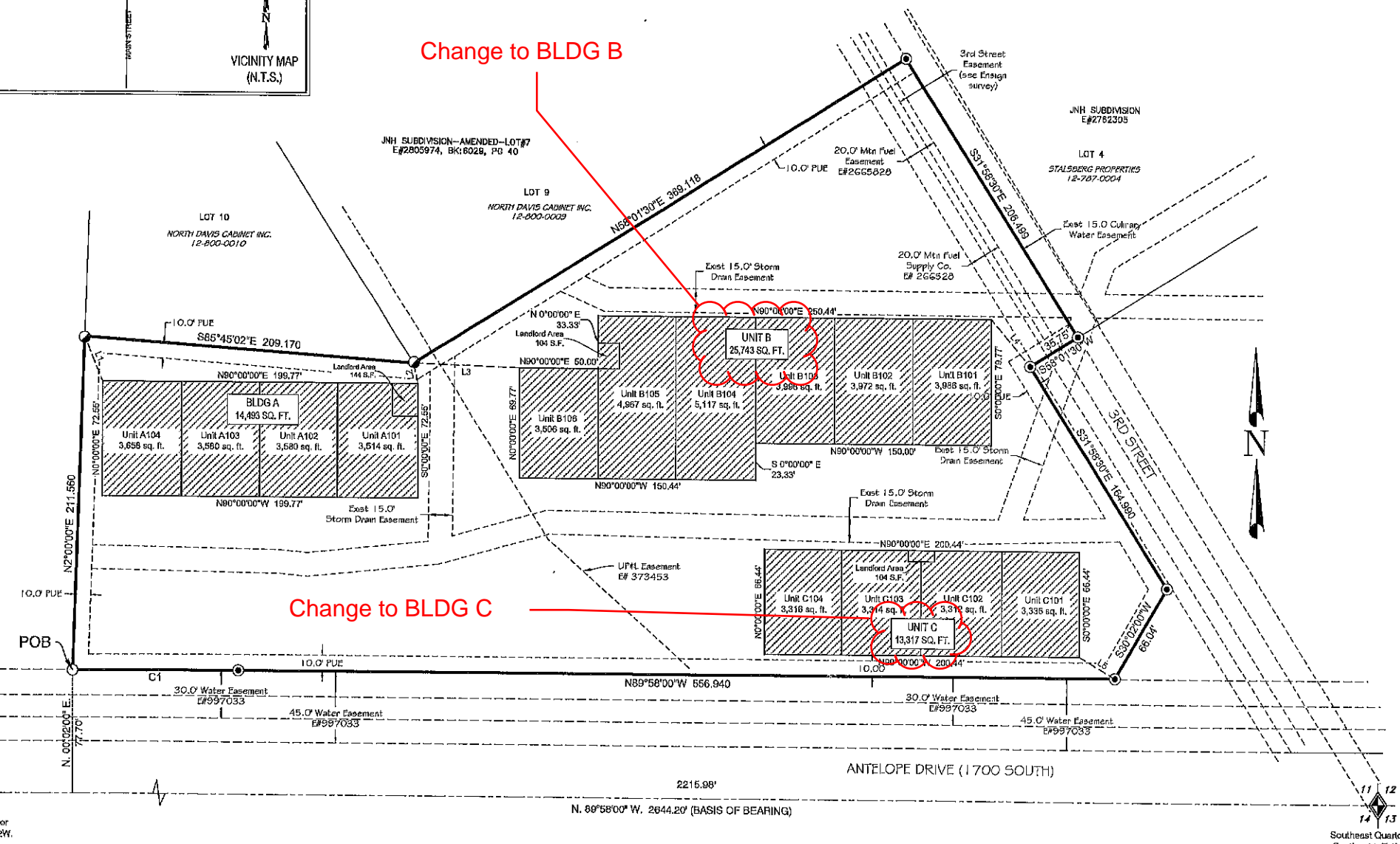
1. Subdivision Plat
2. Clearfield Flex Articles of Incorporation
3. Clearfield Flex CC&R's
4. Clearfield Flex By-laws
5. Engineering Review Letter dated May 10<sup>th</sup>, 2022



# CLEARFIELD FLEX CONDOMINIUMS

## A UTAH COMMERCIAL CONDOMINIUM PROJECT

LOCATED IN THE SOUTHEAST 1/4 OF SECTION 11, TOWNSHIP 4 NORTH, RANGE 2 WEST,  
SALT LAKE BASE AND MERIDIAN  
CLEARFIELD CITY, DAVIS COUNTY, UTAH



**LEGEND**

- Boundary Line
- Adjacent Parcel Line
- Lot Line
- Section Line
- Easement Line
- Private Ownership
- Common Areas
- Rebar and Cap as marked "CIR Engineering"

**\*Recommend including an address table showing the address of each condominium unit.**

**GENERAL NOTES & CONDITIONS:**  
1. PLEASE NOTE THAT EAVES, OVERHANDS, TRIMS, AND OTHER ARCHITECTURAL FEATURES AND PROJECTIONS MAY EXTEND BEYOND THE BOUNDARY LINE INDICATED FOR THE BUILDING.

**LINE TABLE**

LINE #	LENGTH	BEARING
L1	30.71	N22° 09' 49"W
L2	13.23	N12° 02' 37"W
L3	67.11	N88° 00' 29"W
L4	38.54	S39° 44' 05"E
L5	26.45	S59° 17' 33"E

**CURVE TABLE**

CURVE #	LENGTH	RADIUS	DELTA	CHORD BEARING	CHORD LENGTH
C1	105.49	10055.03	00° 38' 04"	S89° 43' 38"W	105.49

SHEET  
**1**  
**7**

**SURVEYOR CERTIFICATE**

I, GARY CHRISTENSEN, do hereby certify that I am a Professional Land Surveyor in the State of Utah and that I hold License No. 5152617 in accordance with Title 58, Chapter 22, Professional Engineers and Land Surveyors Licensing Act. I further certify that by authority of the owners I have made a survey of the tract of land in accordance with Section 17-25-17 and have verified all measurements and that the description describes the land known as CLEARFIELD FLEX CONDOMINIUMS. I further certify that this condominium lot is accurate and has been prepared in compliance with the provisions of the Utah Condominium Ownership Act, and that the same has been surveyed and staked on the ground as shown on this map, and that the building dimensions are or will be as shown on this plat.

Signed this \_\_\_ day of \_\_\_\_\_, 2022.



**BOUNDARY DESCRIPTION**

All of Lot 1A, JNH Subdivision, Second Amended recorded June 21, 2019 as Entry No. 3187569 in Book 7289, of Page 95 in the Office of the Davis County Recorder located in the Southwest Quarter of Section 11, Township 4 North, Range 2 West, Salt Lake Base and Meridian and is described as follows:

Beginning at the Southwest Corner of Lot 1 of the JNH Subdivision, said point lies North 89°58'00" West 2215.990 feet along the Section Line and North 00°02'00" East 77.700 feet from the Southeast Corner of Section 11, Township 4 North, Range 2 West, Salt Lake Base and Meridian and running thence along said Lot 1 the following (2) courses: 1) North 02°00'00" East 211.550 feet; 2) South 89°45'02" East 209.170 feet; thence along the Northerly line of said Lots 1, 2 & 3 North 58°01'30" East 859.116 feet; thence along said Lot 3 the following (5) courses: 1) South 31°59'30" East 164,880 feet; 2) South 56°01'30" West 55,760 feet; 3) South 31°59'30" East 164,880 feet; 4) South 00°02'00" West 66,040 feet; thence along the Southerly line of said Lots 1, 2 & 3 North 89°58'00" West 656,940 feet to a point on a 10055.000 foot radius tangent curve to the left. (Chord bears South 69°45'58" West 105,490 feet); thence along the Southerly line of said Lot 1 and the arc of said curve 105,490 feet through a central angle of 00°38'04" to the point of beginning.

The above-described Lot 1A contains 172,125 sq. ft. in area or 3.951 acres more or less, 1 Lot.

**OWNER'S DEDICATION**

The owner of the described tracts of land to be hereafter known as CLEARFIELD FLEX CONDOMINIUMS does hereby dedicate, grant, and convey to CLEARFIELD CITY all easements as shown on this plat as public utility easements, the same to be used for installation, maintenance, and operation of public utility service lines and drainage as may be authorized by:

In witness whereof, I have hereunto set my hand this \_\_\_ day of \_\_\_\_\_, 2022.

a Utah limited liability company.

BY: \_\_\_\_\_  
PRINT NAME \_\_\_\_\_  
ITS: \_\_\_\_\_

**NOTARY ACKNOWLEDGMENT**

State of Utah )  
                  ) ss  
County of        )

On this \_\_\_ day of \_\_\_\_\_, in the year 2022, before me, \_\_\_\_\_ a Notary Public, personally appeared \_\_\_\_\_ of \_\_\_\_\_ proved on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to in the foregoing owner's dedication and consent regarding the CLEARFIELD FLEX CONDOMINIUMS and was signed by him/her on behalf of said \_\_\_\_\_ and acknowledged that he/she/they executed the same.

Commission Number: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

Signature: \_\_\_\_\_  
Print: \_\_\_\_\_  
Name: \_\_\_\_\_

A Notary Public Commissioned in Utah

**CLEARFIELD FLEX CONDOMINIUMS**  
LOCATED IN THE SOUTHEAST 1/4 OF SECTION 11,  
TOWNSHIP 4 NORTH, RANGE 2 WEST, S.L.B. & M.  
CLEARFIELD CITY, DAVIS COUNTY, UTAH

PREPARED BY:

10718 S Backstead Lane, Suite 102  
South Jordan, Utah 84095  
Phone: 435-503-7641

**CITY ENGINEER APPROVAL**

I, hereby certify that my office has reviewed this plat and find it to be correct and in accordance with information on file in this office, of this \_\_\_ day of \_\_\_\_\_, A.D. 2022.

\_\_\_\_\_  
Clearfield City Engineer

**CITY ATTORNEY APPROVAL**

I, \_\_\_\_\_, hereby certify that I have reviewed this entire document and approve it as to form, on this \_\_\_ day of \_\_\_\_\_, A.D. 2022.

\_\_\_\_\_  
Clearfield City Attorney

**PLANNING COMMISSION APPROVAL**

I, hereby certify that the Clearfield City Planning Commission approved this plat on the \_\_\_ day of \_\_\_\_\_, A.D. 2022.

\_\_\_\_\_  
Title: \_\_\_\_\_

**CITY COUNCIL APPROVAL**

Presented to the Clearfield City Council this \_\_\_ day of \_\_\_\_\_, A.D. 2022, and is hereby approved.

\_\_\_\_\_  
City Recorder Attest

\_\_\_\_\_  
City Mayor

**DAVIS COUNTY RECORDER**

Recorded # \_\_\_\_\_  
State of Utah, County of DAVIS, Recorded and filed at the request of \_\_\_\_\_

Date: \_\_\_\_\_ Time: \_\_\_\_\_ Book: \_\_\_\_\_ Page: \_\_\_\_\_

Fee \$ \_\_\_\_\_ DAVIS County Recorder

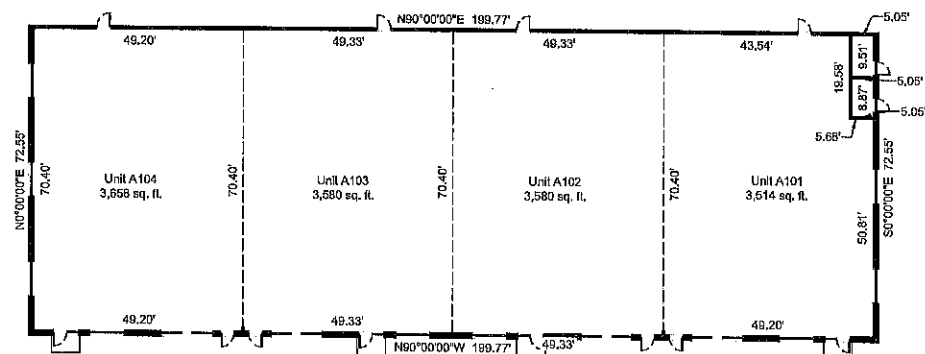


# CLEARFIELD FLEX CONDOMINIUMS

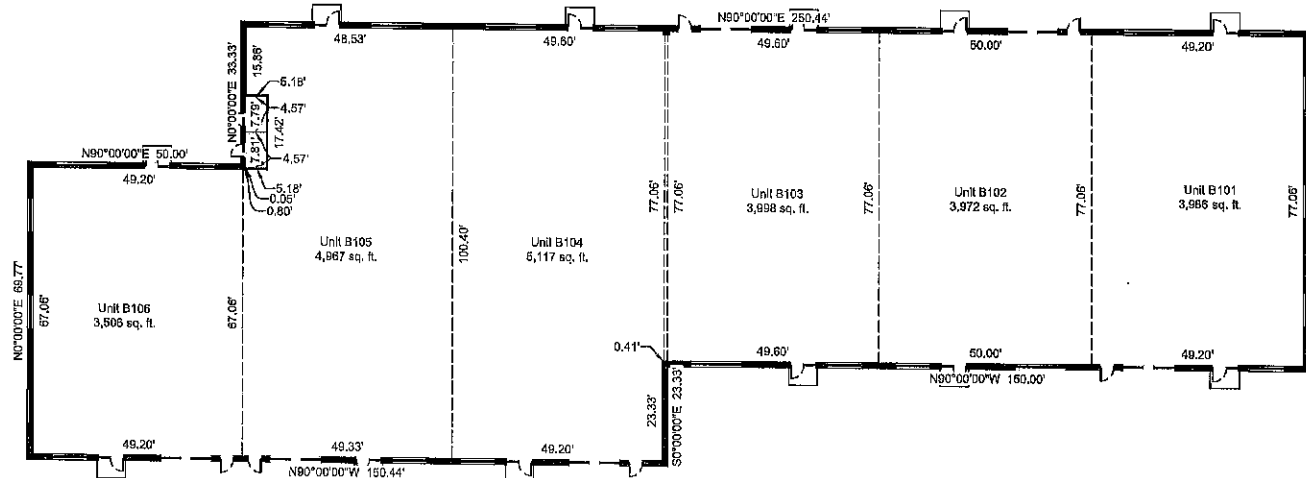
A UTAH COMMERCIAL CONDOMINIUM PROJECT

LOCATED IN THE SOUTHEAST 1/4 OF SECTION 11, TOWNSHIP 4 NORTH, RANGE 2 WEST,  
SALT LAKE BASE AND MERIDIAN  
CLEARFIELD CITY, DAVIS COUNTY, UTAH

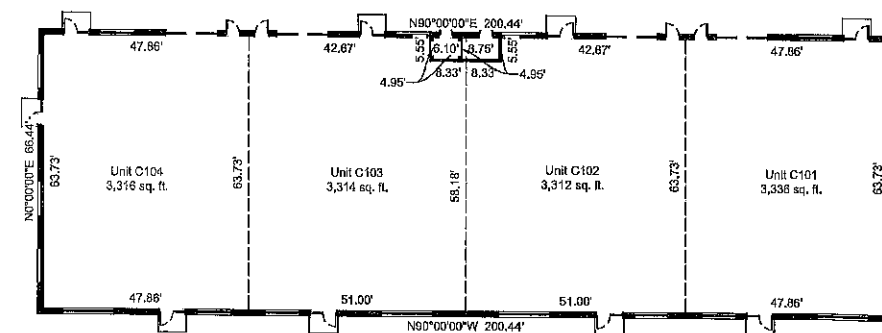
**BUILDING A  
FLOORPLAN**



**BUILDING B  
FLOORPLAN**

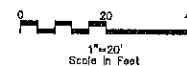


**BUILDING C  
FLOORPLAN**



**LEGEND**

- Boundary Line
  - - - Adjacent Parcel Line
  - Lot Line
  - - - Section Line
  - - - Easement Line
  - ▨ Private Ownership
  - ▨ Common Areas
- Rebar and Cap set marked "CIR Engineering"



PREPARED BY:

**CIR CIVIL ENGINEERING  
+ SURVEYING**

10718 S Beckstead Lane, Suite 102  
South Jordan, Utah 84095  
Phone: 435-503-7641

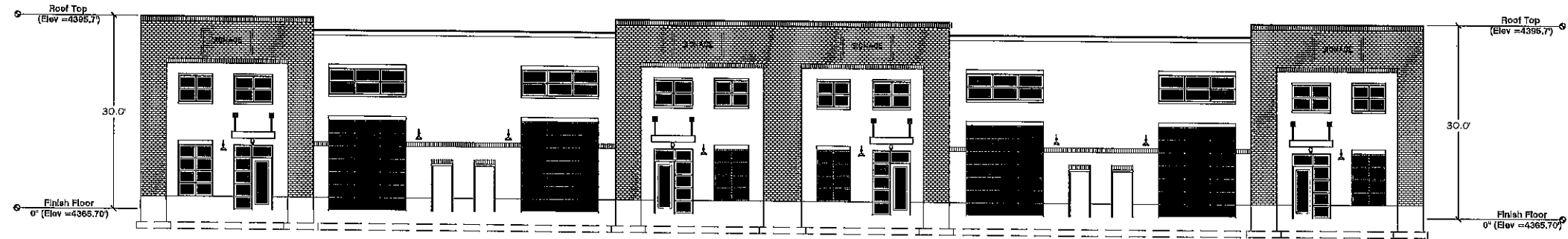
SHEET  
2  
3

CLEARFIELD FLEX CONDOMINIUMS  
LOCATED IN THE SOUTHEAST 1/4 OF SECTION 11,  
TOWNSHIP 4 NORTH, RANGE 2 WEST, S.L.B. & M.  
CLEARFIELD CITY, DAVIS COUNTY, UTAH

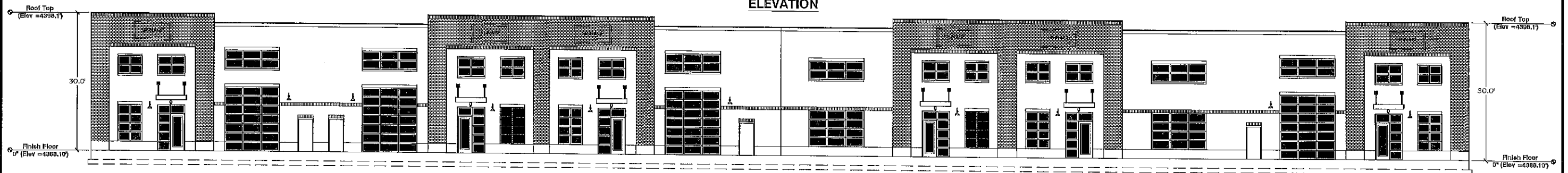
# CLEARFIELD FLEX CONDOMINIUMS

A UTAH COMMERCIAL CONDOMINIUM PROJECT  
 LOCATED IN THE SOUTHEAST 1/4 OF SECTION 11, TOWNSHIP 4 NORTH, RANGE 2 WEST,  
 SALT LAKE BASE AND MERIDIAN  
 CLEARFIELD CITY, DAVIS COUNTY, UTAH

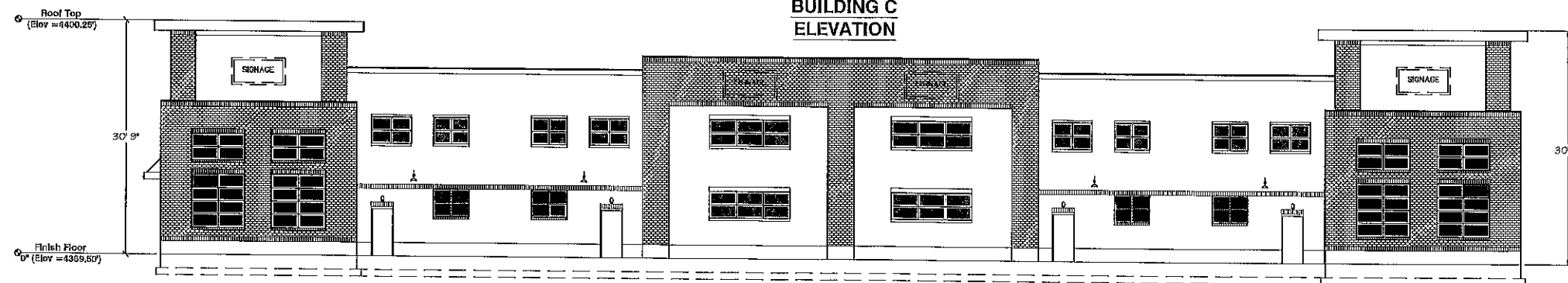
**BUILDING A  
ELEVATION**



**BUILDING B  
ELEVATION**



**BUILDING C  
ELEVATION**



**LEGEND**

- Boundary Line
- Adjacent Parcel Line
- Lot Line
- Section Line
- Easement Line
- ▨ Private Ownership
- ▨ Common Areas
- Rebar and Cap not marked "CIR Engineering"

PREPARED BY:

**CIR CIVIL ENGINEERING  
+ SURVEYING**

10718 S Beckstead Lane, Suite 102  
 South Jordan, Utah 84095  
 Phone: 435-503-7841

SHEET  
 3 / 3

CLEARFIELD FLEX CONDOMINIUMS  
 LOCATED IN THE SOUTHEAST 1/4 OF SECTION 11,  
 TOWNSHIP 4 NORTH, RANGE 2 WEST, S.L.B. & M.  
 CLEARFIELD CITY, DAVIS COUNTY, UTAH

**ARTICLES OF INCORPORATION**  
**OF**  
**CLEARFIELD FLEX INDUSTRIAL COMMERCIAL ASSOCIATION, INC.**  
**(A Nonprofit Corporation)**

Rich Day, the undersigned natural person over the age of eighteen (18) years, acting as incorporator of a nonprofit corporation pursuant to the Utah Revised Nonprofit Corporation Act, § 16-6a-101, *et seq.*, Utah Code Ann. (the “Act”), hereby adopts the following Articles of Incorporation for such nonprofit corporation (the “Articles”).

ARTICLE I: NAME

The name of the nonprofit corporation is Clearfield Flex Industrial Commercial Association, Inc., hereinafter referred to as the “Association.”

ARTICLE II: DURATION

The Association shall exist perpetually or until dissolved pursuant to law.

ARTICLE III: PURPOSE

The purpose of the Association is to engage in any lawful act for which a nonprofit corporation may be organized under the Utah Revised Nonprofit Corporation Act, including, but not limited to, maintaining, operating, and governing a commercial center located in the county of Davis, State of Utah (the “Project”)

ARTICLE IV: MEMBERSHIP, STOCK AND VOTING RIGHTS

The Association will not issue stock. The Association will have voting members. Each Owner of a Lot within the Project shall be a Class A Member of the Association. The Declarant shall be a Class B Member of the Association, for as long as the Declarant owns any Lots in the Project. The rights and duties appertaining to the Association Membership shall be governed by the Declaration and the Bylaws. Neither the issuance nor the holding of shares of stock shall be necessary to evidence an Association Membership. Membership in the Association shall be mandatory, and not optional, and shall be appurtenant to and may not be separated from the ownership of any Lot that is subject to assessment by the Association. No persons or entity other than an Owner of a Lot or the Declarant may be a Member. Membership in the Association shall begin immediately and automatically upon ceasing to be an Owning of such a Lot.

As a Class A Member, each Owner shall be entitled to one (1) vote for each Lot owned. The voting rights appurtenant to each Lot shall vest upon execution and recordation of the Declaration or Amendment to the Declaration, as the case may be. As a Class B Member, Declarant shall be entitled to seven (7) votes for each Lot owned. Class B Association

Memberships shall cease and shall be converted to Class A Association Memberships at such time as Lots are sold by Declarant to purchasers of such Lots.

ARTICLE V: ASSESSMENTS

Members shall be subject to assessments by the Association from time to time in accordance with the provisions of the Declaration and shall be liable to the Association for payment of such Assessments. Members shall not be individually or personally liable for the debts or obligations of the Association.

ARTICLE VI: PRINCIPAL OFFICE

The address of the initial principal office of the Association is 4267 Summermeadow Drive, Bountiful, UT 84010.

ARTICLE VII: REGISTERED AGENT

The initial Registered Agent for the Association, including address, is as follows:

The Rudd Firm, P.C.  
75 W. Towne Ridge Pkwy. Suite 125  
Sandy, Utah 84070

Pursuant to the Model Registered Agents Act, the undersigned hereby accepts appointment as registered agent for the Association.

\_\_\_\_\_  
The Rudd Firm, P.C.

\_\_\_\_\_  
Date

ARTICLE VIII: INCORPORATOR

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

Rich Day  
4267 Summermeadow Drive  
Bountiful, UT 84010

ARTICLE IX: BYLAWS

The Association shall adopt Bylaws which are not inconsistent with law or these Articles for the regulation and management of the affairs of the Association.

ARTICLE X: AMENDMENTS

Except as otherwise provided by law or by the Declaration, these Articles of Incorporation may be amended only in accordance with the Act. These Articles may not be amended so as to provide for any matter that is inconsistent with the provisions of the Declaration and the Bylaws (as the Declaration and the Bylaws may from time to time be amended).

ARTICLE XI: CONFLICT WITH DECLARATION

In the event of any conflict or inconsistency between the provisions of these Articles and the provisions of the Declaration and/or the Bylaws (as the Declaration and the Bylaws may from time to time be amended), the provisions of the Declaration and/or the Bylaws shall control, in that order.

ARTICLE XII: DISSOLUTION

Upon dissolution, the Association shall make distribution of income or assets to its members.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2021

\_\_\_\_\_  
Rich Day, Incorporator

When recorded, please return to:  
Clearfield Flex, LLC  
c/o Rich Day  
4267 Summermeadow Dr.  
Bountiful, Utah 84010

Utah County Tax Parcel Nos.: **XXX**

## **DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS**

**FOR**

### **CLEARFIELD FLEX INDUSTRIAL PARK**

**THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS (“Declaration”)** is made as of this \_\_\_\_\_ day of \_\_\_\_\_ 2021, by **CLEARFIELD FLEX, LLC**, a Utah limited liability company (“**Declarant**”). Capitalized terms in this Declaration have the meanings either defined herein or as provided in Section 1.1 hereinbelow.

#### RECITALS

**A. Commercial Center.** Declarant is the owner of the real property located in the City of Clearfield, Davis County, State of Utah, which is legally described on **Schedule “A”** attached hereto and incorporated herein by reference (the “**Commercial Center Land**”). Declarant plans to develop and build the Commercial Center, as defined and described herein, on the Commercial Center Land. All of the Commercial Center Land, Buildings, and uses located thereon shall be subject to the terms and conditions of this Declaration, including binding against any assignors, assignees, assigns, and so forth of any land or interests associated with the Commercial Center. This Declaration, including any present or future amendments, shall run with the Commercial Center Land.

**B. Intent.** Declarant desires to restrict the Commercial Center and its uses in accordance with the terms and provisions of this Declaration in order to provide for (i) the orderly development, operation, and maintenance of the Commercial Center, (ii) the construction of compatible improvements in the Commercial Center, (iii) common easements for ingress and egress of pedestrian and vehicular traffic, (iv) reciprocal parking rights, (v) procedures for the maintenance of the Commercial Center, and (vi) such other matters as are provided herein.

**NOW THEREFORE**, the Declarant does hereby make and consent to this Declaration as follows:

## 1. PRELIMINARY

1.1 **Definitions.** The following terms as used in this Declaration shall have the meanings set forth below.

1.1.1 **“Applicable Laws”**: The statutes, laws, ordinances, rules, regulations, orders, ordinances and provisions of the State of Utah, the City and other governmental agencies having jurisdiction over the Commercial Center or the use thereof.

1.1.2 **“Approving Person”**: As defined in **Section 15.7**.

1.1.3 **“Association”**: The association of Owners known as Clearfield Flex Industrial Commercial Association, Inc., a Utah nonprofit corporation.

1.1.4 **“Association Documents”**: This Declaration, Articles of Incorporation of the Association, Bylaws of the Association, and Rules and Regulations as may be amended from time to time.

1.1.5 **“Authorized Occupant”**: In the singular, any tenant, subtenant, licensee or similar party who is entitled by written agreement to occupy any Floor Area of any Building located within the Commercial Center, or in the plural all or some portion of the same as the context requires.

1.1.6 **“Benefitted Parties”**: Owners of the Commercial Center, their Authorized Occupants, contractors, employees, agents, customers, licensees and invitees and the subtenants, contractors, employees, agents, customers, licensees and invitees of such Authorized Occupants.

1.1.7 **“Building(s)”**: Buildings, offices, and commercial structures located upon the Commercial Center Land, including but not limited to each such building’s appurtenant improvements known as Canopy Areas and/or Service Facilities.

1.1.8 **“Canopy Areas”**: Areas located under canopies or roof extensions which extend from a Building, together with any columns or posts supporting the same, all of which shall be constructed, owned, operated and maintained by the Owner of the Building to which the same are attached.

1.1.9 **“Center Sign(s)”**: Monument and/or pylon signs, if any, which will be located in areas allowed by the City and approved by the Consent of the Owners.

1.1.10 **“City”**: The City of Clearfield, Davis County, State of Utah.

1.1.11 **“Collection Costs”**: As defined in **Section 11.1**.

1.1.12 **“Commercial Center”**: The Commercial Center Land, together with all Buildings and other improvements located thereon and all thereunto pertaining.

1.1.13 “**Commercial Center Land**”: The real property described on **Schedule “A”**, and consisting of the Parcels.

1.1.14 “**Common Facilities**”: All those areas located upon each Parcel, excluding the Buildings, but including, without limitation, the following: sidewalks (excluding store front sidewalks and those adjacent and contiguous to Buildings located within the Commercial Center which are the responsibility of their Parcel Owner) and trails (except where maintained by the City); walkways; aisles and driveways providing ingress and egress to the Buildings and parking areas located within the Commercial Center to and from adjacent public streets and highways; all parking areas; any and all storm water systems (excluding all retention and detention basins or facilities located on each Parcel for the exclusive use of such Parcel), and including compliance with the requirements of any applicable storm water agreements, as well as any additional applicable recorded documents; any and all land drains (excluding those installed for the exclusive benefit of a particular Building or Parcel); unloading areas (except for Service Facilities which are for the exclusive use of a particular Building or Parcel); shrubbery; plantings and other landscaping; the illuminating and mechanical equipment used exclusively in connection with any of the foregoing (but excluding any illumination and mechanical equipment use or operated for a Building; all utility lines and facilities, including but not limited to all sewer lines and water lines, servicing the Parcels to the perimeter walls of any Building in the Commercial Center (but excluding any utility lines and/or facilities which exclusively service only one Parcel and the improvements located thereon); Center Signs; Pad Monument Signs; and all other portions of the Commercial Center designated by the Consent of the Owners from time to time as Common Facilities.

1.1.15 “**Common Facilities Budget**”: As defined in **Section 7.1.1**.

1.1.16 “**Common Facilities Charge**”: As defined in **Section 7.4.1.3** and sometimes referred to as a “periodic assessment” or a “common area maintenance fee”.

1.1.17 “**Common Facilities Lien**”: As defined in **Section 11.1**.

1.1.18 “**Common Facilities Maintenance**”: As defined in **Section 6.1**.

1.1.19 “**Common Lighting**”: Lighting to be provided for the Common Facilities initially as the Declarant shall deem appropriate during the initial development and operation of the Commercial Center through the Declarant Control Period, and thereafter as determined by the Consent of the Owners.

1.1.20 “**Condemnation Award**”: As defined in **Article 14**.

1.1.21 “**Consent of Owners**”: The approval of the Owners holding at least fifty percent (50%) of the Proportionate Shares and of the Consenting Party, if the Consenting Party has any ownership interest in any of the Parcels.

1.1.22 “**Consenting Party**”: The Declarant as long as it is the Owner of at least one Parcel or has any ownership interest in any of the Parcels, according to the official plat thereof on file with the Recorder’s Office.



1.1.23 “**Contracting Party**”: As defined in **Section 2.6.1.2**.

1.1.24 “**Declarant**”: As defined above, as well as any Owner to whom the Declarant or a successor thereto assigns all of its rights to be the Declarant hereunder.

1.1.25 “**Declarant Control Period**”: As defined in **Section 12.1.2**.

1.1.26 “**Declaration**”: This Declaration of Covenants, Conditions, Restrictions, and Easements for WX Industrial Park.

1.1.27 “**Default Rate**”: A rate of interest equal to the greater of (i) the Prime Rate plus ten percent (10%) per annum, compounded annually, or (ii) eighteen percent (18%) per annum, compounded annually.

1.1.28 “**Defaulting Party**”: As defined in **Section 11.1**.

1.1.29 “**Deficiencies**”: As defined in **Section 11.2**.

1.1.30 [Intentionally Omitted.]

1.1.31 “**Employee Parking Areas**”: Those areas designated as “Employee Parking Areas” pursuant to the provisions of **Section 5.2**.

1.1.32 “**Environmental Laws**”: As defined in **Section 13.3.2**.

1.1.33 “**Floor Area**”: With respect to a Parcel within the Commercial Center upon which a Building (excluding Canopy Areas and Service Facilities) has been erected, Floor Area shall mean the total number of square feet of floor space on all levels or stories in a fully constructed Building and approved for occupancy by the City, whether or not actually occupied, excluding basement, subterranean, and balcony space, unless that space is used as selling area. Floor Area shall be measured from the exterior line of the building exterior walls and from the center line of any party or common interior walls without deduction for columns, walls or other structural or non-structural components. With respect to a Parcel within the Commercial Center upon which an office building has been erected, Floor Area shall mean the total number of rentable square feet located in each such office building as determined using the latest BOMA standards. With respect to a Parcel within the Commercial Center which is vacant (i.e., on which no Building has been erected), Floor Area shall mean the Floor Area Ceiling assigned to such Parcel as shown on **Schedule “C”** attached hereto, until such time as a Building is erected upon such Parcel, at which time the Floor Area assigned to such Parcel shall be the Floor Area of the Building as provided for in this Section.

1.1.34 [Intentionally Omitted.]

1.1.35 “**Hazardous Substance**”: As defined in **Section 13.3.2**.

1.1.36 “**Immediately Adjacent Building**”: A Building that shares a common wall with another Building or a Building whose exterior wall has no material separation from the exterior wall of an adjacent Building.

1.1.37 “**Lienholder**”: Any mortgagee under a mortgage or a trustee or beneficiary under a deed of trust constituting a lien on any Parcel.

1.1.38 “**Management Fee**”: As defined in **Section 7.4.1**.

1.1.39 “**Manager**”: As defined in **Section 6.2**.

1.1.40 “**Minimum Parking Count**”: As defined in **Section 2.3**.

1.1.41 “**Non-defaulting Party**”: As defined in **Section 11.1**.

1.1.42 [Intentionally Omitted.]

1.1.43 “**Office Building**” is herein defined as a single-story building in which business, clerical, or professional activities are conducted.

1.1.44 “**Operating Costs**”: As defined in **Section 7.2**.

1.1.45 “**Owner**”: The Person or Persons holding record fee title to a Parcel, as reflected in the records of the Recorder and their respective heirs, successors and assigns. If there are more than one record title to a Parcel, each record holder shall be an Owner. The term “Owner” includes the Declarant to the extent that the Declarant is the record holder of title to a Parcel. Notwithstanding any applicable theory relating to a mortgage deed of trust, or like instrument, the term “Owner” shall not mean or include a mortgagee or beneficiary or trustee under a deed of trust, unless and until such person has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof.

1.1.46 “**Pad(s)**”: “**Pad**” shall mean any of Lots A through C, as shown on the Plat, and “**Pads**” shall mean any two or more thereof where the context requires. These Pads are sometimes also referred to herein as Parcels, depending on context.

1.1.47 “**Pad Monument Sign**”: Monument signs, to be located on a Pad which are intended to be utilized by the Authorized Occupants (which may be for the benefit of Authorized Occupants of more than one Pad) in locations approved by the City, and during the Declarant Control Period, the Declarant, and thereafter with the Consent of Owners.

1.1.48 “**Parcel(s)**”: In the singular, any of the Lots A through C, as shown on the Plat, and in the plural, any two or more of such Lots.

1.1.49 “**Parcel Area**”: The size of each Parcel, measured in square feet or acres, as shown of the Plat, as the same may be amended from time to time.

1.1.50 “**Person**”: Individuals, partnerships, limited liability companies, firms, associations, corporations, trusts, governmental agencies, administrative tribunals, or any other form of business or legal entity.

1.1.51 “**Plat**”: The Subdivision plat of Clearfield Flex as recorded in the official records of the Recorder on \_\_\_\_\_, 20\_\_\_\_

, as Entry No. \_\_\_\_\_, in Book \_\_\_\_\_, beginning at Page \_\_\_\_\_, as the same may be amended.

1.1.52 **“Prime Rate”**: The rate of interest which shall be the rate of interest reported from time to time on the financial page of *The Wall Street Journal*. Should, for any reason, *The Wall Street Journal* cease to publish such prime rate, the Prime Rate shall be the prime rate or other reference rate charged from time to time to corporate borrowers of the highest credit standing by Zions First National Bank, N.A.

1.1.53 **“Proportionate Share”**: A percentage derived by dividing the Parcel Area of a given Parcel by the total Parcel Area of all Parcels in the Commercial Center (as set forth in **“Schedule C”**).

1.1.54 **“Real Estate Taxes”**: As defined in **Section 9.1**.

1.1.55 **“Receipt”**: As defined in **Section 15.10.2**.

1.1.56 **“Recorder”**: The Recorder of Davis County, State of Utah.

1.1.57 **“Reimbursement Assessment”**: As defined in **Section 12.3.4**.

1.1.58 **“Requesting Person”**: As defined in **Section 15.7**.

1.1.59 **“Restrictions”**: The covenants, conditions, restrictions, easements, liens, and encumbrances contained in this Declaration.

1.1.60 **“Seasonal Sales Area”**: As shown on the Site Plan, if any such area is designated, or as designated by the Association.

1.1.61 **“Service Facilities”**: Loading docks, trash enclosures, bottle storage areas, drive-up and drive-through lanes, and other similar service facilities.

1.1.62 **“Site Plan”**: The site plan attached hereto as **Schedule “B”** and incorporated herein by this reference, as the same may be amended from time to time in accordance with the provisions of Section 2.2.3 of this Declaration.

1.1.63 [Intentionally omitted.]

1.1.64 **“Trustee”**: As defined in **Section 11.6**.

1.1.65 **“Utility Facilities”**: As defined in **Section 4.2.1**.

## 2. **BUILDING AND COMMON FACILITIES DEVELOPMENT**

2.1 **Standard.** All Buildings and other structures shall be constructed and maintained in accordance with all Applicable Laws.

2.2 **Building Location.** The specific placement and dimensions of all Buildings within the Commercial Center (including those resulting from any remodeling, renovation, replacement, or other re-construction) shall be consistent and subject to the following:

2.2.1 [Intentionally Omitted.]

2.2.2 Buildings constructed on Parcels may be constructed in such locations thereon as the then Owner shall request in advance of obtaining City approvals and Declarant shall approve in writing, Declarant's prior approval not to be unreasonably withheld, delayed or conditioned, provided that such location: (a) does not result in (i) the unreasonable impairment of the visibility of the Commercial Center, (ii) a material impairment of access to the Commercial Center from the public street and/or parking in the Commercial Center as shown on the Site Plan, or (iii) a reduction in the number of parking spaces in the Commercial Center below the Minimum Parking Count.

2.2.3 **Site Plan Amendment:** Provided all applicable approvals are obtained and until the expiration of the Declarant Control Period, the Declarant may alter the Site Plan, including but not limited to a change in location or orientation of a Building, parking stalls, and ingress and egress to and from a Pad without the approval of the Owners. Thereafter material modifications of the Site Plan shall require the Consent of the Owners, together with the approval of applicable governmental agencies as the same may be required.

2.3 **Parking.** Each Owner of a Parcel located in the Commercial Center shall maintain at all times on each of the Parcels owned by it, a parking ratio equal to or higher than shown on the Site Plan as required by the City as a condition to occupancy of Building upon such Parcel (herein the "**Minimum Parking Count**"). The size and configuration of the parking spaces must satisfy the requirements of the City (which includes a requirement that the parking stalls be at least ten [10] feet in width) and must be approved by the Declarant during the Declarant Control Period and thereafter with the Consent of the Owners.

2.3.1 **Governmental Parking Tax:** If any governmental entity imposes a parking tax upon the use of the parking facilities, then each Owner shall be responsible for the payment of the parking tax imposed on the parking spaces located on such Owner's Parcel.

2.3.2 **Miscellaneous Parking Provisions:**

2.3.2.1 The parking facilities shall be used for the parking of only standard sized motor vehicles or motorcycles, and shall not be used for the parking or storage of recreational or other oversize vehicles.

2.3.2.2 No parking facilities located on the Commercial Center Land shall be used or licensed for parking for any off-site property or business.

2.3.2.3 No Owner shall have the right to install gates or other entry control equipment, curbing, bollards, or other obstructions to the drive aisles and parking facilities located on its Parcel.

2.4 **Common Facilities.** Except as may be provided for in any applicable easement agreement or recorded document, the Common Facilities are hereby reserved for the use of the Benefitted Parties. The Common Facilities may be used for vehicular driving, parking (except that there shall be no multi-level parking), pedestrian traffic, directional signs, permitted signage, sidewalks, walkways, landscaping, perimeter walls and fences, lighting for Common Facilities (herein “**Common Lighting**”), utilities, and Service Facilities designated for common use, if any, and for no other purpose unless otherwise specifically provided in this Declaration. The Common Facilities shall be constructed in accordance with the material provisions of the Site Plan and shall be kept and maintained as provided for herein. The sizes and arrangements of the Common Facilities improvements, including, without limitation, service drives and parking areas, striping, traffic directional arrows and signs, concrete bumpers, Common Lighting, perimeter walls and fences, and landscaped areas together with necessary planting may not be materially changed after initial construction as approved by the Declarant without the prior written Consent of the Owners.

## 2.5 **Type and Design of Building.**

2.5.1 **Quality and Compatibility.** Each Building to be constructed in the Commercial Center shall be constructed to accommodate Permitted Uses as specified in Article 3, and shall be of first quality construction and architecturally designed so that its exterior elevations (including, without limitation, signs and color) will be architecturally and aesthetically compatible and harmonious with all other Buildings located in the Commercial Center as reasonably determined by the Owners, subject to the following:

2.5.1.1 Subsequent to the Declarant Control Period, no Building may be constructed nor the exterior of any existing Building changed in any way (including, without limitation, signs and color) without the prior, written Consent of the Owners as to the exterior elevations (including, without limitation, signs and color) of the Building to be constructed or modified, which approval shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing: (a) the standard signs and logos of a national franchise or business, as such logos and signs may exist from time to time, shall not require approval; (b) the opening, closing or relocation of any door shall not require approval; and (c) subject to all other restrictions contained herein and except as otherwise required herein, the standard building elevations of national businesses located on Parcels shall not require the Consent of the Owners.

2.5.1.2 Subsequent to the Declarant Control Period, before construction is commenced of any proposed Building or any modification of an existing Building which requires approval as specified in **Section 2.5.1.1**, sufficient information shall be sent to the Owners to enable them to make a reasonable determination as to the architectural and aesthetic compatibility of said Building or modification with all other Buildings in the Commercial Center. No Owner may arbitrarily or unreasonably withhold its approval of the proposed Building or modification if it is architecturally and aesthetically compatible and harmonious with all other Buildings in the Commercial Center and otherwise complies with the requirements of this Declaration. Each Owner must approve or disapprove a proposal submitted to it within thirty (30) days after the receipt of the proposal, and, if such Owner disapproves the proposal, it shall provide a written explanation in reasonable detail of its reasons for

disapproval. If an Owner (even though it rejects or disapproves the proposal) fails to provide such explanation within the thirty (30) day period, such Owner shall be deemed to have approved the proposal provided that with the submission of such approval, the party seeking the approval has stated in writing to the Owner whose approval is sought, that if a disapproval with supportive explanation is not delivered to the party seeking the approval within the thirty (30) day period after receipt of the proposal, approval shall then be deemed to have been given. If the proposal is disapproved as provided herein, then an alternative proposal may be submitted, which alternative proposal shall be submitted and considered in the same manner and according to the same procedures as the initial proposal. No approval or deemed approval of the architectural and aesthetic compatibility of any Building or modification of a Building shall waive any requirement that all Buildings be built of first quality construction or any other requirement applicable under this Declaration. If a dispute arises regarding whether a Building or modification to a Building is architecturally and/or aesthetically compatible and harmonious with other Buildings in the Commercial Center, the parties shall attempt to resolve the dispute informally and in an amicable manner. If the parties cannot resolve the dispute among themselves, the parties shall then attempt to resolve the dispute through a review of the proposed plans and specifications by a mutually approved and qualified architect. If the dispute still remains unresolved, the parties shall submit the dispute to arbitration as provided in **Section 15.4** herein.

**2.5.2 Sprinkler Systems.** Every Building either shall be equipped with automatic sprinkler systems or similar systems which meet or exceed applicable building codes and do not adversely affect the fire rating (for insurance purposes) of any Building built upon any adjacent Parcel.

**2.5.3 Structural Integrity.** No Building shall be built in a manner that shall adversely affect the structural integrity of any other Building in the Commercial Center.

**2.5.4 Height.** All Buildings in the Commercial Center shall abide by multi-level and/or height restrictions as laid out in any applicable laws, rules, ordinances, and regulations of any governmental body having jurisdiction over the Commercial Center, including the height of mechanical fixtures and equipment and screening of the same, excluding incidental architectural embellishments and peaks, measured from the finished grade at the center point of the front side of the Buildings (i.e., the side of the Building facing the customer parking lot, or if more than one customer parking lot abuts the Building, the side of the Building containing the main entrance). Any variance from the restrictions set forth above shall require the prior written approval of the Declarant during the Declarant Control Period and thereafter the Consent of the Owners.

**2.5.5 Basements and Mezzanine Restrictions.** No mezzanine or basement area constructed as part of a building shall be used for the sale or display of merchandise unless the same is first approved in writing by the Consent of the Owners.

**2.5.6 Building Maintenance.** Each Owner, at its sole cost and expense, shall maintain or cause to be maintained the exterior and interior of any Building, including any Canopy Areas and Service Facilities (unless designated as part of the Common Facilities) located on such Owner's Parcel(s) in a quality and condition comparable to that of first-class

Commercial Centers of comparable size and nature located in the same geographic area as the Commercial Center. All Service Facilities shall be attractively screened from view from the parking areas in a manner initially approved by the Declarant or, after the Declarant Control Period, approved with the Consent of the Owners.

## 2.6 Construction Requirements.

2.6.1 **Timing and Manner of Work.** All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any Building, sign or Common Facilities improvements located in the Commercial Center shall be effectuated as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay (i) access to or from the Commercial Center, or any part thereof, and any public right-of-way, (ii) customer vehicular parking designated in that portion of the improved Common Facilities located in front of any Building constructed in the Commercial Center, or (iii) the receiving of merchandise by any business in the Commercial Center including, without limitation, access to Service Facilities. All Common Facilities shown on the Site Plan for a Parcel shall be constructed and installed in advance of or in connection with the construction of the Building(s) on the Parcel.

2.6.1.1 Staging for the construction, replacement, alteration or expansion of any Building, sign or Common Facilities improvements located in the Commercial Center including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment shall be limited to that portion of the Commercial Center approved in writing by the Declarant during the Declarant Control Period and thereafter with the Consent of the Owners; however, to the extent possible, the staging area must be self-contained on the Parcel where construction activity is to occur.

2.6.1.2 Unless otherwise specifically stated herein, the Person contracting for the performance of such work (“**Contracting Party**”) shall, at its sole cost and expense, promptly repair and restore or cause promptly to be repaired and restored to its prior condition all Buildings, signs and Common Facilities improvements damaged or destroyed in the performance of such work.

2.6.2 **Liens.** The Contracting Party shall not permit any liens to remain effective against any Parcel for any work done or materials furnished in connection with the performance of the work described in **Section 2.6.1** above; subject to the following:

2.6.2.1 The Contracting Party may contest the validity of any such lien, but upon a final determination of the validity thereof, the Contracting Party shall cause the lien to be satisfied and released of record.

2.6.2.2 The Contracting Party shall, within thirty (30) days after receipt of written notice from an Owner or Authorized Occupant, cause any such outstanding lien or claim of lien to be released of record or transferred to a bond in accordance with Applicable Laws, in a manner reasonably satisfactory to the Person giving notice, failing which such Owner or Authorized Occupant shall have the right, at the Contracting Party’s expense, to transfer said lien to a bond.

2.6.2.3 The Contracting Party shall indemnify, defend and hold harmless the Owners and Authorized Occupants of the Commercial Center from any and all liability, claims, damages, expenses (including reasonable attorneys' fees incurred in or before any action, at trial, on appeal or in bankruptcy court), liens, claims of liens, judgments, proceedings and causes of action, arising out of or in any way connected with the performance of such work, unless caused by the negligent or willful act or omission of the otherwise indemnified Person, its tenants, subtenants, agents, contractors or employees.

2.6.3 **Incidental Encroachments.** The Owners acknowledge and agree that incidental encroachments upon the Common Facilities and Buildings may occur as a result of the use of ladders, scaffolds, store front barricades and similar facilities in connection with the construction, maintenance, repair, replacement, alteration or expansion of Buildings, signs and Common Facilities improvements located in the Commercial Center, all of which are permitted hereunder so long as all activities requiring the use of such facilities are expeditiously pursued to completion and are performed in such a manner as to minimize any interference with use of the improved Common Facilities or with the normal operation of any business in the Commercial Center.

2.6.4 **Insurance.** During the course of any construction or repair as to any Building on a Parcel, the Person responsible for such construction or repair shall obtain and maintain:

2.6.4.1 Commercial general liability insurance (as to which all the Owners and Authorized Occupants shall be additional insureds) on an "occurrence basis" against claims for bodily injury, personal injury, death, or property damage occurring on, in or about the Commercial Center and the adjoining streets, sidewalks and passageways, with such insurance to be in single limit coverage in the minimum amount of Two Million and 00/100 Dollars (\$2,000,000.00);

2.6.4.2 Workers' compensation insurance for all employees of the entity conducting such construction who are engaged in such construction, in the amounts established by law; and

2.6.4.3 "Builder's completed value all risk" insurance against "all risks of physical loss" including collapse and transit coverage, during construction or repair, with deductibles not to exceed Five Thousand and 00/100 Dollars (\$5,000.00), covering the Building under construction while in the course of construction, fixtures, machinery, construction equipment, and building materials and supplies with limits covering the cost of such building, materials and supplies.

2.6.5 **Condition Pending Construction.** Except as provided in **Section 6.1.12** below, each Owner of any Parcel in the Commercial Center, at its expense, shall maintain the undeveloped portion thereof in a clean condition, free from weeds, and either landscaped and/or covered with gravel base prior to commencement of construction of Buildings; provided, however, that on or before the date which will be three (3) years after the date that a business first opens on one of the Parcels, each Owner, at its expense, shall either: (i) install an asphalt cap on such unimproved Parcel according to the requirements of Applicable Law; (ii) install



landscaping and a sprinkling system on such unimproved Parcel; or (iii) commence or cause to be commenced construction of one or more Buildings upon such Parcel and thereafter diligently pursue such construction to completion. Except as provided in **Section 6.1.12** below, each owner of any unimproved Parcel shall maintain its Parcel in a clean condition, free from weeds, pending construction of and Building thereon and shall use reasonable efforts to minimize the creation and distribution of dust that may detrimentally affect the Commercial Center.

2.7 **Casualty and Condemnation.** In the event all or any portion of any Building located within the Commercial Center is (i) damaged or destroyed by fire or other casualty, or (ii) taken or damaged as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, the Owner of such Building shall promptly restore or cause to be restored the remaining portion of such Building or, in lieu thereof, shall remove or cause to be removed the damaged portion of such Building together with all rubble and debris related thereto. All portions of Parcels on which a restoration or replacement of a Building has not commenced within ninety (90) days following a casualty or condemnation shall be graded or caused to be graded by the Owner thereof to the level of the adjoining Commercial Center Land and in such a manner as to not adversely affect the drainage of the Commercial Center or any portion thereof, and shall be covered by a one inch asphalt dust cap (or a compacted gravel base) or landscaped (including a sprinkling system). In the event any Common Facilities are damaged or destroyed by fire or other casualty or taken or damaged as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, any insurance or condemnation proceeds or awards and any needed additional funds of the Owner shall be used by the Owner to restore the remaining portion of the Common Facilities so that they are in operative condition.

### 3. **PERMITTED USES AND RESTRICTIONS ON USE**

3.1 **Permitted Uses.** Permitted uses of any portion of the Commercial Center and any Floor Area located therein, shall be limited to those uses permitted or not otherwise prohibited by this Declaration and as otherwise permitted by Applicable Laws of the City.

3.2 **Exclusive Uses.** Each Parcel may be subject to its own exclusive uses or rights as stated in written lease agreements by or between Owners and Authorized Occupants, and subject to written approval from Declarant.

3.3 **Prohibited Uses.** Each Parcel may be subject to its own Prohibited Uses as stated in this Declaration or other written documentation.

3.4 **Enforcement.** If the provisions of this Article shall be breached or shall be threatened to be breached, the Association, any Owner, or Authorized Occupant shall be entitled to injunctive relief or any other appropriate remedy at law or in equity whether provided by statute or otherwise, as such elect.

### 4. **EASEMENTS**

4.1 **Ingress, Egress, and Parking.** Each Owner, as grantor, hereby reserves to itself and grants to each other Owner, for the benefit of the Benefitted Parties and each Parcel, a non-exclusive easement for ingress and egress by vehicular and pedestrian traffic and vehicular parking upon, over and across that portion of the Common Facilities located on each Owner's

Parcel(s), except for those areas devoted to Service Facilities and not designated as part of the Common Facilities reserved for the use of all Authorized Occupants. The rights of ingress, egress and parking set forth in this Section shall apply to the Common Facilities for each Parcel.

#### 4.2 **Utility Lines and Facilities.**

4.2.1 **Grant.** Each Owner, as grantor, hereby reserves to itself and grants to each other Owner, for the benefit of the Benefitted Parties and each Parcel, as grantees, a non-exclusive easement under, through and across the portion of the Common Facilities located on each Owner's Parcel(s) which are not usable for building locations under Applicable Laws of the City for the installation, operation, maintenance, repair and replacement of storm water drainage systems or structures, water mains, storm and sanitary sewers, water sprinkler system lines, telephones, electrical conduits or systems, gas mains and other public or private utilities (the improvements, structures, mains, pipes, lines, conduits and components collectively referred to as the "**Utility Facilities**").

4.2.1.1 All Utility Facilities shall be installed and maintained below ground level or surface of such easements except for ground-mounted electrical transformers and such other components as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration, or expansion of any Buildings or improvements located in the Commercial Center).

4.2.1.2 The installation, operation, maintenance, repair, and replacement of such Utility Facilities shall not unreasonably interfere with the use of the improved Common Facilities or with the normal operation of any business in the Commercial Center. The grantee shall bear all costs related to the installation, operation, maintenance, repair, and replacement of such Utility Facilities, shall repair to the original specifications any damage to the Common Facilities resulting from such use, and shall provide as-built plans for all such Utility Facilities to the Association and the Owner of all Parcels upon which such Utility Facilities are located, within thirty (30) days after the date of completion of construction of the same.

4.2.2 **Relocation.** At any time and from time to time, the Owner of a Parcel shall have the right to relocate on its Parcel any Utility Facilities installed pursuant to the foregoing grant of easement which is then located upon the Parcel of such Owner, provided that any such relocation (i) shall be performed only after sixty (60) days' notice of the Owner's intention to undertake the relocation shall have been given to the Association, to the Declarant, and to the Owner of each Parcel served by the Utility Facilities to be relocated, (ii) shall not unreasonably interfere with or diminish utility service to the Parcels serviced by the Utility Facilities, (iii) shall not reduce or unreasonably impair the usefulness or function of the Utility Facilities, (iv) shall be performed without cost or expense to the Owner, the Association, or Authorized Occupant of any other Parcel (unless otherwise agree in writing in advance by the parties), and (v) shall provide for the original and relocated area to be restored to the original specifications. The Owner performing such relocation shall provide as-built plans for all such relocated Utility Facilities to the Association and the Owners of all Parcels served by all such Utility Facilities within thirty (30) days after the date of completion of such relocation.

4.2.3 **Additional Grants.** Each Owner agrees to grant such additional easements as are reasonably required by the Association or any public or private utility for the purpose of providing utility services and installing Utility Facilities described herein provided such easements are not otherwise inconsistent with the provisions of this Declaration, and provided that such easements do not unreasonably interfere with or limit the use of the subject Parcels.

4.3 **Signs.** Each Owner, as grantor, hereby grants to the other Owners and to the Association, as grantees, for the benefit of each Parcel belonging to the other Owners and the Authorized Occupants of a Building located upon each such Parcel, an easement under, through and across the Common Facilities of each Owner's Parcel(s) for the installation, operation, maintenance, repair and replacement of the free-standing signs, and all utility lines and facilities appurtenant thereto, referred to in **Section 5.3** of this Declaration. Except where otherwise specifically stated herein to the contrary, the grantee(s) shall bear all costs related to the installation, maintenance, repair and replacement of its free-standing sign and appurtenant facilities, shall repair to the original specifications any damage to the Common Facilities resulting from such use and shall provide as-built plans for all such facilities to the Association, to the Declarant and to the Owners of all Parcels upon which such facilities are located within thirty (30) days after the date of completion of construction of the same.

4.4 **Building Encroachments.** Each Owner, as grantor, hereby grants to the other Owners, as grantees, for the benefit of each Parcel belonging to the other Owners and its Authorized Occupants, as applicable: (i) an easement for any portion or component of any Building Improvement located on any such Parcel which may unintentionally encroach into or over the adjoining Parcel(s) by not more than six (6) inches; (ii) an easement for any footings, foundations, piers, piles, or grade beams of any Building Improvement located on any such Parcel which may intentionally or unintentionally encroach into or over the adjoining Parcel(s) provided the easement for footings, foundations, piers, piles, grade beams does not exceed three (3) feet; provided that the encroachments specified in (i) and (ii) above do not diminish the buildable area of the servient parcel. The easements granted in this Section shall survive the termination of this Declaration and shall last so long as the encroaching Building is standing following its initial construction or following its reconstruction where such Building is substantially restored to its prior condition following a casualty or condemnation.

## 5. OPERATION OF COMMON FACILITIES

### 5.1 Parking.

5.1.1 **Charges.** There shall be no charge for parking in the Common Facilities without the prior written Consent of the Owners, or unless otherwise required by law.

5.1.2 **Parking Spaces.** Each Parcel located within the Commercial Center shall at all times contain the Minimum Parking Count.

5.2 **Employee Parking.** The employees, contractors, agents, officers, and partners of all Owners and Authorized Occupants of the Commercial Center shall use only the Employee Parking Areas for parking as shall be designated as such by the Owners from time to time. With

the Consent of the Owners, an Owner may from time to time designate, expand and/or relocate the Employee Parking Areas in the Commercial Center by written notice to all Owners and Authorized Occupants within the Commercial Center. The authority herein granted shall be exercised in such manner as not to discriminate against or create any unreasonable burden upon any Owner or Authorized Occupant of the Commercial Center.

### 5.3 Signs.

5.3.1 **Location, Design, Content, and Costs.** Subject to compliance with Applicable Law, the approval of the Declarant during the Declarant Control Period and thereafter the Consent of the Owners with respect to location, size and design, which consent shall not be unreasonably withheld, conditioned or delayed: (i) Center Signs shall be erected and maintained in the Commercial Center for the benefit of all of the Owners and Authorized Occupants, and (ii) Pad Monument Signs for the benefit of Authorized Occupants, may be placed on each of the Pads, subject to the following terms and conditions:

5.3.1.1 The cost of constructing, maintaining, repairing, and replacing the Center Signs (excluding electrical hookup to the Common Facilities meter) shall be paid by the Owners or Authorized Occupants entitled to display designations (other than the Commercial Center designation) thereon in the proportion that the total square footage of each occupant designation or designations on such Center Signs bears to the total square footage of all designations entitled to be displayed on such Center Signs. The cost of constructing, maintaining, repairing and replacing the Pad Monument Signs shall be paid by the Owner of the Pad on which the sign is located or if a Pad Monument Sign is utilized by the Owners of more than one Pad, then by the Owners of such Pads as they shall agree; provided, however, that nothing contained herein shall prevent the Owner of a Pad from shifting such expense to the Authorized Occupants of the Pad. Notwithstanding, Declarant shall have the unrestricted right to place directional signs throughout the Commercial Center.

5.3.1.2 Each Person displaying a designation on the Center Signs shall supply and maintain its own sign fascia and can. The design of the Center Sign structure(s) shall be consistent with the fascia used and selected by the Owners.

5.3.1.3 The Center Signs shall be maintained in a customary and first-class Commercial Center standard in the area of the Commercial Center.

5.3.1.4 Each Pad Monument Sign may advertise only the business of the Authorized Occupants located upon such Pad or Pads for which Pad Monument Sign was installed.

5.3.2 **Restrictions and Types.** Other than as set forth in this Section 5.3, there shall be no other signs, except directional signs and signs on Buildings, in the Commercial Center. All exterior Building signs on all Buildings in the Commercial Center shall be restricted to identification of the business or service/product located or provided therein. No exterior Building sign shall be placed on penthouse walls, extend above the Building silhouette line or be painted on the exterior Building surface, without the approval of the Declarant during the Declarant Control Period and thereafter without the Consent of the Owners. No exterior

Building or free-standing sign shall utilize flashing, moving or audible lights or appurtenances, or LED signs and displays with scrolling messages and changing images, unless approved by the Consent of the Owners.

**5.4 Protection of Common Facilities.** Each Owner and Authorized Occupant shall have the right to take such reasonable steps as it deems necessary to prevent those Persons not authorized by this Declaration or other easements or similar rights of record in the offices of the Recorder from using the Common Facilities for ingress, egress and parking, provided such steps do not deprive any Owner or Authorized Occupant of the substantial benefit and enjoyment of the Commercial Center and further provided that each Owner and Authorized Occupant shall be given thirty (30) days' prior written notice of such steps. Such steps may include, without limitation, the construction of fences, walls or barricades along the perimeter boundary lines of any portion of the Commercial Center excluding areas adjacent to public streets and further excluding any common boundary line between of any Parcels located within the Commercial Center

**5.5 Exterior Sales.** No portion of the Common Facilities may be used by an Authorized Occupant of a Parcel for the display and/or sale of merchandise and services, except as follows:

**5.5.1 Sidewalks.** An Owner or Authorized Occupant of a Parcel may use the sidewalks directly in front of the Building erected on such Parcel for the sale of merchandise and services, provided that all such merchandise and services exhibited for sale (and the sidewalk, during periods in which such merchandise or services are being displayed) must be kept in a safe, neat, clean and attractive manner, including sweeping and removal of snow, ice or other debris, and a reasonable pedestrian passage corridor must at all times be maintained through such area.

**5.5.2 Seasonal Sales Area.** An Owner or Authorized Occupant of a Parcel shall be permitted to use the Seasonal Sales Area approved for Parcel for seasonal sales of merchandise from time to time, but not continuously, provided that (i) such sales shall be permitted by Applicable Laws and shall not interfere with the free movement of vehicular traffic within the Commercial Center or with access to or from the Commercial Center, or any part thereof, to or from any public right-of-way; (ii) such Owner or Authorized Occupant maintains the Seasonal Sales Area in a safe, neat and clean condition including sweeping and removal of snow, ice or other debris, to the extent such maintenance is required during periods in which such Owner or Authorized Occupant is making use of the Seasonal Sales Area or to the extent such use by the Authorized Occupant prohibits the Association from fulfilling Common Facilities Maintenance; (iii) sales within the Seasonal Sales Area shall be limited to not more than one hundred twenty (120) days duration in each calendar year; (iv) all booths, stands, displays and other structures erected in connection with such sales shall be promptly removed by the Owner or Authorized Occupant of a Parcel upon termination of said sales activities; and (v) the Common Facilities shall be promptly repaired to their condition immediately prior to their use for seasonal sales at the sole cost and expense of the Owner or Authorized Occupant of such Parcel.

5.5.3 **Obligation for Compliance.** For purposes of this **Section 5.5**, the Owner and the Authorized Occupant of a Parcel shall remain responsible and liable to see that any external sales conducted pursuant to this **Section 5.5** comply with the requirements set forth herein.

5.6 **Common Lighting.** If deemed advisable by the Declarant during the Declarant Control Period and thereafter upon the Consent of the Owners, Common Lighting shall be provided during those dawn, dusk and nighttime hours that fall between one-half hour before and one-half hour after the hours of standard operation of the Commercial Center (“**Common Lighting Hours**”). During all other dawn, dusk and nighttime hours, the Common Lighting may be reduced to three (3) foot candles. However, Common Lighting need not be maintained in the event of failure of power, restrictive governmental law or regulations, riots, insurrection, war, act of God, or other reason of a like nature not the fault of the party responsible for Common Lighting, in which instance performance of the foregoing covenant shall be excused. Notwithstanding the foregoing, the Owner of any Parcel may require the Association to light the Common Facilities on its Parcel (and other Common Facilities on adjacent Parcels which may not be operated separately from those on the Parcel of the requesting Owner) beyond Common Lighting Hours, provided such Owner shall pay the cost thereof, as reasonably determined by the Association; provided that, in the alternative, such Owner may, at its sole option and cost, cause the Common Lighting on its Parcel to be separately metered and billed to the Owner or Authorized Occupant of such Parcel.

5.7 **Flag.** The Association shall have the exclusive right in the Commercial Center, subject to compliance with all Applicable Laws, to erect and maintain, at its sole expense, a permanent, exterior flagpole within the Commercial Center, and as approved by Declarant, and, without limitation, to display the USA national flag, Utah state flag, and/or City flag, thereon as it deems appropriate. Nothing herein shall preclude any other Owner or Authorized Occupant from displaying the USA national, Utah state, or City flags in any other manner other than a permanent exterior flagpole.

## 6. **MAINTENANCE AND REPAIR OF COMMON FACILITIES.**

6.1 **Operation of the Common Facilities.** The Common Facilities shall be operated and maintained in compliance with all Applicable Laws, the provisions of this Declaration, and any applicable easement agreement or recorded document, in a safe, sound and clean condition, free of rubbish, debris, or other hazards to Persons using the same. Except as set forth herein, the Association shall be responsible to operate and maintain all Common Facilities improvements and to repair and replace the same with materials at least equal to the original quality of the materials being repaired or replaced, so as to maintain the architectural and aesthetic harmony of the Commercial Center as a whole. This operation, maintenance and repair (i) shall be performed and carried out promptly by the Association (through its Manager if one is retained), or contractors retained for such purposes and in a first class and workmanlike manner, quality and condition comparable to that of first class Commercial Centers of comparable size and nature located in the same geographic area as the Commercial Center and in an equitable and non-discriminatory manner among the various Parcels; (ii) shall be referred to herein as the “**Common Facilities Maintenance**”; and (iii) shall include but not be limited to the following:

6.1.1 **Drive and Parking Areas.** Maintaining, repairing, cleaning, and replacing all blacktop, paved surfaces, and curbs (excluding the drive-through portions) in a smooth and evenly covered condition, and such work shall include, without limitation, sweeping, restriping, resealing, and resurfacing. For the purpose of this Section, an overlay of the drive and parking areas shall be considered a maintenance item.

6.1.2 **Debris, Refuse, and Trash Removal.** Periodic removal of all litter, filth, refuse, ice, and snow, including sweeping to the extent necessary to keep the Common Facilities in a first-class, clean and orderly condition. All sweeping shall be done at appropriate intervals during such times as shall not unreasonably interfere with the conduct of business or use of the Common Facilities by Persons intending to conduct business with Authorized Occupants of the Commercial Center. The Owner or Authorized Occupant, as such parties shall agree, of each Parcel, shall be responsible for removal of the trash generated from the use of such Parcel at its/their own expense, and shall do so in such manner as shall keep all Parcels in a first-class, clean, and orderly condition.

6.1.3 **Signs and Markers.** Placing, cleaning, keeping in repair, replacing, and repainting any appropriate directional signs or markers, including any handicapped parking signs, and also the Center Signs, except as otherwise provided in this Declaration with regard to sign fascia and cans which shall be supplied and maintained by the businesses designated thereon. The Owner(s) of each Pad shall pay the cost of so maintaining the Pad Monument Signs located on or used for the benefit of the Owner's Pad.

6.1.4 **Common Lighting.** Maintaining, cleaning and replacing Common Lighting facilities, including lamps, ballasts and lenses.

6.1.5 **Landscaped Areas.** Maintaining all landscaped areas, including landscaping and planters adjacent to exterior walls of Buildings, in an attractive and thriving condition, and replacing shrubs and other landscaping as necessary; provided, however, that if any Authorized Occupant requires "special" landscaping (i.e., beyond the type of landscaping originally installed, if any, by the Declarant), the cost of installation, replacement and maintenance of such special landscaping shall be borne solely by such Owner or Authorized Occupant and shall not be included in Operating Costs.

6.1.6 **Common Utilities.** Maintaining, cleaning, replacing, and repairing any and all common utility lines, including any sprinkling systems and Common Facilities water lines; and payment of all electrical, water and other utility charges or fees for service furnished to such Common Facilities, including lighting for the Center Signs and Common Lighting.

6.1.7 **Obstructions.** Keeping the Common Facilities free from any obstructions including those caused by the sale or display of merchandise, unless such obstruction is permitted under the provisions of this Declaration.

6.1.8 **Sidewalks.** Maintaining, cleaning, and replacing of all non-store front sidewalks, excluding those adjacent and contiguous to Buildings located within the Commercial Center. Sidewalks shall be cleaned and swept at appropriate intervals during such time as shall not interfere with the conduct of business or use of the Common Facilities.

6.1.9 **Traffic.** Regulation of traffic at entrances and exits to the Commercial Center and within the Commercial Center as conditions reasonably require in order to maintain an orderly and proper traffic flow. Notwithstanding anything to the contrary, each Owner in the first instance and each Authorized Occupant, if required by written agreement with the Owner, shall maintain and repair, at its sole cost, in a clean, sightly, and safe condition any Service Area intended to service a Building located upon such Owner's Parcel.

6.1.10 **Insurance.** Obtaining and paying premiums for insurance coverage on the Common Facilities as provided in **Section 7.5**.

6.1.11 [Intentionally Omitted.]

6.1.12 **Undeveloped Parcel Maintenance.** At its expense, each Owner of an undeveloped Parcel shall maintain its Parcel in accordance with the provisions of **Section 2.6.5** and the Association shall have no obligation to maintain the same; provided, however, that if an asphalt cap or landscaping is installed thereon pursuant to **Section 2.6.5**, then thereafter the Association shall perform Common Facilities Maintenance thereon suspended for periods of construction of a Building and related improvements.

6.2 **Manager.** Any Person retained by the Association and charged with the obligation for the operation and maintenance of the Common Facilities or some portion thereof from time to time, as an agent of the Association, shall be referred to herein as the "**Manager**" and shall be selected and operate according to the following terms and conditions:

6.2.1 **Initial Manager.** Initially, Declarant or its affiliate shall act as the Manager. If the Declarant declines to act as the Manager, the Association shall enter into a contract with a qualified Manager.

6.2.2 **Replacement of the Manager.** During the Declarant Control Period, Declarant shall have the right to replace and appoint the Manager. After the Declarant Control Period, the Association shall have the right to appoint and replace the Manager. All agreements between the Association and the Manager shall provide that the Manager may be terminated for cause or upon such other terms as the parties shall agree.

6.2.3 **Cure of Manager's Default.** Notwithstanding any other provision of this **Section 6.2**, and in the absence of notice and cure provisions within an agreement between the Association and the Manager, any Owner may require that the Association give the Manager notice of termination for cause resulting from (a) the Manager's failure to do or cause to be done the Common Facilities Maintenance promptly and in a first-class and workmanlike manner, or (b) the Manager's failure to perform any other obligation under the terms of its agreement. Unless a cure period is required by the terms and conditions of the agreement between the Association and the Manager, the Association, with the may provide the Manager with a period of ten (10) days after the date of the written notice in which to cure such default (or, if such default is not reasonably capable of cure within a ten (10) day period, then within a reasonable period of time provided the Manager gives notice of its intent to cure and thereafter diligently pursues such cure to completion). In the event of continued failure to maintain Common Facilities and if the Association is not able to obtain services from others necessary to resolve



any emergency maintenance item, if an Owner is required to perform any emergency maintenance after first notifying the Association, the Association shall reimburse the such Owner for the reasonable amounts expended by it or them in performing or having others perform such emergency Common Facilities Maintenance not performed by the Association or its Manager as specified herein above.

6.2.4 **Resignation.** A Manager may resign only according to the terms of its agreement with the Association, or if the initial Manager is the Declarant, upon at least sixty (60) days' advance written notice to the Owners. A replacement Manager shall be replaced as provided in Section 6.2.2 above. The replacement Manager may, but need not be, an Owner or its Affiliate.

6.2.5 **Minimizing Operating Costs.** The Association shall use their best efforts to retain a qualified Manager at a competitive price. Each Manager shall be charged with the responsibility of performing the Common Facilities Maintenance on behalf of the Association in such a manner as shall keep Operating Costs at a reasonable minimum while at the same time achieving the level of maintenance as required by this Declaration. Nothing herein shall preclude a Manager from employing its own personnel to perform parking lot sweeping, snow removal, refuse removal or other like actions for which a Manager incurs Operating Costs, and the Manager shall be entitled to collect for such services its agreed upon compensation as specified in the agreement between the Association and the Manager.

6.3 **License to Carry Out Intent of this Declaration.** Each Owner hereby grants to the Association, its agents and employees, a license to enter upon its Parcel to discharge the duties imposed upon the Association as specified in the Declaration, to perform the Common Facilities Maintenance and to otherwise carryout the obligations and directives of the Owners as specified in this Declaration.

6.4 **Exclusion.** Declarant shall have the right but not the obligation to allow Owners of the Parcels to maintain their own Parcels independently as long as Declarant, the Association, and such Owners enter into supplementary recorded agreements obligating such Owners to (a) comply with the maintenance standards hereof, and (b) pay a reasonable contribution towards the maintenance of the Common Facilities on the rest of the Commercial Center (such as access drives) used by such Owners. In such cases, the Owners shall not be required to otherwise share in costs of the Common Facilities except as may otherwise be agreed between the same and Declarant.

## 7. COMMON FACILITIES OPERATING COSTS

7.1 **Common Facilities Budget.** A budget for Common Facilities Operating Costs shall be formulated and made effective in the following manner, as applicable:

7.1.1 **Submission for Review.** For calendar year 2022, Declarant shall establish a budget for the balance of the year for which each present Owner will be proportionately responsible. At least sixty (60) days prior to the beginning of each succeeding calendar year, the Association shall submit to the Owners an estimated budget ("**Common Facilities Budget**") for the projected Operating Costs, Management Fee and Common Facilities

Operating Costs for the ensuing calendar year (or, in the case of an initial partial calendar year, that ensuing partial year). The Common Facilities Budget shall identify separate cost estimates for major categories in accordance with good Commercial Center management practices.

7.1.2 **Bids.** In determining the Common Facilities Budget, the Association shall submit major items of Common Facilities maintenance work for competitive bid to responsible bidders. Major items shall be deemed single maintenance or repair items that cost Ten Thousand and 00/100 Dollars (\$10,000.00) or more in the aggregate for any calendar year. Upon an Owner's request, the names of the bidders and their respective bids shall be furnished to such Owner together with the Common Facilities Budget, and the contract shall be awarded to the low bidder unless the Association shall otherwise reasonably determine.

7.1.3 **Approval by Owners.** Beginning in calendar year 2022, the Owners shall give written notice to Association of their approval or disapproval of the Common Facilities Budget before the later of December 10th or thirty (30) days after receipt of such Budget, which approval shall not be unreasonably withheld. Failure to give notice of approval or disapproval shall be deemed to be approval. If an Owner timely objects to the Common Facilities Budget or any element thereof by specifying such objection and the reason therefor, the Common Facilities Budget shall not be deemed approved until such objection is resolved. The Association and the objecting Owner shall seek to resolve such objection between them. If the objection relates to any bid(s) and the Owner requests that such item(s) be re-bid, the Association shall do so, and the lowest responsible bid (as determined by the Association) in each category of the previous and new bids shall be accepted. If the objecting Owner and the Association cannot agree, the matter shall be referred to all Owners for vote and if Consent of Owners is obtained, the Common Facilities Budget shall be deemed approved. If the Consent of Owners cannot be obtained, the matter shall be referred to binding arbitration in accordance with the provisions of Section 15.4 of this Declaration. Until a new Common Facilities Budget is approved, the last approved Common Facilities Budget shall be binding upon the Owners and shall be utilized for next calendar year until a new Common Facilities Budget is approved.

7.1.4 **Implementing Budget.** After the Common Facilities Budget is approved, the Association shall contract with the approved bidders, pay all of the Operating Costs, and use its reasonable efforts to perform the Common Facilities Maintenance in accordance with the Common Facilities Budget.

7.1.5 **Emergency Repairs.** Notwithstanding the foregoing, the Association shall have the right to make emergency repairs to the Common Facilities to prevent injury or damage to Person or property or to prevent disruption in the use of the Common Facilities, provided that the Association shall nevertheless advise the Owners and Authorized Occupants of such emergency condition as soon as reasonably possible, including any corrective measure(s) taken and the cost thereof. If the cost of said emergency action exceeds Five Thousand and 00/100 Dollars (\$5,000.00), the Manager may charge a special assessment to the Owners, together with evidence supporting such, and the parties responsible for payment of Operating Costs shall pay their Proportionate Share thereof within thirty (30) days. If the emergency cost is less than the amount collected, the excess shall be refunded to the parties making the payment in proportion to their original obligations or credited to future obligations, as is deemed reasonably appropriate by the Owners.

7.1.6 **Unforeseen Items.** The Association shall be entitled to reimbursement of actual expenses for any unforeseen non-emergency items not included in the Common Facilities Budget without first obtaining each Owner's approval so long as the cumulative amount of such items does not exceed Twenty Thousand and 00/100 Dollars (\$20,000.00) in any calendar year.

7.1.7 **Disagreement over Unbudgeted Items.** In the event of a good faith disagreement between the Association and any Owner over the amount of or validity of any unbudgeted Common Facilities Charge billed to such Owner by the Association, such Owner shall pay such amount under protest, and such Owner's sole remedy shall be to refer such disagreement to arbitration in accordance with **Section 15.4** of this Declaration.

7.1.8 **Amendment to Common Facilities Budget.** Nothing herein shall preclude and amendment to a previously approved Common Facilities Budget provided that such amendment is adopted according the procedures of this **Section 7.1**.

7.2 **Operating Costs.** The following expenses shall be referred to as "**Operating Costs**":

7.2.1 **General.** Costs for performing Common Facilities Maintenance, as described in **Section 7.1**, and Common Lighting costs as described in **Section 5.6** above;

7.2.2 **Employees.** The expenses (including without limitation hourly compensation paid to or on behalf of employees, and based upon competitive hourly rates) of the Manager as specified in the Manager's Agreement for work done at the Commercial Center in performing the Common Facilities Maintenance;

7.2.3 **Third Parties.** The expenses incurred to unrelated third parties in performing the Common Facilities Maintenance;

7.2.4 **Liability Insurance.** Commercial general liability insurance premiums associated with the operation and maintenance of the Common Facilities in an amount of not less than Two Million and 00/100 Dollars (\$2,000,000.00) as provided in **Section 7.5** below and casualty insurance on the Common Facilities;

7.2.5 **Real Estate Taxes.** Real Estate Taxes on the Commercial Center, unless assessed against each Parcel and paid separately pursuant to **Article 9** below;

7.2.6 **Management Fees.** Management fees incurred pursuant to the provisions of Section 7.4.1.

7.2.7 **Reserves.** Reserves for capital expenses as provided in **Section 7.3.2** below.

7.3 **Adjustment to Operating Costs.** The Operating Costs shall not include or shall be adjusted to not include the following:

**7.3.1 Exclusions.** There shall not be included in the Operating Costs the following: (i) costs of original construction (as distinguished from maintenance and repair) of the Common Facilities or any additions or expansion thereof; (ii) the costs of correcting defects in the design or construction of the Common Facilities, or repair and/or replacement of any of the original materials or equipment required as a result of such defects; (iii) repairs or other work made necessary by fire or insurable risk or the exercise of the right of eminent domain of Common Facilities, to the extent compensated thereunder; (iv) expenses incurred associated with the build-out, renovation, or redecoration of any portion of Common Facilities; (v) any items for which the Association, Manager, Owners or Declarant is/are reimbursed or compensated (excluding assessments), including, without limitation, contractors' warranty or right of reimbursement for Common Facilities; (vi) expenses in connection with services or other benefits of a type which are not provided to all the Owners or for the benefit of all Parcels, but which are provided only to or for one or a few Owners, or fewer than all of the Authorized Occupants of the Commercial Center but nothing herein precludes the Association from allocating such items to such Owners and including such Owners' share thereof with the other obligation of such Owners; (vii) costs, fines, penalties, or fees assessed due to a violation of any federal, state or local law, statute or ordinance, or any rule, regulation, judgment or decree of any governmental rule or authority, including without limitation any Environmental Laws or the remediation of any Hazardous Substances unless the same is attributable to the Association; (viii) [Intentionally Omitted]; (ix) any service, administration, management, or overhead costs or charges in addition to the actual cost of maintenance (except that the Management Fee or other charges due a Manager pursuant to executed management agreement, may be charged to Owners in accordance with the provisions of **Sections 7.2 and 7.4**); (x) the costs associated with the Manager's employees, such as wages, salaries, bonuses, benefits, or employment taxes, except to the extent such employees actually perform Common Facilities Maintenance and other services specified in an executed management agreement, in the Commercial Center as documented by the Manager; (xi) interest or payments on any of Declarant's or an Owners' construction or permanent financing for any Parcel located in the Commercial Center or ground lease payments; (xii) legal and leasing fees or commissions related to the development of, or the leasing or enforcement of leases or other similar agreements in the Commercial Center; or (xiii) costs required to be paid by individual Owners, as described in **Section 2.6.5, Section 6.1.12 and Section 13**.

**7.3.2 Capital Expense Reserve.** In the event the Association anticipates that any single item of future Common Facilities Maintenance of a capital improvement is expected to cost in excess of Fifty Thousand and 00/100 Dollars (\$50,000.00) as reasonably estimated (including but not limited to asphalt resurfacing/repaving, slurry sealing, patching and crack sealing, and maintenance and repair to curb, gutter, sidewalk or adjoining streets required by a municipal authority or assessment district); and has a useful life exceeding three (3) years, the Association is authorized to include within the Operating Costs and the Annual Common Facilities Budget, a proportionate share of such estimated future cost of such capital improvement, such proportion equal to the future estimated cost divided by the remaining estimated useful years of the existing capital improvement.

**7.3.3 Operating Reserve.** The Association may also include as an Operating Cost a reasonable assessment to create an operating reserve not to exceed ten percent (10%) of all other Operating Costs.

#### 7.4 Common Facilities Charge.

7.4.1 **Determination.** Each Owner shall pay to the Association its Proportionate Share of the Operating Costs (as calculated pursuant to **Section 7.4.2**) which Operating Costs shall include a management fee equal to the amount required by the terms of the management agreement between the Association and the Manager (the “**Management Fee**”) not to be less than **\$2,000.00** monthly subject to the following terms and conditions:

7.4.1.1 [Intentionally Omitted.]

7.4.1.2 There shall be no Management Fee payable to Declarant or an Owner acting as the Manager during any period of time during which such Manager delegates or contracts out substantially all of the management of the Common Facilities Maintenance; provided, however, that notwithstanding the foregoing, if the Declarant or Owner acting as the Manager engages one of its affiliates to manage the Common Facilities Maintenance, then either such Manager or the affiliate, but not both, may collect the Management Fee.

7.4.1.3 The amount due from each Owner pursuant to this Section is referred to as the “**Common Facilities Charge.**”

7.4.1.4 In the event of a disagreement between Association, and an Owner over the amount of or validity of any Common Facilities Charge billed to such Owner by the Association, the Owner shall have the right to protest said amount in controversy and to refer such matter to arbitration in accordance with **Section 15.4** of this Declaration. If not included within an approved Common Facilities Budget, no single non-budgeted item of Common Facilities Maintenance in excess of Twenty Thousand and 00/100 Dollars (\$20,000.00) other than an emergency repair shall be made without the prior Consent of Owners.

7.4.2 **Payment.** Based upon the Common Facilities Budget approved as provided in Section 7.1, the Association shall notify each Owner in writing of the amount of its monthly installment of the Common Facilities Charge for the applicable fiscal period. Each Owner shall pay, or cause its Authorized Occupants to pay, the Owner’s Common Facilities Charge as specified in such notice monthly in advance (on or before the first day of each month). Within sixty (60) days following the close of each calendar year, the Association will furnish to each Owner and where applicable its Authorized Occupants, a statement of the actual amount of Operating Costs, the calculation of each Owner’s Proportionate Share, and such Owner’s Common Facilities Charge based on actual expenditures for the previous calendar year. If the actual amount of an Owner’s Common Facilities Charge is less than the total amount paid by such Owner (or others for such Owner’s benefit) for such period, and such amount is more than one month’s budgeted Common Facilities Charge to such Owner, the excess shall be refunded to such Owner (and Owner shall refund it to the party entitled thereto) together with said annual statement; otherwise the amount will be applied to the next month’s Common Facilities Charge. If the actual amount of an Owner’s Common Facilities Charge exceeds the amount paid by such Owner (or for its benefit) for such period, the Owner shall pay, or cause the party obligated therefore to pay, to the Association the amount shown as due thereon within thirty (30) days following the receipt of the Association’s statement. If at any time or times, it reasonably appears

to the Association that the amount of such Owner's Common Facilities Charge for the current calendar year will vary from the amount set forth in the Association's initial notice, the Association may, by written notice to the Owner, revise the monthly installment for such fiscal period, and subsequent monthly payments by the Owner (or its Authorized Occupant) for such year will be based upon the revised estimate.

**7.4.3 Audit.** The annual statement of Common Facilities Charges shall include reasonable detail as to each Operating Cost incurred throughout the year. Upon request by any Owner, the Manager shall provide such requesting Owner reasonable additional documentation requested by such requesting party supporting the annual statement. Each Owner shall, at its sole cost and expense, have the right to audit the Association's records relating to Operating Costs (including Management Fees) and Common Facilities Charges within two (2) years after receipt of the annual statement upon ten (10) days' written notice to the Association. If such audit should reveal an overstatement of actual expenses by five percent (5%) or more, the Association shall pay for the reasonable cost and expenses of such audit and refund any excess amount paid by the Owner within thirty (30) days after written notice thereof. Any understatement or overstatement discovered by such audit shall be adjusted as provided in Section 7.4.2. The cost of any such Audit imposed upon the Association shall be deemed an Operating Cost.

**7.4.4 Commencement of Charges.** Each Owner of a Parcel shall become obligated to pay and shall pay all its Proportionate Share of Operating Costs commencing at such time as the date of the transfer of ownership to the Owner. All payments of an Owner's Proportionate Share shall be made in accordance with the terms and conditions of this Declaration and shall be effective the date of recording of this Declaration, and shall not be retroactive.

**7.5 Common Facilities Liability Insurance.** The Association shall obtain and maintain for the benefit of the Owners and other parties identified herein, a policy of commercial general liability on an "occurrence basis" against claims for bodily injury, personal injury and property damage occurring on, in or about the Commercial Center and the adjoining streets, sidewalks and passageways, with a combined single limit coverage in the minimum amount of Two Million and 00/100 Dollars (\$2,000,000.00) and with broad form contractual liability coverage. Such policy is intended to provide secondary coverage to the liability policy that each Owner is required to obtain pursuant to Section 8.1. In the event such a policy is not available in such coverage amount, such policy may be supplemented with an "umbrella" policy to achieve such coverage amount. The policy shall endorse the Association, the Declarant, the Owners, the Manager, and Authorized Occupants and their respective officers, directors, managers, agents, and any buyer as additional insureds. Each Owner or Authorized Occupant which maintains a primary liability insurance coverage, shall cause its insurance carrier to waive any rights of subrogation against the Association and its managers and agents. The Association's policy of liability insurance shall be issued by an insurance company with an AM Best rating of at least A- authorized to do business in the State of Utah and shall contain an endorsement requiring thirty (30) days' written notice to any additional insured before cancellation or change in the coverage, scope or amount of the policy. The Association agrees to furnish the Owners, the Declarant, and Authorized Occupants certificates evidencing the insurance coverage required under this Declaration, upon written request referencing this

Section. If the limits of the Association's liability insurance and/or deductibles become inadequate due to the changes in overall price level or the size of claims being experienced, the Association and the Owners shall agree upon new limits and deductibles based on Commercial Center industry practices for similarly situated and comparable Commercial Centers.

## 8. **INSURANCE FOR OWNERS**

8.1 **Liability Insurance.** Each Owner, at its sole cost and expense, shall obtain and maintain, or cause its Authorized Occupant to obtain and maintain, from the time development of its respective Parcel occurs, a policy of commercial general liability on an "occurrence basis" against claims for bodily injury, personal injury and property damage occurring on, in or about the Commercial Center (including but not limited to the Buildings, the Common Facilities, and the adjoining streets, sidewalks and passageways, with such insurance to be in single limit coverage in the minimum amount of Two Million and 00/100 Dollars (\$2,000,000.00) and with a deductible not in excess of Ten Thousand and 00/100 Dollars (\$10,000.00). In the event such a policy is not available in such coverage amount, such policy may be supplemented with an "umbrella" policy to achieve such coverage amount. The liability insurance maintained by each Owner and/or Authorized Occupant shall be primary coverage and non-contributing to the liability insurance maintained by the Association as provided in **Section 7.5**. All such policies of insurance shall be issued by companies with an AM Best rating of at least A- authorized to do business in the State of Utah. Upon request, each Owner agrees to furnish Association certificates evidencing the insurance coverage required under this Section or elsewhere in this Declaration.

8.2 **Commercial Property Insurance.** Each Owner, at its sole cost and expense, shall obtain and maintain a commercial property insurance policy with "causes of loss - special form" covering all of the Building and Common Facilities located on its Parcel, in an amount equal to no less than the full replacement cost thereof, reduced by items such as footings, foundations and other concrete improvements.

8.3 **Release/Waiver of Subrogation.** Whenever (i) any loss, cost, damage or expense resulting, directly or indirectly, from fire, explosion or any other casualty, accident or occurrence is incurred by an Owner or Authorized Occupant, and (ii) at the time such Owner or Authorized Occupant is required to be covered in whole or in part by insurance with respect to such loss, cost, damage or expense, then such Owner or Authorized Occupant hereby releases each other Owner, the Association, and Authorized Occupant from any liability such Owner and Authorized Occupant may have on account of such loss, cost, damage or expense, other than acts constituting gross negligence and/or willful misconduct, and shall cause its commercial property insurance carrier to waive any rights of subrogation under such policy.

## 9. **TAXES**

9.1 **Real Estate Taxes.** "Real Estate Taxes" shall mean, with regard to any Parcel: (a) all ad valorem real estate taxes and assessments on the land and Building and Common Area Facilities comprising the Parcel (adjusted after protest or litigation), exclusive of penalties and interest; and (b) the expense of protesting, negotiating or contesting the amount or validity of any real estate taxes, charges or assessments, such expenses to be applicable to the tax calendar

year of the Real Estate Taxes contested, protested or negotiated; provided, however, that the following shall not be regarded as “Real Estate Taxes”: (i) any franchise, corporate, estate, inheritance, succession, capital levy, or transfer tax of an Owner, (ii) any income, profits, sales or revenue tax, (iii) any other tax, charge, or levy upon the Commercial Center unless it is imposed in lieu of Real Estate Taxes, (iv) any assessments against the Commercial Center or any Parcel therein, for the initial costs of development of the Commercial Center, which Declarant elects to be placed against the Commercial Center in the form of an assessment or tax payable over a term of years; i.e., sewers initially installed, connection of utilities or fees for connecting to utilities, installation of required traffic control devices, off-site street work, etc., or (v) any tax or assessment on rent or other charges payable by any occupant of the Commercial Center under any lease and imposed by state, federal, local or any other regulatory agency except (other than a sales tax on rent if imposed) if imposed in lieu of Real Estate Taxes.

9.2 **Tax Obligations.** If the applicable Parcel constitutes a separate tax lot or parcel, each Owner shall pay directly to the taxing authorities prior to the delinquency date for the payment of such taxes, the Real Estate Taxes assessed against the Parcel in which the Owner has an interest, including the portion of the Common Facilities located on such Owner’s Parcel. Each Owner shall have the right to contest the amount or validity of all or any part of said taxes and assessments and to obtain reimbursement from its Authorized Occupants pursuant to agreement with such Authorized Occupants. In the event of such contest, the contesting Person shall prosecute such contest with diligence, shall take such steps as are necessary to avoid a tax sale of its Parcel and, upon final determination of such contest, shall promptly pay when due the taxes and assessments then due. In the event that the Parcels are not separate tax parcels, the Association shall, to the extent it has received payment therefor from the Owners or Authorized Occupants, pay the Real Estate Taxes for all of such Parcels which are not separately assessed and such Real Estate Taxes shall be an element of Operating Costs allocable to and payable by the Owners of such Parcels as set forth in **Article 7**. If any Owner pays real estate taxes separately assessed to its Parcel, such Owner shall not be obligated to contribute toward the real estate taxes of another Parcel or any other portion of the Commercial Center.

## 10. **EFFECT OF SALE OF A PARCEL BY AN OWNER**

10.1 **Sale by Owner.** In the event an Owner sells all or any portion of its interest in its Parcel, such Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the property sold or conveyed by it arising under this Declaration after the effective date of the sale or conveyance of title but shall remain liable for all obligations arising under this Declaration prior to the effective date of the sale or conveyance of title.

10.2 [Intentionally Omitted.]

10.3 **Obligation of New Owner.** An Owner (including, without limitation, any Owner who acquires its interest by foreclosure, trustee’s sale or otherwise) shall be liable for all obligations arising under this Declaration with respect to such Parcel or portion thereof or interest therein after the effective date of the acquisition of title or, as applicable, the receipt of an assignment of an interest.



10.4 **Miscellaneous.** Nothing contained herein shall bar or restrict the operation of **Articles 11 and 12** which permit the filing of a Notice of Lien and foreclosure of the same upon a Parcel for certain defaults under this Declaration. Notwithstanding the foregoing to the contrary, no first priority Lienholder or purchaser at a foreclosure sale of a first mortgage or first deed of trust shall be liable for any obligation arising under this Declaration prior to the sale or conveyance of title pursuant to such foreclosure or deed in lieu thereof.

## 11. **DEFAULTS**

11.1 **Assessments and Other Charges.** In the event any Owner (“**Defaulting Party**”) fails or refuses to pay when due its Assessments, including but not limited to Common Facilities Charge or any other amount owed to the Association, Declarant, or other Owner pursuant to the provisions of this Declaration (a “**Non-defaulting Party**”), which failure is not cured for a period of ten (10) days after receipt of written notice thereof, such failure shall constitute a default and legal action may thereafter be instituted by the Non-defaulting Party against the Defaulting Party, which term shall apply to any Owner in default pursuant to the provisions of this **Article 11** of this Declaration) for such amount plus interest from and after the date said obligation was due and payable at the Default Rate. Furthermore, the Non-defaulting Party shall have a “**Common Facilities Lien**” on the Parcel of the Defaulting Party (or on the Defaulting Party’s interest therein, as applicable) by following the procedures specified in Section 12.4 and filing a Notice of Lien in the official records of the Recorder for such amount plus accrued interest at the Default Rate as set forth above, plus any costs and expenses of pursuing any legal or other action to obtain such amount, including without limitation a reasonable attorneys’ fee and expert witness fee (including without limitation such as may be incurred in any appeal or in bankruptcy court) and the fees of any expert retained for such action (collectively the “**Collection Costs**,” including all such collection costs, expenses, and fees as the Non-defaulting Party may be entitled pursuant to **Section 11.4** of this Article). The Association, by its Trustee (identified in Section 11.6) may foreclose the lien against such Parcel in the manner of a Trust Deed.

11.2 **Deficiencies.** In the event that any Owner shall fail to obtain and maintain insurance, as required by this Declaration, or to perform any other obligation imposed upon an Owner, any Non-defaulting Party may send written notice of such failure to the Defaulting Party. Such notice shall contain an itemized statement of the specific deficiencies (hereinafter referred to as the “**Deficiencies**”) of the Defaulting Party’s performance of its obligations, monetary or otherwise. The Defaulting Party shall have thirty (30) days after receipt of the said notice in which to cure the Deficiencies or in which to commence to cure the Deficiencies if the Deficiencies cannot be cured within the said thirty (30) day period, and thereafter, to proceed diligently to complete the curing of the Deficiencies. If necessary, for the safety of the Commercial Center or to prevent a gap in, or a lapse of, any insurance, the thirty (30) day time period referred to above may be appropriately shortened. In the event that the Defaulting Party shall fail or refuse to cure or to begin and continue diligently thereafter to cure the Deficiencies, as the case may be, the Non-defaulting Party may, at its option, cure the Deficiencies. In the event that the Non-defaulting Party shall exercise the option and shall cure the Deficiencies, the Defaulting Party shall, promptly upon receipt from the Non-defaulting Party of an itemized invoice for the costs incurred by the Non-defaulting Party in curing the Deficiencies, pay all such costs and expenses to the Non-defaulting Party, together with interest at the Default Rate

from the date of the Non-defaulting Party's payment of the same until paid, plus Collection Costs. Furthermore, the Non-defaulting Party shall have a Common Facilities Lien on the Parcel of the Defaulting Party (or on the Defaulting Party's interest therein, as applicable) by filing a Notice of Lien in the official records of the Recorder for such amounts.

**11.3 Taxes.** In the event any Owner fails to pay when due all Real Estate Taxes that the Owner is obligated to pay, which failure is not cured for a period of ten (10) days after receipt of written notice thereof from any Non-defaulting Party, such failure shall constitute a default, and any Non-defaulting Party may, but is not obligated to, thereafter pay such Real Estate Taxes if such Real Estate Taxes are delinquent and the Defaulting Party has not commenced and is not duly prosecuting any protest of such taxes. If such Real Estate Taxes are paid by a Non-defaulting Party, the Non-defaulting Party shall then provide evidence of payment and an invoice for the expenses incurred. The Defaulting Party shall have ten (10) days within which to pay the amounts due, together with interest at the Default Rate from the date of the Non-defaulting Party's payment of the Real Estate Taxes until paid, plus Collection Costs, if any. If the Defaulting Party does not so pay, then the Non-defaulting Party shall have a Common Facilities Lien on the Parcel of the Defaulting Party (or on the Defaulting Party's interest therein, as applicable) by filing a Notice of Lien in the official records of the Utah County Recorder, State of Utah, for such amounts.

**11.4 Default.** Except as specified in **Sections 1.1.1** (Assessments), **Section 11.2** (Insurance), and **Section 11.3** (Taxes) or other Section in this Declaration where a specific remedy and/or cure period is specified, a Person shall be deemed to be in default of this Declaration only upon the expiration of thirty (30) days from receipt of written notice from any Owner or Authorized Occupant or the Association specifying the particulars in which such Person has failed to perform the obligations of this Declaration unless such Person, prior to the expiration of said thirty (30) days (or other such period as is elsewhere specified), has cured the particulars specified in said notice of default.

**11.5 Remedies.** In addition to the remedies set forth in this Article and in **Article 12** of this Declaration, each Person entitled to enforce this Declaration shall have all other remedies provided by law and equity to the same extent as if fully set forth herein. No remedy herein conferred upon, or reserved to any Person, shall exclude any other remedy herein or by law or equity provided, but each shall be cumulative and non-exclusive.

**11.6 Trustee.** The Trustee for purposes of this **Article 11** shall mean The Rudd Firm, PC, whose address is 75 W. Towne Ridge Pkwy, Ste 125, Sandy, Utah 84070, or any successor trustee designated by the Association.

## **12. ASSOCIATION, MEMBERSHIP, VOTING, POWERS, AND ASSESSMENTS**

### **12.1 Membership and Voting Rights.**

**12.1.1. Membership.** Every Owner shall be a Member of the Association. Membership in the Association shall be mandatory, shall be appurtenant to the Parcel in which the Owner has the necessary interest, and shall not be separated from the Parcel to which it appertains.

12.1.2. **Voting Rights.** The Association shall have the following described two classes of voting membership:

Class A. Owner of a Lot shall be a Class A Member of the Association and each Owner is allotted one (1) vote per Lot owned. Each Class A Membership shall be held jointly by all Owners of such Lot. Class A Membership will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If more than one person holds title to a Lot, the membership appurtenant to that Lot shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Lot is held. An Owner shall be entitled to one membership for each Lot owned by him. Each membership shall be appurtenant to the Lot to which it relates and shall be transferred automatically by conveyance of that Lot. Ownership of a Lot within the Project cannot be separated from the Association membership appurtenant thereto, and any devise, encumbrance, conveyance or other disposition of a Lot shall constitute a devise, encumbrance, conveyance or other disposition, respectively, of such Owner's membership in the Association and the rights appurtenant thereto. No person or entity other than an Owner may be a Member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Lot.

Class B. Declarant shall be the only Class B Member of the Association and shall be entitled to seven (7) votes for each Lot that Declarant owns. The Class B Membership shall automatically cease and be converted to a Class A membership on the first to occur of the following events:

(a) When the total number of votes held by all Class A Member(s) equals the total number of votes held by the Class B Member(s); or

(b) The Declarant voluntarily elects to convert its Class B Membership to Class A Membership; or

(c) The Declarant no longer owns any Parcels in the Commercial Center.

The period commencing upon the recording of this Declaration with the Recorder and ending upon the first to occur of the foregoing three (3) events is referred to herein as the "**Declarant Control Period**".

12.1.3. **Multiple Ownership Interests.** In the event there is more than one Owner of a particular Parcel, the vote relating to such Parcel 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 Parcel concerned unless an objection is immediately made by another Owner of the same Parcel. In the event such an objection is made, the vote involved shall not be counted for any purpose whatsoever other than to determine whether a quorum exists.

12.1.4. **Record of Ownership.** Every Owner shall promptly cause to be duly

filed of record with the Recorder the conveyance document (or in the case of contract buyer, a copy of the sales contract) to him of his Parcel. Each Owner shall file a copy of such conveyance document (or contract) with the secretary of the Association with a transfer fee of Twenty-Five and 00/100 Dollars (\$25.00), who shall maintain a record of ownership of the Parcels. Any Owner who mortgages his Parcel or any interest therein by a mortgage which has priority over the lien of any assessment provided herein shall notify the secretary of the Association of the name and address of the Mortgagee and also of the release of such Mortgage; and the secretary of the Association shall maintain all such information in the records of ownership. Any cost incurred by the Association in obtaining the information about an Owner as specified herein which is not furnished by such Owner shall nevertheless be at the expense of such Owner and shall be reimbursed to the Association as a Reimbursement Assessment in accordance with the provisions of **Section 12.3**.

## 12.2 Duties and Powers of the Association.

12.2.1. **Duties of the Association.** Without limiting any other duties which may be imposed upon the Association by its the Association Documents; the Association shall have the obligation and duty to do and perform each and every one of the following for the benefit of the Owners and the maintenance and improvement of the Commercial Center:

12.2.1.1 The Association shall accept all Owners as Members of the Association.

12.2.1.2 The Association shall maintain, repair, and replace all Common Facilities, excluding only any landscaping installed by an Owner without the Association's express agreement to maintain such landscaping.

As provided in **Section 2.5.6**, each Owner shall have the obligation to provide exterior and interior maintenance of its Building including but not limited to painting, repair, replacement and care of roofs, gutters, downspouts, exterior building surfaces, and the maintenance all mechanical devices, including but not limited to, appurtenant electrical, plumbing and heating, ventilating and air conditioning systems, and adjacent sidewalks. The maintenance of all Buildings shall be in accordance with the requirements of **Section 2.5**.

In the event that the need for maintenance or repair of Common Facilities as specified herein is caused through the willful or negligent acts of an Owner, or through the willful or negligent acts of an Owner's Authorized Occupant, the Association may cause such repairs to be made by the Association and the cost of such maintenance or repair (and administrative expenses equal to ten percent [10%] of such costs) shall be added to and become part of the Reimbursement Assessment (as set forth in **Section 12.3**) to which such Parcel is subject.

12.2.1.3 To the extent not assessed to or paid by the Owners directly, the Association shall pay all Real Estate Taxes levied upon any portion of the Common Facilities, provided that the Association shall have the right to contest or compromise any such Real Estate Taxes.

12.2.1.4 The Association shall obtain and maintain in force the policies

of insurance required by the provisions of this Declaration.

12.2.1.5 The Association may employ a responsible Person as a Manager to manage and maintain the Common Facilities, subject at all times to direction by the Association, with such administrative functions and powers as shall be delegated to the Manager by Association. The compensation of the Manager shall be such as shall be specified by the Association in its agreement with the Manager. Any agreement appointing a Manager shall be consistent with the requirements of **Section 6.2**. A Manager shall be an independent contractor and not an agent or employee of the Association.

12.2.2 **Powers and Authority of the Association.** The Association shall have all the powers set forth in the Association Documents, together with its general powers as a nonprofit corporation, and the power to do any and all things which may be authorized, required or permitted to be done by the Association under and by virtue of this Declaration, including the power to levy and collect assessments as hereinafter provided. Without in any way limiting the generality of the foregoing, the Association shall have the following specific powers:

12.2.2.1 The Association shall have the power and authority at any time and from time to time and without liability to any Owner for trespass, damage or otherwise, to enter upon any Parcel for the purpose of maintaining and repairing the Common Facilities located upon such Parcel or any improvement thereon if for any reason the Owner fails to maintain and repair such improvement, or for the purpose of removing any improvement constructed, reconstructed, refinished, altered or maintained upon such Parcel in violation of **Article 2 or 3** of this Declaration. The Association shall have the right to close all or any portion of a Common Facility to such extent as may be legally sufficient to prevent a dedication thereof or the accrual of any right therein to any person or the public. The Association shall also have the power and authority from time to time in its own name, on its own behalf, or in the name and behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of this Declaration or any Rules and Regulations promulgated by the Association's Board of Directors (the "**Board of Directors**") or to enforce by mandatory injunction or otherwise all of the provisions of this Declaration and such Rules and Regulations.

12.2.2.2 In fulfilling any of its duties under this Declaration, including its duties for the maintenance, repair, operation or administration of the Common Facilities (and exterior repairs of Building to the extent necessitated by the failure of the Owners of such Parcels) or in exercising any of its rights to construct, maintain and repair improvements or other work upon any of the Common Facilities, the Association shall have the power and authority (i) to pay and discharge any and all liens placed upon any Common Facilities on account of any work done or performed by the Association in the fulfillment of any of its obligations and duties of maintenance, repair, operation or administration and (ii) to obtain, contract and pay for, or to otherwise provide for:

i. Construction, maintenance, repair and landscaping of the Common Facilities (and exterior repairs of Building upon Parcels to the extent necessitated by the failure of Owners of such Parcels) on such terms and conditions as the Board of Directors shall deem appropriate.

ii. Such insurance policies or bonds as the Board of Directors may deem appropriate for the protection or benefit of Declarant, the Association, the members of the Board of Directors and the Owners;

iii. Such utility services, including (without limitation) water, sewer, trash removal, snow removal, electrical, telephone and gas services, as the Board of Directors may from time to time deem desirable;

iv. The services of architects, engineers, attorneys and certified public accountants and such other professional or nonprofessional services as the Board of Directors may deem desirable;

v. Fire, police and such other protection services as the Board of Directors may deem desirable for the benefit of the Owners or any of the Property; and

vi. Such materials, supplies, furniture, equipment, services and labor as the Board of Directors may deem necessary.

12.2.2.3 The Board of Directors may delegate by resolution or contract to the Manager any of its powers under this Declaration; provided, however, that the Board of Directors cannot delegate to such Manager the power to execute any contract binding on the Association for a sum in excess of Five Thousand and 00/100 Dollars (\$5,000.00), nor the power to sell, convey, mortgage, or encumber any Common Facilities.

**12.2.3 Association Rules and Regulations.** The Board of Directors, from time to time and subject to the provisions of this Declaration, may promulgate, adopt, amend, repeal and enforce reasonable, non-discriminatory rules and regulations (“**Rules and Regulations**”) governing, among other things: (a) the use of the Common Facilities, including the regulation of employee parking; (b) the use of any roads or utility facilities owned by the Owners or the Association; (c) the collection and disposal of refuse; (d) the types of animals permitted and the maintenance of permitted animals on the Commercial Center Property (provided that there shall be no prohibition for the use or presence of service animals); and (e) other matters concerning the use and enjoyment of the Commercial Center and the conduct of Authorized Occupants and the Benefitted Parties.

**12.2.4 Limitation of Liability.** No member of the Board of Directors acting in good faith shall be personally liable to any Owner, Benefitted Parties or any other person for any error or omission of the Association, its officers, representatives and employees, the Board of Directors, any committee or the Manager.

**12.2.5 Insurance.** The Association shall secure and at all times maintain the following insurance coverage:

12.2.5.1 A policy or policies insuring the Association as specified in Section 7.5.

12.2.5.1 In addition to the insurance described above, the Association

shall secure and all times maintain insurance against such risks as are or hereafter may be customarily insured against in connection with developments similar to the Property in construction, nature and use.

(1) The Association shall have the authority to adjust losses.

(2) Insurance secured and maintained by the Association shall not be brought into contribution with insurance held by the individual Owners or their mortgagees.

(3) Each policy of insurance obtained by the Association shall, if reasonably possible, provide: a waiver of the insurer's subrogation rights with respect to the Association, the Owners, and their respective directors, officers, agents, employees, invitees, and Authorized Occupants; that it cannot be cancelled, suspended or invalidated due to the conduct of any particular Owner or Owners; that it cannot be cancelled, suspended or invalidated due to the conduct of the Association or of any director, officer, agent or employee of the Association without a prior written demand that the defect be cured; without a prior written demand that the defect be cured; that any "no other insurance" clause therein shall not apply with respect to insurance held individually by Owners.

**12.2.6 Quorum Requirements.** The quorum required for any action by the Members hereunder, unless otherwise specifically set forth in this Declaration, shall be as follows: At the first meeting called the presence of Members or of proxies entitled to cast seventy percent (70%) of the Proportionate Shares for all Parcels shall constitute a quorum. If a quorum is not present at the first meeting or any subsequent meeting, another meeting may be called at which a quorum shall be one-half of the quorum which was required at the immediately preceding meeting. No such subsequent meeting shall be held more than thirty (30) days following the immediately preceding meeting.

### **12.3. Assessments.**

**12.3.1 Personal Obligation and Lien.** Each Owner shall, by acquiring or in any way becoming vested with his interest in a Parcel, be deemed to covenant and agree to pay to the Association the periodic (Common Facilities Charge), special assessments and Reimbursement Assessments described in this **Section 12.3**, together with the hereinafter provided for interest at the Default Rate and Collection Costs. All such amounts shall be, constitute, and remain: (a) a charge and continuing lien upon the Parcel with respect to which such assessment is made; and (b) the personal obligation of the person who is the Owner of such Parcel at the time the assessment falls due. No Owner may exempt himself or his Parcel from liability for payment of assessments by waiver of his rights concerning the Common Facilities or by abandonment of his Parcel. In a voluntary conveyance of a Parcel, the grantee shall be jointly and severally liable with the grantor for all such unpaid assessments, late payment fees, interest and costs of collection, including reasonable attorneys' fees, which shall be a charge on the Parcel at the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor.

**12.3.2 Purpose of Assessments.** Assessments levied by the Association shall

be used exclusively for the purpose of maintaining, repairing, replacing and managing the Common Facilities and making repairs to Buildings as permitted in this **Article 12**, including but not limited to the enhancement of the appearance and aesthetics of the Commercial Center. The use made by the Association of funds obtained from assessments may include, but is not limited to, payment of the cost of taxes, if any, and insurance on the Common Facilities; maintenance, repair and improvement of the Common Facilities; establishing and funding a reserve to cover major repairs or replacements of improvements within the Common Facilities; and any expenses necessary or desirable to enable the Association to perform or fulfill its obligations, functions or purposes under the Association Documents..

**12.3.3 Special Assessments.** For the purposes identified in **Sections 7.1.5** or **7.1.6**, the Association may levy special assessments for the purpose of defraying, in whole or in part ("**Special Assessments**"): (a) any expense or expenses not reasonable capable of being fully paid with funds generated by periodic assessments; or (b) the cost of any construction, reconstruction or unexpectedly required repair or replacement in connection with the Common Facilities. Any such special assessments must be assented to by the Consent of Owners, other than the Declarant, present in person or represented by proxy are entitled to cast a vote at a meeting duly called for the purpose. Written notice setting forth the purpose of the meeting shall be sent to all Owners at least ten (10) but not more than thirty (30) days prior to the meeting date.

**12.3.4 Reimbursement Assessment on Specific Parcel.** In addition to the periodic assessment and any special assessment authorized pursuant to **Sections 12.3.1, 12.3.2 and 12.3.3** above, the Board of Directors may levy at any time Special Assessments (a) on each Parcel specifically benefitted by any improvement to adjacent roads, sidewalks, planting areas or other portions of the Common Facilities made on the written request of the Owner of the Parcel to be charged; (b) on each Parcel the Owner or Authorized Occupant of which shall cause any damage to the Common Facilities necessitating repairs; and (c) on each Parcel as to which the Association shall incur any expense for maintenance or repair work performed, or enforcement action taken, pursuant to **Section 12.2.2.1, Section 11.1** or other provisions of this Declaration (all or part of the foregoing being sometimes referred to as "**Reimbursement Assessment**"). The aggregate amount of any such Reimbursement Assessments shall be determined by the cost of such improvements, repairs, maintenance or enforcement action, including all overhead and administrative costs and attorneys' fees, and shall be allocated among the affected Parcels according to the special benefit or cause of damage or maintenance or repair work or enforcement action, as the case may be, and such assessment may be made in advance of the performance of work. If a special benefit arises from any improvement which is part of the general maintenance obligations of the Association, it shall not give rise to a Reimbursement Assessment against the Parcels benefitted.

**12.3.5 Rate of Assessment.** Except as provided in **Section 12.3.4** above, periodic and Special Assessments shall be a fixed rate based upon the Owner's Proportionate Share.

**12.3.6 Periodic Assessment Due Dates.** The periodic assessments (Common Facilities Charges) provided for herein shall commence as to all Parcels as provided in Section 7.4.4. The first periodic assessment shall be adjusted according to the number of days



remaining in the month of conveyance. Thereafter and except as provided below, all periodic assessments shall be due and payable on the first day of each month. A periodic assessment not paid within ten (10) days of the due date thereof shall be deemed late and subject to a late fee of Fifteen and 00/100 Dollars (\$15.00). At least fifteen (15) days prior to the effective date of any change in the amount of the periodic assessment, the Association shall give each Owner written notice of the amount and the first due date of the assessment concerned.

NOTWITHSTANDING THE FOREGOING, with the Consent of the Owners, the Association may provide for the payment of periodic assessments on a quarterly basis, provided such periodic assessments are payable in advance.

**12.3.7 Certificate Regarding Payment.** Upon the request of any Owner or prospective purchaser or encumbrancer of a Parcel, the Association shall issue a certificate stating whether or not all assessments respecting such Parcel are current and, if not, the amount of the delinquency. Such certificate shall be conclusive in favor of all persons who in good faith rely thereon.

**12.3.8 Effect of Non-Payment; Remedies.** Any assessment (including periodic assessments, Special Assessments, or Reimbursement Assessments) not paid when due, together with the hereinafter provided for interest and Collection Costs shall be, constitute and remain a continuing lien on the affected Parcel; provided, however, that any such lien will be subordinate to the lien or equivalent security interest of any first mortgage on the Parcel recorded prior to the date any such assessments became due. If the assessment is not paid within sixty (60) days after the date on which it becomes delinquent, the amount thereof shall bear interest from the date of delinquency at the Default Rate and the Association may bring an action either against the Owner who is personally liable or to foreclose the lien against the Parcel. Any judgment obtained by the Association shall include reasonable attorneys' fees, court costs, and each and every expense incurred by the Association in enforcing its rights.

**12.4 Procedure.** The lien provided for in **Article 11.1** and **Section 12.3.8** shall be referred to herein as the “**Common Facilities Lien**” and shall only become effective when a Notice of Lien is filed for record in the official records of the Recorder, by the Association, the Owners or another Non-defaulting Party as a claim for a Common Facilities Lien against the Defaulting Party’s Parcel or interest therein. Such Notice of Lien shall contain at least the following:

**12.4.1 Statement.** A reference to this Section of the Declaration and an itemized statement of all amounts due and payable pursuant hereto, except as to Collection Costs, and, for Collection Costs, a statement that such are included in the Common Facilities Lien and will be itemized and specifically set forth at the time of foreclosure or immediately prior to payment;

**12.4.2 Parcel Description.** A description sufficient for identification of that Parcel in which the Defaulting Party has an interest and which is the subject of the Common Facilities Lien;

**12.4.3 Owner.** The name of the Owner or reputed Owner of the Parcel which is the subject of the Common Facilities Lien;

12.4.4 **Defaulting Party.** The name of the Defaulting Party and the extent of the Defaulting Party's interest in the Parcel if the Defaulting Party is other than the Owner; and

12.4.5 **Non-defaulting Party.** The name and address of the Non-defaulting Party or its agent.

12.5 **Priority.** The Common Facilities Lien, when the same is perfected against a Parcel by the filing of a Notice of Lien, shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to such Parcel after the time of filing the Notice of Lien. Prior to the filing of a Notice of Lien, unperfected Common Facilities Liens shall in all cases be subordinate to each first mortgage lien that encumbers a Parcel or an interest therein from time to time (i.e., a mortgage or deed of trust that is given by the Owner of a Parcel and/or the Owner of improvements on a Parcel, that secures repayment of a loan and that is in a first priority position as to voluntary liens). The Common Facilities Lien shall be for the use and benefit of the Non-defaulting Party having a right thereto pursuant to this Declaration and may be enforced and foreclosed as a mortgage in a suit or action brought in any court of competent jurisdiction or pursuant to a power of sale held by the Trustee designated in **Section 11.6**.

#### 12.6 **Number and Election of Directors.**

12.6.1 The Board of Directors shall consist of three (3) directors ("**Directors**"). The initial Directors shall hold office until the election or appointment of their successors at the first annual meeting after expiration of the Declarant Control Period. Thereafter, subject to the terms and conditions of **Sections 12.6.3** and **12.6.4** below, the Owners of the Parcels that comprise the Commercial Center shall have the right to appoint the Directors by a 75% vote of the Owners. Each Director will hold office for a term of two (2) years.

#### 12.6.2 **Powers of the Board of Directors.**

12.6.2.1 Except as provided in the Association Documents, the Board of Directors may act on behalf of the Association in all instances.

12.6.2.2 The Board of Directors may retain by written contract the Manager who shall be responsible for the routine operation and maintenance of the Common Facilities.

12.6.2.3 The Board of Directors may not act on behalf of the Association to:

- (i) amend this Declaration;
- (ii) terminate the Association or this Declaration;
- (iii) elect Directors to the Board of Directors; or
- (iv) determine the qualifications, powers and duties, or terms of office, of Directors.

### 12.6.3 Appointment of Directors.

12.6.3.1 Subject to the terms and conditions of **Sections 12.6.3.2** and 12.6.3.3 below, but notwithstanding anything else to the contrary contained in this Declaration or in any other Association Document, Declarant shall have the exclusive right to appoint and remove all Directors and Officers during the Declarant Control Period.

12.6.3.2 Declarant may voluntarily surrender its right to appoint and remove Officers and Directors prior to the expiration of the Declarant Control Period, but, in that event, Declarant may require, for the remainder of the Declarant Control Period, that specific actions of the Association or the Board of Directors, as described in a recorded instrument executed by Declarant, be approved by the Declarant before they become effective.

12.6.3.3 During the thirty (30)-day period immediately preceding the date on which the Declarant Control Period expires, the Owners shall elect a Board of Directors of three (3) Directors as set forth in **Section 12.6.1** above. Such Directors shall take office upon election.

12.6.3.4 The Declarant need not designate a Manager or a Board of Directors during the Declarant Control Period.

### 12.6.4 Removal of Directors.

(a) Directors appointed by Declarant may be removed, with or without cause, solely by Declarant.

(b) Each Director, other than a Director appointed by Declarant, may be removed, with or without cause, by 66% vote of the Owners.

### 12.6.5 Replacement of Directors.

(a) Vacancies on the Board of Directors created by the removal, resignation or death of a Director appointed by Declarant shall be filled by a Director appointed by Declarant.

(b) A vacancy on the Board of Directors created by the removal, resignation, or death of a Director appointed by a vote of the Owners shall be filled by a majority vote of the Owners.

(c) Any Director elected or appointed pursuant to this **Section 12.6.5** shall hold office for the remainder of the unexpired term of the Director that Director replaced.

**12.6.6 Board of Directors Liability.** No Director or officer of the Association shall be liable to the Owners for any mistake in judgment, for negligence, or on other grounds, except for such Director's or officer's own individual and willful misconduct or bad faith. The Owners and Association shall indemnify and hold harmless each Director and officer from and against all liability to third parties arising out of any contract made by the Board of Directors on behalf of the Association or Owners, unless such contract was made in bad faith or contrary

to the provisions of this Declaration or the Association Documents. The liability of an Owner arising out of the foregoing indemnification shall be limited to the total liability concerned multiplied by such Owner's Proportionate Share. The Association shall be authorized to obtain liability insurance for the errors and omissions of its Directors and officers.

### 13. INDEMNITY; HAZARDOUS SUBSTANCES

13.1 **Subrogation Waiver.** To the extent that liability of an Owner or Authorized Occupant to another Owner or Authorized Occupant or employees, agents, contractors, invitees, tenants, subtenants, successors and assigns of the same is covered by insurance, each Owner or Authorized Occupant respectively waives all rights of subrogation against the other Owners or Authorized Occupants, and agrees to cause its insurer to waive its rights of subrogation against the other Owners or Authorized Occupants to the same extent provided above.

13.2 **Indemnification.** Subject to the provisions of **Section 13.1**, each Owner and Authorized Occupant hereby agrees to indemnify, defend and hold harmless the other Owners, the Declarant, Authorized Occupants, and the Association and their respective agents, officers, directors, employees, servants, employees and contractors, from and against any and all liabilities, claims, damages, expenses (including reasonable attorneys' fees and reasonable attorneys' fees on any appeal), judgments, proceedings and causes of action, for bodily injury, death property damage arising from the active or passive negligence of such Owner or Authorized Occupant, and their respective agents, employees, servants, and contractors acting within the scope of their employment.

13.3 **Hazardous Substances.** Each Owner agrees as follows with respect to its Parcel(s):

13.3.1 **Care of Parcel.** The Owner shall not use, produce, store, release, dispose or handle in or about its Parcel or transfer to or from its Parcel (or permit any other Person under its control or any Authorized Occupant to do such acts) any Hazardous Substance except in compliance with all applicable Environmental Laws. No Owner shall construct or use any improvements, fixtures or equipment or engage in any act on or about its Parcel that would require the procurement of any license or permit pursuant to any Environmental Law, except for (i) the routine use and sale of substances necessary to the use and occupancy of the Parcel; (ii) the pursuit of the Owner's or Authorized Occupant's legal business on the Parcel; and (iii) for the sale to the public of substances generally handled in businesses similar to the Owner's or Authorized Occupant's legal business, so long as the requisite licenses or permits are obtained and maintained.

13.3.2 **Definitions.** In this Declaration the term "**Environmental Laws**" shall mean any federal, state or local statute, ordinance, rule, regulation or guideline pertaining to health, industrial hygiene, or the environment, including without limitation the federal Comprehensive Environmental Response, Compensation, and Liability Act; and the term "**Hazardous Substance**" shall mean all substances, materials and wastes that are or become regulated or classified as hazardous or toxic, under any Environmental Law, including, but not limited to gasoline, diesel fuel and petroleum products.

**13.3.3 No Knowledge.** To the best of the Owner's knowledge after reasonable inquiry, each Owner represents and warrants the following to the other Owners with respect to its Parcel. These representations and warranties shall be effective first at the time the Owner acquires an interest in its Parcel and shall continue while the Owner holds an interest in its Parcel. If at any time these representations and warranties are inaccurate, the Owner shall immediately give written notice thereof to the other Owners and the Association. The representations and warranties are:

13.3.3.1 Except as permitted by Environmental Laws, there are no Hazardous Substances or regulated substances thereon or to be installed thereon, whether contained in barrels, tanks, equipment (movable or fixed) or other containers; deposited or located in land, waters, or sumps; or incorporated into any structure or in any other part of the Parcel.

13.3.3.2 No asbestos-containing materials have been or will be installed or affixed to the Buildings located or to be located on the Parcel at any time in violation of any Environmental Laws.

13.3.3.3 The Parcel and all uses thereon are not in violation of any Environmental Laws, whether they govern the existence, clean-up and/or remedy of contamination from any Hazardous Substance or regulated substances, and no governmental entity has served upon such Owner any notice claiming any violation of any such statute, ordinance or regulation.

**13.3.4 Notification.** If any Owner becomes aware of any condition relating to the existence, release or threatened release of any Hazardous Substance or violation of any Environmental Law on its Parcel, the cure or remediation of which is required by law or dictated by commercially reasonable business practices, such Owner shall promptly notify the other Owners and Association in writing thereof and shall promptly cure or remediate such condition.

**13.3.5 Right to Cure.** If any Defaulting Party fails to perform its duty to cure or remediate as required by Applicable Laws or this Section 13, a Non-defaulting Party may proceed to cure after thirty (30) days' written notice and failure of the Defaulting Party to commence, and thereafter diligently to prosecute, such cure, and the Non-defaulting Party shall be entitled to a reimbursement of all costs incurred in effectuating such cure together with interest at the Default Rate from the date such costs were paid, plus Collection Costs. Furthermore, the Non-defaulting Party shall have a Common Facilities Lien on the Parcel of the Defaulting Party (or on the Defaulting Party's interest therein, as applicable) by filing a Notice of Lien in the official records of the Recorder for all such amounts. In case of an emergency, the Person becoming aware of the condition shall attempt reasonable efforts to notify the Person with the duty of cure of the condition requiring attention; however, any Person may in such emergency, without notice, proceed in good faith to effectuate a cure, giving such notice later as soon as possible.

**13.3.6 Indemnity.** The Owner of each Parcel agrees to indemnify, defend and hold harmless the other Owners, the Association, the Declarant, Manager and Authorized Occupants of all other Parcels from and against any and all liabilities, claims, damages, expenses

(including reasonable attorneys' fees and reasonable attorneys' fees on any appeal), judgments, proceedings and causes of action, relating to or connected with any of the foregoing obligations and/or liabilities identified in this **Section 13.3**, for injury to or death of any Person or damage to or destruction of any property occurring on or originating from said Owner's Parcel or arising out of the act or omission of such Owner, its Authorized Occupants, unless caused by the negligent or willful acts or omissions of the otherwise indemnified Person, its agents, contractors or employees.

#### 14. **CONDEMNATION**

If at any time or times all or any part of the Common Facilities shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of the Common Facilities in lieu of condemnation but under threat of condemnation shall be deemed to be a taking by eminent domain. All compensation, damages, and other proceeds from any such taking by power of eminent domain ("**Condemnation Award**") attributable to the value of any land and improvements within the Common Facilities shall be payable only to the Owner thereof (and its Authorized Occupants and assigns according to their respective interests therein) and no claim thereon shall be made by the other Owners; provided, however, that all other Owners may file collateral claims with the condemning authority over and above the value of the land and improvements located within the Common Facilities so taken to the extent of any damage suffered by their respective Parcels (as intended and permitted hereunder if there is then no building thereon) resulting from severance of the appurtenant portions of the Common Facilities so taken. The Owner of the portions of the Common Facilities so condemned shall promptly repair and restore the remaining portion of the Common Facilities so owned by such Owner as near as practicable to the condition of the same immediately prior to the condemnation and without contribution from any other Owner; provided, however, that the obligation to repair or reconstruct shall be limited such that the cost thereof shall not exceed the amount of the Condemnation Award payable to the Owner of the Common Facilities so condemned less said Owner's costs associated with the condemnation, including but not limited to attorneys' fees and court costs arising out of the condemnation proceedings.

#### 15. **GENERAL PROVISIONS**

15.1 **Covenants Run With the Land.** Each restriction on each Parcel shall be a burden on that Parcel, shall be appurtenant to and for the benefit of the other Parcels and each part thereof and shall run with the land.

15.2 **Successors and Assigns.** This Declaration and the Restrictions created hereby shall inure to the benefit of and be binding upon the Owners as they exist from time to time, their respective heirs, personal representatives, successors, assigns, agents, employees, Authorized Occupants and the remaining Benefitted Parties, and upon any Person acquiring a Parcel, or any portion thereof, or any interest therein, whether by operation of law or otherwise, to the extent that the foregoing is consistent with the provisions of **Article 10** of this Declaration. With respect to rights in or to any Parcel which have been severed from the rights or estates owned by Declarant pursuant to the terms of this Declaration, Declarant intends that such rights remain severed notwithstanding that during any time in which this Declaration is in

effect Declarant or any other Person may own the underlying estate or servient estate as well as the lesser right or dominant estate, respectively, so that Declarant's purposes in making this Declaration, as listed in the recitals, may be served, and any doctrine of merger of estates, or principle of law having similar effect, shall not apply to diminish any right hereunder or combine any right created or severed hereunder with any other estate or interest.

**15.3 Duration.** Except as otherwise provided herein, the term of this Declaration shall be for fifty (50) years and shall be thereafter automatically renewed for successive terms of ten (10) years each unless terminated by the filing of a Termination Notice executed by all of the Owners of all of the Parcels and first mortgage Lien Holders owning or having first mortgage (including trust deed) liens upon all of the Parcel Area in the Commercial Center, which Termination Notice shall be executed by said Owners and mortgage holders and recorded in the official records of the Recorder at least one (1) year before the effective date of termination of the primary term or any renewal term.

**15.4 Arbitration.** As required by specific references within this Declaration to arbitration but otherwise only with the consent of the Persons affected thereby, any controversy or claim arising out of or relating to this Declaration, or the breach thereof, shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

**15.5 Injunctive Relief.** In the event of any violation or threatened violation by any Person of any of the Restrictions contained in this Declaration, the Association, any or all of the Owners and Authorized Occupants of the property included within the Commercial Center shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Declaration or provided by law.

**15.6 Modification and Termination.** This Declaration may not be modified in any respect or terminated, in whole or in part, except with the Consent of the Owners, and then only by written instrument duly executed and acknowledged by the Consent of the Owners or an officer of the Association who certifies that the required consents have been obtained, and recorded in the official records of the Recorder. No modification or termination of the Declaration shall affect the rights of any first Lienholder unless the first Lienholder consents in writing to the modification or termination. Notwithstanding any other provision hereof, this Declaration may not be modified in such a manner as would prohibit or restrict the use of a Parcel without the written consent of the Owner of the Parcel.

**15.7 Method of Approval.** Whenever the Consent of the Owners or other approval is required under this Declaration, such consent or approval must be given in accordance with the particular provision requiring consent by the other Person or Persons from whom consent is required. The Person requesting approval or consent (the "**Requesting Person**") shall give notice in writing to the Person or Persons whose consent or approval is required (the "**Approving Person**"). Within thirty (30) days after receipt of said written request, each Approving Person shall notify the Requesting Person whether or not such consent or approval is granted. In the event that the Approving Person does not provide notification to the

Requesting Person within thirty (30) days from the date of receipt of notice sent pursuant to **Section 15.10.1**, then the Approving Person shall be deemed to have granted consent or approval. Notwithstanding the above, this Section shall not be interpreted to permit a modification or termination of this Declaration without the express written Consent of the Owners as provided in **Section 15.6** and in such situation the failure to respond or notify any Requesting Person shall not be deemed an approval or consent thereto. Approval of any act, plan, budget, or any other item or fact under this Declaration shall not constitute a waiver of any requirements, duties, or obligations of any Person under this Declaration.

**15.8 Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Commercial Center or any Parcel to the general public or for the general public or for any public purpose whatsoever, it being the intention of the Owners that this Declaration shall be strictly limited to and for the purposes herein expressed.

**15.9 Breach Shall Not Permit Termination.** It is expressly agreed that no breach of this Declaration shall entitle the Association, any Owner or Authorized Occupant to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Association, Owner or Authorized Occupant may have hereunder by reason of any breach of this Declaration. Any breach of the Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

**15.10 Notices.**

**15.10.1 Method of Delivery.** All notices given pursuant to this Declaration shall be in writing and shall be given by personal delivery, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the Person and address designated below or, in the absence of such designation, to the Owner at its address shown on the then current real property records of the Recorder is located, or to an Authorized Occupant, to the premises which are occupied:

Declarant: Clearfield Flex, LLC  
Attn: Rich Day  
4267 Summermeadow Drive  
Bountiful, Utah 84010

With a copy to:  
The Rudd Firm, P.C.  
Attn: Jonathan Rudd  
75 W. Towne Ridge Pkwy. Suite 125  
Sandy, Utah 84070

The Person and address to which notices are to be given may be changed at any time by any



party upon written notice to the other parties. All notices given pursuant to this Declaration shall be deemed given upon receipt.

**15.10.2 Receipt.** For the purpose of this Declaration, the term “**receipt**” shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to **Section 15.10.1** above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the Person specified pursuant to **Section 15.10.1** above, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (a) the date of the attempted delivery or refusal to accept delivery, (b) the date of the postmark on the return receipt, or (c) the date of receipt of notice of refusal or notice of non-delivery by the sending Person.

**15.11 Waiver.** The failure of a Person to insist upon strict performance of any of the Restrictions contained herein shall not be deemed a waiver of any rights or remedies that said Person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the Restrictions contained herein by the same or any other Person.

**15.12 Attorneys’ Fees.** In the event any Person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Declaration, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs, expenses, expert fees, and attorneys’ fees (including its reasonable costs and attorneys’ fees on any appeal).

**15.13 Severability.** If any term or provision of this Declaration or the application of it to any Person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Declaration or the application of such term or provision to Persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

**15.14 Not a Partnership.** The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the Owners or other beneficiaries hereof.

**15.15 Third Party Beneficiary Rights.** This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third-party beneficiary rights in any Person or entity not specifically mentioned herein (such as Owner, Declarant, etc.) unless otherwise expressly provided herein.

**15.16 Captions and Headings.** The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions, restrictions, or agreements contained herein.

**15.17 Grammar Construction.** In construing the provisions of this Declaration and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

15.18 **Joint and Several Obligations.** In the event any party hereto is composed of more than one Person, the obligations of said party shall be joint and several.

15.19 **Recordation.** This Declaration shall be recorded in the official records of the County Recorder's office in the County of Davis, State of Utah.

15.21 **As-is/Waiver.** The Owners hereby accept their respective Parcels at conveyance with no warranties of fitness and acknowledge that neither Declarant nor developer nor any agent, contractor or employee of Declarant or developer has made any representation or warranty of any kind with respect to the Commercial Center, any Common Facilities and areas, specifically including, but not limited to, any representation or warranty of suitability or fitness of the Commercial Center and/or the Parcels, land, property, or Buildings for any particular purpose, or the use thereof, and the Owners hereby waive any and all claims related thereto. Owners shall be deemed to have accepted the Commercial Center, land, Buildings, Common Facilities, and the Common area and all aspects thereof in an "AS IS - WHERE IS" condition and "WITH ALL FAULTS," including, but not limited to any latent or patent defects.

15.22 **Indemnification.** The Owners shall indemnify Declarant for any and all liability associated with Declarant's duties and obligations associated with this Declaration, including the paying of any reasonable attorney's fees and court costs.

**EXECUTED** as of the day and year first above written.

**CLEARFIELD FLEX, LLC,**

a Utah limited liability company

By: \_\_\_\_\_

Rich Day, Member

**STATE OF UTAH** )

**:SS**

**COUNTY OF \_\_\_\_\_**)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by Rich Day in the capacity indicated.

Notary Public: \_\_\_\_\_

**SCHEDULE "A"**  
**TO DECLARATION**  
**(Legal Description of the Commercial Center)**

**SCHEDULE "B"**  
**TO DECLARATION**  
**(Site Plan of the Commercial Center)**

**SCHEDULE “C”**  
**TO DECLARATION**  
**(Proportionate Share of the Owners)**

<b>Parcel</b>	<b>Parcel Size (sq ft.)</b>	<b>Proportionate Share (%)</b>
A	xxxx sq. ft.	xxxx%
B	xxxx sq. ft.	xxxx%
C	xxxx sq. ft.	xxxx%

**BYLAWS OF  
CLEARFIELD FLEX INDUSTRIAL COMMERCIAL ASSOCIATION, INC.**

**ARTICLE I  
NAME AND LOCATION**

The name of the association is Clearfield Flex Industrial Commercial Association, Inc., a Utah non-profit corporation. The principal office of the Association shall be located at 4267 Summermeadow Drive, Bountiful, Utah 84010 (or at such other location as the Board may designate), but meetings of Owners and the Board may be held at such places within the State of Utah as may be designated by the Board.

**ARTICLE II  
DEFINITIONS**

Section 1. “Association” shall mean and refer to Clearfield Flex Industrial Commercial Association, Inc. and its successors and assigns.

Section 2. “Board” shall mean and refer to the Board of Directors, with all powers as stated in the Declaration, the Articles of Incorporation of the Association, and these Bylaws.

Section 3. “Declaration” shall mean and refer to the *Declaration of Covenants, Conditions, and Restrictions and Easements for Clearfield Flex Industrial Park*, filed of record in the Davis County Recorder’s Office, State of Utah, as the Declaration may be amended in accordance with its terms and provisions. These Bylaws may be recorded against the same property encumbered by the Declaration.

Section 4. “Directors” shall mean and refer to those individuals who are members of the Board. The singular Director shall refer to the singular of the Directors.

Section 5. “Member” shall mean a member of the Association as set forth in Article III.

Section 6. “Nonprofit Act” shall refer to the Utah Revised Nonprofit Act, Utah Code Ann. § 16-6a-101, *et seq.*, as amended.

Section 7. “Owner” shall mean any person or entity owning a Lot within the Project, as shown by the records of the County Recorder for Davis County, Utah.

Section 8. “Project” shall mean the Property identified in the Declaration, and all the Lots, Common Areas, Limited Common Areas and other improvements constructed on the Property.

Section 9. All other capitalized terms used herein shall have the same meaning as stated in the Declaration.

ARTICLE III  
MEMBERSHIP IN ASSOCIATION: MEETING OF OWNERS: VOTING

Section 1. Membership in Association. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot. The Association shall have the following two classes of Membership and voting rights.

Class A. Except as provided below, each Owner of a Lot shall be a Class A Member of the Association and each Owner is allotted one (1) vote per Lot owned. Each Class A Membership shall be held jointly by all Owners of such Lot. Class A Membership will begin immediately and automatically upon becoming an Owner and shall terminate immediately and automatically upon ceasing to be an Owner. If more than one person holds title to a Lot, the membership appurtenant to that Lot shall be shared by all such persons in the same proportionate interest and by the same type of tenancy in which title to the Lot is held. An Owner shall be entitled to one membership for each Lot owned by him. Each membership shall be appurtenant to the Lot to which it relates and shall be transferred automatically by conveyance of that Lot. Ownership of a Lot within the Project cannot be separated from the Association membership appurtenant thereto, and any devise, encumbrance, conveyance or other disposition of a Lot shall constitute a devise, encumbrance, conveyance or other disposition, respectively, of such Owner's membership in the Association and the rights appurtenant thereto. No person or entity other than an Owner may be a Member of the Association, and membership in the Association may not be transferred except in connection with the transfer of a Lot.

Class B. Declarant shall be the only Class B Member of the Association and shall be entitled to seven (7) votes for each Lot that Declarant owns.

Section 2. Voting. Unless otherwise stated herein, or in the Declaration, all voting shall be decided by a majority of the Total Votes of the Association, including, without limitation, the votes pertaining to the Class B Member. When Declarant is no longer a Class B Member of the Association, then (i) the Class B membership shall cease being a class of membership; (ii) there shall no longer be any Class B votes of the Association; and (iii) all matters submitted to a vote of the Association shall be decided solely by the votes of the Class A Members. Except for Lots owned by Declarant as a Class B Member, there shall be one (1) vote, and only one (1) vote, for each Lot in the Project. The voting percentage for each Lot shall be equal to a fraction, the numerator of which shall be the vote held by the Owner of such Lot and the denominator of which shall be the total number of all votes of all Members.

A change in the ownership of a Lot shall be effective for voting purposes from the time the deed or other instrument effecting such change is recorded, or, in connection with Owners who are vendees under an installment purchase contract, upon the full execution of the installment purchase contract. Thereafter, the new Owner shall give the Board written notice of such change of ownership and provide satisfactory evidence thereof. The vote for each Lot owned by Class A Members must be cast as one vote, and fractional votes shall not be allowed. In the event that a Lot is owned by more than one Owner and such Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question.



If any Member casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he or she was acting with the authority and consent of all other Owners of the same Lot unless objection thereto is made at the time the vote is cast. In the event more than one Owner attempts to cast the vote for a particular Lot, the vote for that Lot shall be deemed void and shall not be counted.

Section 3. Annual Meeting. The first annual meeting of the Owners shall be held in June following the date of incorporation of the Association, and each subsequent regular, annual meeting of the Owners shall be held in June of each year thereafter. The Board may change the date of the annual meeting provided it provides reasonable advance notice to all Members.

Section 4. Special Meetings. Special meetings of the Owners may be called at any time by the Board, or upon written request of the Owners who are entitled to vote thirty percent (30%) of all of the total votes, including Class A votes and Class B votes combined.

Section 5. Notice of Meetings. Written notice of each meeting of the Owners shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least thirty (30) days, and no more than sixty (60) days, before such meeting to each Owner entitled to vote, addressed to the Owner's address last appearing on the books of the Association, or supplied by such Owner to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. Those present at the meeting may vote to continue the meeting to any date within thirty (30) days. Notice of the continued meeting will be given by mail, and at the subsequent continued meeting, a quorum will consist of those Owners present. The President of the Association will give notice of any meetings, and will chair meetings of the Owners.

Section 6. Quorum. The presence at the meeting of Owners, or proxies, entitled to cast votes shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. Unless otherwise stated in the Declaration, the Articles of Incorporation, or these Bylaws, a majority of the votes cast, regardless of class, at any meeting shall be the action of the Owners.

Section 7. Proxies. At all meetings of Owners, each Owner may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Owner of his or her Lot.

#### ARTICLE IV BOARD: TERM OF OFFICE

Section 1. Nomination and Tenure. The Declarant shall select the three (3) initial Directors, and the Declarant shall decide who serves on the Board for as long as Declarant remains a Class B Member. Upon the expiration or termination of the Declarant's Class B Membership, the Owners at the next annual owners meeting shall elect three (3) Directors. Each of the three (3) elected Directors shall draw lots to divide themselves into terms of one (1), two (2) and three (3) years. At each successive annual meeting, the Owners shall elect a Director to replace the Director

whose term has expired or is then expiring. Each newly elected Director shall serve for a three (3) year term. So long as a quorum is present, a simple majority of the votes cast shall elect a Director. If a quorum is not present at a meeting, the other Directors shall select a new Director. The Directors shall make nominations for election to the Board. Nominations may also be made from the floor at the annual meeting. If any Director resigns, is removed, dies, or is otherwise unwilling or unable to serve during his or her term, the remaining Directors may appoint another Owner to fill the remainder of such term.

Section 2. Election. Election to the Board shall be by secret written ballot. At such election the Owners or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. There shall be no cumulative voting.

Section 3. Number of Directors. The Board shall consist of not less than three (3) Directors. An odd number of Directors shall be required at all times. The initial number of Directors shall be three (3). The number of Directors may be increased or decreased by resolution of the Directors, so long as the number is not less than three (3).

Section 4. Indemnification. In the event that any Director or Officer is sued for liability for actions undertaken in his role as a member of the Board or as an Officer of the Association, whether or not such Director or Officer is still acting in their official capacity, the Association shall indemnify such Director or Officer for losses or claims, and undertake all costs of defense, until and unless it is proven that such Director or Officer acted with willful or wanton misfeasance or with gross negligence. After such proof, the Association is no longer liable for the cost of defense, and may recover costs already expended from the Director or Officer who so acted

## ARTICLE V MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board shall be held as frequently as the Board deems appropriate, but at least annually, at such place and hour as may be fixed from time to time by resolution of the Board. Should such meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day that is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two (2) Directors, after not less than three (3) days' notice to each Director.

Section 3. Quorum. A majority of the number of Directors shall constitute a quorum for transaction of business. Every act or decision of a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

## ARTICLE VI POWERS AND DUTIES OF THE BOARD

Section 1. Powers. The Board shall have all the powers as are now or may hereafter be provided by the Declaration and these Bylaws, including, but not limited to, the power to:

A. Adopt and publish rules and regulations governing the operation and maintenance of the Project and the Lots, including use of the Common Areas and Limited Common Areas, and the personal conduct of the Owners and their guests thereon, and to establish penalties for the infraction thereof;

B. Exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the Owners by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;

C. Declare the office of a Director of the Board to be vacant in the event such Director shall be absent from three (3) consecutive regular meetings of the Board; and

D. Employ a manager who shall be an independent contractor, and not an agent or employee of the Association or Board as they deem necessary, and to prescribe their duties, and to carry out through the Manager any of the functions or acts required or permitted to be performed by the Board itself.

Section 2. Duties. The Board shall have all the duties provided by the Declaration and these Bylaws, including, but not limited to, the duty to:

A. Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Owners at the annual meeting of the Owners, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Owners of each class who are entitled to vote;

B. Supervise all Officers, agents and employees of the Association, and see that their duties are properly performed;

C. As more fully provided in the Declaration, to:

1. Fix the amount of Assessments as provided in the Declaration or under the applicable law;

2. Foreclose a lien (at the option of the Board) against any property for which Assessments are not paid as required or to bring an action at law (at the option of the Board) against the Owner personally obligated to pay the same.

D. Issue, or to cause an appropriate Officer to issue, upon demand by any person, a certificate setting forth whether or not any Assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an Assessment has been paid, such certificate shall be conclusive evidence of such payment;

E. Procure and maintain insurance in accordance with the provisions relating to insurance in the Declaration;

F. Cause all Officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and

G. Cause the Common Areas and Limited Common Areas to be properly maintained.

Section 4. Applicability of the Nonprofit Act. Except as otherwise provided for in these Bylaws or Declaration, the provisions of the Nonprofit Act shall apply and govern the operations and dealings of the Association to the extent not otherwise provided in these Bylaws, the Declaration, or the Articles of Incorporation.

## ARTICLE VII OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The Officers of this Association shall be a President, a Vice-President, a Secretary/Treasurer, and such other Officers as the Board may from time to time by resolution create. Following the expiration or termination of Declarant's Class B membership, all Officers of the Association must be Owners of Lots in this Project.

Section 2. Election of Officers. The election of Officers shall take place at the first meeting of the Board following each annual meeting of the Owners.

Section 3. Term. The Officers of the Association shall be elected annually by the Board and each shall hold office for one (1) year unless they shall sooner resign, be removed, or are otherwise qualified to serve.

Section 4. Special Appointments. The Board may elect such other Officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. The Board may remove any Officer from office with or without cause. Any Officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The Officer appointed to such vacancy shall serve for the remainder of the term of the Officer he replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one (1) of any of the other offices except in the case of special Officers created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the Officers are as follows:

A. President. The President shall preside at all meetings of the Board; shall see that orders and resolutions of the Board are carried out; shall sign all written instruments of the Association, and shall co-sign all checks and promissory notes.

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

C. Secretary. The Secretary shall record the votes and keep the minutes of all things and proceedings of the Board and of the Owners; serve notice of meetings of the Board and of the Owners; keep appropriate current records showing the Owners of the Association together with their addresses, and shall perform such other duties as required by the Board.

D. Treasurer. The Treasurer shall receive and deposit all monies of the Association in appropriate bank accounts and shall disburse such funds as Directed by the Board; shall sign all checks and promissory notes of the Association; keep proper books of account; and shall prepare an annual budget and a statement of income and expenditures to be presented to the ownership at its regular annual meeting, and deliver a copy of each to the Owners.

## ARTICLE VIII BOARDS

The Association may appoint Boards or Committees as deemed appropriate in carrying out its purposes.

## ARTICLE IX BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Owner. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any Owner at the principal office of the Association, where copies may be purchased at reasonable cost.

## ARTICLE X ASSESSMENTS

As more fully set forth in the Declaration, each Owner is obligated to pay to the Association all Assessments that are secured by a continuing lien upon the Owner's Lot. Any Assessment that is not paid when due shall be delinquent. If the Assessment is not paid on time, then the Board has the authority to establish late fees from time to time and collect the same from the delinquent Owner. The Association may bring an action at law against the Owner personally obligated to pay the Assessments and late fees or foreclose the lien against the property, and interest, costs, and reasonable attorney's fees of any such action shall be added to the amount of such Assessment. No Owner may waive or otherwise escape liability for the Assessments and late fees provided for

herein or provided in the Declaration by nonuse of the Common Areas or abandonment of his or her Lot.

ARTICLE XI  
AMENDMENTS

Section 1. These Bylaws may be amended at any time by the Declarant during the period of Declarant's control, and thereafter at a regular or special meeting of the Owners, by a vote of sixty-seven percent (67%) majority of a quorum of Owners present in person or by proxy; provided, however, that no amendment to the Bylaws shall be adopted that is inconsistent with or contradicts any provisions of the Declaration unless and until the Declaration is also amended (in accordance with the amendment requirements of the Declaration) to resolve such inconsistency or contradiction.

Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE XII  
MISCELLANEOUS

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

*[END OF BYLAWS. SIGNATURE PAGE FOLLOWS.]*

In Witness whereof, we, the undersigned initial three (3) directors of the Association have hereunto set our hands to the foregoing Bylaws effective as of the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Name Printed

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name Printed

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name Printed

\_\_\_\_\_  
Signature

STATE OF UTAH            )  
                                  : ss.  
COUNTY DAVIS         )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, before me \_\_\_\_\_, a notary public, personally appeared the individuals above, and proved on the basis of satisfactory evidence to be the persons whose names are subscribed to in this document, and acknowledged they executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

(notary seal)



Public Works Department  
497 South Main Clearfield City, UT 84015  
Phone: 801-525-4419

May 10<sup>th</sup>, 2022

Attn: Brad McIlrath, Senior Planner  
Proj: Clearfield Flex  
Subj: Plat Review 1

Brad,

I have completed my review of the recently submitted plat for Clearfield Flex Condominiums. The plat has several comments that need to be addressed before our recommendation of approval can be given.

1. The easement running East-West located just North of Unit B needs to be labeled.
2. The detention pond located on the north side of the property should be identified on the plat, along with language indicating who will be responsible for the maintenance and upkeep of it.
3. Include language indicating who is responsible for maintenance of all utilities on site (storm, sewer, water) and note that they will be privately owned and maintained.
4. Include language indicating who is responsible for all interior roads, note that all interior roads and facilities will be private.
5. Include language "Private streets are designated as utility, drainage, ingress/egress, and public fire access easement".
6. Change the year on all signatory lines to 2022.
7. Only one north arrow needs to be on the plat.
8. Include addresses of neighboring lots.
9. Include all lines on the Line Table.
10. Show the width of the UP&L Easement running through the property.

If you have questions, please contact me anytime.

Thanks,

**Dayton Newell**  
Clearfield City Public Works  
Staff Engineer  
Dayton.newell@clearfieldcity.org  
(801) 525-4423 Office



CLEARFIELD CITY COUNCIL MEETING MINUTES  
7:00 P.M. POLICY SESSION  
April 12, 2022

City Building  
55 South State Street  
Clearfield City, Utah

PRESIDING:	Mark Shepherd	Mayor
PRESENT VIA TEAMS:	Kent Bush	Councilmember
PRESENT:	Nike Peterson	Councilmember
	Vern Phipps	Councilmember
	Tim Roper	Councilmember
	Karece Thompson	Councilmember
STAFF PRESENT:	JJ Allen	City Manager
	Summer Palmer	Assistant City Manager
	Stuart William	City Attorney
	Kelly Bennett	Police Chief
	Adam Favero	Public Works Director
	Braden Felix	City Engineer
	Eric Howes	Community Services Director
	Curtis Dickson	Community Services Deputy Dir.
	Benji Frye	Parks and Open Space Manager
	Spencer Brimley	Community Development Director
	Brad McIlrath	Senior Planner
	Rich Knapp	Finance Manager
	Lee Naylor	Accountant
	Shaundra Rushton	Communications Manager
	Nancy Dean	City Recorder

VISITORS: Jenna Nelson, LeAnn Owell, Scott McDonald, Lanette Lambert, Yoselyn Martinez, Anna Nova, Ian Barlow, Cici Smith, Hanna McLaughlin, Valaney Dilley via Video, Barbara Bloomfield, Nancy Austin, Jason Linder

Mayor Shepherd called the meeting to order at 7:02 p.m.

Mayor Shepherd informed the audience that if they would like to comment during the Open Comment Period there were forms to fill out by the door.

Councilmember Peterson led the opening ceremonies.

APPROVAL OF THE MINUTES FROM JUNE 15, 2021, WORK SESSION

**Councilmember Peterson moved to approve the minutes from the June 15, 2021, work session as written, seconded by Councilmember Roper. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.**

PRESENTATION TO THE CLEARFIELD COMMUNITY SERVICES DEPARTMENT BY THE UTAH RECREATION AND PARKS ASSOCIATION

LeAnn Owell and Scott McDonald from the Utah Recreation and Parks Association, attended to present the 2022 Outstanding Department for a Class II City (Population between 15,000 and 50,000) award to the Community Services department. Ms. Owell also recognized the contributions to the organization by Curtis Dickson, Community Services Deputy Director. Scott McDonald, Utah Recreation and Parks Association, then presented Tyler Hill, City Arborist, with the 2022 Outstanding Park Professional award. The leadership of Mayor Shepherd and the City Council members was also recognized.

APPROVAL OF THE PROCLAMATION DECLARING APRIL 15, 2022, AS ARBOR DAY IN CLEARFIELD CITY

Clearfield City planned to celebrate Arbor Day on Friday, April 15, 2022. The City supported all efforts to plant and protect trees within its boundaries because trees are valuable to the City's environment. Clearfield had received the "Tree City USA" designation for the past 27 years. Eric Howes, Community Services Director, requested the date of April 15, 2022, be officially declared "Arbor Day" in the City of Clearfield. Tyler Hill, City Arborist, described the plans for the City's Arbor Day celebration on April 15, 2022.

**Councilmember Thompson moved to approve the Proclamation declaring April 15, 2022, as Arbor Day in the City of Clearfield, and authorize the Mayor's signature to any necessary documents, seconded by Councilmember Peterson. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.**

APPROVAL OF THE PROCLAMATION DECLARING APRIL 2022 AS "SEXUAL ASSAULT AWARENESS MONTH" IN CLEARFIELD CITY

"Sexual Assault Awareness Month" was intended to draw attention to the fact that sexual violence is widespread and has public health implications for every community member. Mayor Shepherd and the City Council recognized the need to work together with national, state, local partners, and every citizen to actively engage in public and private efforts to educate our community on the prevention of sexual assault and how to support survivors. There was compelling evidence that the City could be successful in reducing sexual violence in Clearfield through prevention, education, increased awareness, and holding perpetrators who committed acts of violence responsible for their actions.

Jenna Nelson, Youth Commission Advisor and sexual assault survivor, provided statistical information regarding the number of sexual assaults taking place nationally. She described her experience and encouraged compassion and awareness. She encouraged more education on the subject and support for survivors. She thanked the City for having a Victims Advocate and Housing Advocate that assisted survivors.

**Councilmember Thompson moved to approve the Proclamation declaring April 2022 as “Sexual Assault Awareness Month” in the City of Clearfield, and authorize the Mayor’s signature to any necessary documents, seconded by Councilmember Peterson. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.**

PRESENTATION BY THE CLEARFIELD YOUTH COMMISSION REGARDING ATTENDANCE AT THE NATIONAL LEAGUE OF CITIES CONGRESSIONAL CITIES CONFERENCE

The City recently provided the Clearfield City Youth Commission with the opportunity to attend the National League of Cities Congressional Cities Conference in Washington DC. Members of the Commission thanked the City for its support and shared the benefits of the experiences. Mayor Shepherd commented on the quality of the youth on the Commission and the example they were for those attending the conference.

PUBLIC HEARING TO RECEIVE PUBLIC COMMENT ON PROPOSED AMENDMENTS TO CITY CODE TITLE 11 – LAND USE TO COMPLY WITH STATE LAW PROHIBITING THE REGULATION OF BUILDING MATERIALS FOR SINGLE- AND TWO-FAMILY RESIDENTIAL DWELLINGS

As part of the 2021 Utah State Legislative session, House Bill 1003 was passed prohibiting a municipality from regulating building materials for single- and two-family residential dwellings. Staff was proposing changes to City Code, Title 11 – Land Use to comply with the State Law. The Planning Commission reviewed the amendments on March 2, 2022, and recommended approval.

Brad McIlrath, Senior Planner, reviewed the proposed changes to the City Code with the City Council. He stated the Council had a discussion during work session a few weeks ago about the changes and had then expressed some concerns about how the changes would affect the quality of housing in the City. He reviewed the current statistics in the City and how market demands, and consumers were dictating building design more than the regulations.

Mayor Shepherd opened the public hearing at 8:08 p.m.

Mayor Shepherd asked for public comments.

There were no public comments.

Councilmember Bush asked if the City could regulate building materials for single-family homes in the R-3 (Multi-family Residential) zone when it was used for a higher density single-family product. Mr. McIlrath responded the City could not regulate building materials for any type of single-family development unless there was a development agreement in place. He added the bill would allow the City to use a development agreement sparingly when regulation was necessary.

**Councilmember Thompson moved to close the public hearing at 8:12 p.m. seconded by Councilmember Peterson. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.**

PUBLIC HEARING TO RECEIVE PUBLIC COMMENT ON PROPOSED AMENDMENTS TO CITY CODE, TITLE 11, TABLE 11.2 PUBLIC NOTICE REQUIREMENTS REMOVING THE REQUIREMENT FOR SEVERAL TYPES OF NOTICES TO BE PUBLISHED IN THE NEWSPAPER

As part of the 2021 Utah State Legislative session, Senate Bill 201 removed the requirement for several types of notices to be published in a newspaper of general circulation: General Plan, Rezones, Zoning Text Amendments, and Vacations. The City would still be providing notice on its website, Utah Public Notice, and through mailings when necessary. The Planning Commission reviewed the amendments on March 2, 2022, and recommended approval.

Mayor Shepherd opened the public hearing at 8:14 p.m.

Mayor Shepherd asked for public comments.

There were no public comments.

**Councilmember Roper moved to close the public hearing at 8:15 p.m. seconded by Councilmember Thompson. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.**

PUBLIC HEARING TO RECEIVE PUBLIC COMMENT ON THE PROPOSED ENACTMENT OF CITY CODE, TITLE 11, CHAPTER 9, ARTICLE D – RESIDENTIAL ZONE (R-1-4); AMENDING TITLE 11, CHAPTER 13, SECTION 38, TABLE 38.1 - SUPPLEMENTARY REGULATIONS, ACCESSORY BUILDINGS AND STRUCTURE; AND RENUMBERING SEVERAL ARTICLES IN CHAPTER 9

The proposed R-1-4 zone was based upon previous discussions and direction provided by the Planning Commission and City Council. As a smaller lot single-family zone, the R-1-4 zone was intended to provide more single-family residential opportunities in Clearfield. Similar to the R-1-6 zone, the zone would encourage single-family residential infill as an alternative to multi-family residential in areas outside of the downtown core (Form Based Code area).

Brad McIlrath, Senior Planner, reviewed the proposed ordinance with the City Council. He explained the proposed changes were the result of responding to the housing

affordability topic by allowing single-family development on smaller lots and would only be applicable to infill development. He stated it was intended to be a better option than using the R-3 (Multi-family Residential) zone for those types of uses. He also described how the General Plan could be used to regulate the proper use of the proposed zone.

Mayor Shepherd opened the public hearing at 8:30 p.m.

Mayor Shepherd asked for public comments.

There were no public comments.

**Councilmember Thompson moved to close the public hearing at 8:31 p.m. seconded by Councilmember Peterson. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.**

OPEN COMMENT PERIOD

There were no public comments.

APPROVAL OF AND CONSENT TO THE MAYOR’S PROPOSED APPOINTMENTS OF INDIVIDUALS TO THE PARKS AND RECREATION COMMISSION

The Parks and Recreation Commission had vacancies that needed to be filled. Mayor Shepherd and the City Council interviewed a group of individuals to fill the vacancies. Mayor Shepherd recommended appointing Barbara Bloomfield with a term expiring December 2024, Nancy Austin with a term expiring December 2024, Jason Linder as an alternate with a term expiring December 2024; and move Paul Nielsen from alternate member to a full member with a term expiring in December 2023.

**Councilmember Phipps moved to approve and consent to the Mayor’s proposed appointments to the Parks and Recreation Commission of Barbara Bloomfield as a regular member with a term expiring December 2024, Nancy Austin as a regular member with a term expiring December 2024, Jason Linder as an alternate member with a term expiring December 2024; move Paul Nielsen from alternate member to a full member with a term expiring in December 2023; and authorize the Mayor’s signature to any necessary documents, seconded by Councilmember Roper. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.**

APPROVAL OF ORDINANCE 2022-07 AMENDMENTS TO CITY CODE TITLE 11 – LAND USE TO COMPLY WITH STATE LAW PROHIBITING THE REGULATION OF BUILDING MATERIALS FOR SINGLE- AND TWO-FAMILY RESIDENTIAL DWELLINGS

Nancy Dean, City Recorder, informed the Council that the proposed ordinance amended both the building regulations as discussed and the public notice requirements.

**Councilmember Peterson moved to approve Ordinance 2022-07 amending City Code, Title 11 – Land Use to comply with State Law prohibiting the regulation of building materials for single- and two-family residential dwellings, amending Table 11.2; and authorize the Mayor’s signature to any necessary documents, seconded by Councilmember Phipps. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.**

DENIAL OF ORDINANCE 2022-08 ENACTING CITY CODE, TITLE 11, CHAPTER 9, ARTICLE D – RESIDENTIAL ZONE (R-1-4); AMENDING TITLE 11, CHAPTER 13, SECTION 38, TABLE 38.1 - SUPPLEMENTARY REGULATIONS, ACCESSORY BUILDINGS AND STRUCTURES; AND RENUMBERING SEVERAL ARTICLES IN CHAPTER 9

Councilmember Peterson commented there was a need and desire to address and balance housing affordability and growth. She stated the ordinance represented a solid foundation and addressed a lot of the details necessary to implement it properly. However, she expressed her concern for striking a balance with the need for housing availability and quality housing that would age well. She was concerned with the City’s ability to strike that balance with an R-1-4 zone. She explained the proposal started with a request to develop in the R-3 (Multi-family Residential) zone in areas outside of the areas designated by the Council for higher density development, even areas where existing development did not match the proposals. She expressed an understanding of the cost for development but was concerned it came at the expense of quality. She expressed concern that in the name of affordability a product would be brought to market that would include the quality and longevity expected by residents. She asked what the best land use mechanism was to achieve the goals of the City. She suggested it might be better to collaborate with a developer through the development agreement process to achieve the goals of both parties.

Councilmember Phipps asked if Councilmember Peterson found the establishment of the R-1-4 zone tailorable or not viable at all. Councilmember Peterson commented that staff and the Planning Commission brought forward a good ordinance; however, she was concerned with the future consequences particularly since the Legislature had removed the City’s ability to regulate building materials to ensure a quality product. She suggested a development agreement would be the best way to bring both parties to the table to ensure a quality development. She commented that an R-3 zone approach was not ideal, but it allowed for a collaborative approach to development. Councilmember Phipps expressed his concern with enacting legislation to address a current situation without considering the unintended consequences in the future.

There was a discussion about the density impact when the R-1-4 zone was compared to the R-1-6 zone for infill development and its effect on affordability. Mr. McIlrath commented it did not really lend itself to higher affordability because of the supply and demand issues currently being faced. Mayor Shepherd commented that the City had already designated the R-1-6 zone for infill development. He suggested there were specific areas where a smaller lot than those created by the R-1-6 zone might be appropriate. He informed the Council that allowing R-1-4 only with a development agreement was against the Legislature’s intent when it removed a city’s ability to

regulate building materials. He commented the current cost of land presented a real obstacle to housing affordability.

Mayor Shepherd suggested the proposed R-1-4 zone didn't really get the City where it wanted to be. He commented the City had learned how to manage the density issue with an R-3 zone.

Councilmember Peterson appreciated staff and the Planning Commission exploring alternatives such as the proposed R-1-4 zone. She commented the timing had become an issue as the legislature tried to address housing affordability. She continued on stating; the Council was allowing higher density in some areas of the City with the expectation that residential development outside of the downtown corridor would preserve the neighborhood feel to an area.

JJ Allen, City Manager, asked for clarification on how the Council would like staff to proceed when developers approached the City wanting increased density for development. Mr. McIlrath commented whether the R-1-4 zone or R-3 zone was desired it was the same process. He added staff wanted to be confident in their response to the development community. Mayor Shepherd stated the same result could be obtained by use of the R-3 zone.

Councilmember Peterson stated she was currently not in favor of approving the proposed ordinance.

**Councilmember Peterson moved to deny Ordinance 2022-08 enacting City Code, Title 11, Chapter 9, Article D – Residential Zone (R-1-4); amending Title 11, Chapter 13, Section 38, Table 38.1 – Supplementary Regulations, Accessory Buildings and Structures; renumbering several Articles of Chapter 9 as a result; and authorize the Mayor's signature to any necessary documents, seconded by Councilmember Roper.** Councilmember Thompson commented if it was a matter of affordability the Legislature should address that issue with cities that had an abundance of vacant property. He continued that the Council has a responsibility to maintain the quality and viability of its single-family neighborhoods. **The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.**

APPROVAL OF RESOLUTION 2022R-07 AUTHORIZING AN INTERLOCAL AGREEMENT BETWEEN CLEARFIELD CITY, DAVIS COUNTY, AND OTHER DAVIS COUNTY CITIES FOR A UTAH POLLUTANT DISCHARGE ELIMINATION SYSTEM (UPDES) PERMIT

As part of Clearfield City's Utah Pollution Discharge Elimination System (UPDES) permit, the City determined to jointly implement portions of the Storm Water Management Plan with Davis County and other Davis County cities. The Interlocal Agreement would enact the limits, responsibilities, and requirements for each party to jointly implement the Storm Water Management Plan.

**Councilmember Phipps moved to approve Resolution 2022R-07 authorizing an Interlocal Agreement between Clearfield City, Davis County, and other Davis County cities for a Utah Pollutant Discharge Elimination System (UPDES) permit, and authorize the Mayor's**

**signature to any necessary documents, seconded by Councilmember Thompson. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.**

COMMUNICATION ITEMS

*Mayor Shepherd* – Nothing.

*Councilmember Bush* – Nothing.

*Councilmember Peterson* – Nothing.

*Councilmember Phipps* – Nothing.

*Councilmember Roper*

1. Expressed appreciation for the presentation by the Youth Commission earlier in the meeting.
2. Invited everyone to the Business-to-Business Expo on April 14, 2022, at 1:00 p.m.
3. Disclosed that he had formally applied for CDBG Rehabilitation Program funding to replace the windows in his home, met the income requirements, and qualified for the funds. He stated he had to go through the same process as any other resident and received no special consideration.

*Councilmember Thompson* – Nothing.

STAFF REPORTS

*JJ Allen, City Manager* – Nothing.

*Nancy Dean, City Recorder* - Reviewed the Council’s schedule:

- No meeting on April 19, 2022
- Work and Policy Session on April 26, 2022

**Councilmember Thompson moved to adjourn at 9:16 p.m. and reconvene in work session, seconded by Councilmember Peterson. The motion carried upon the following vote: Voting AYE: Councilmembers Bush, Phipps, Peterson, Roper, and Thompson. Voting NO – None.**



CLEARFIELD CITY COUNCIL MEETING MINUTES  
7:00 P.M. POLICY SESSION  
April 26, 2022

City Building  
55 South State Street  
Clearfield City, Utah

PRESIDING:	Mark Shepherd	Mayor
PRESENT:	Kent Bush	Councilmember
	Nike Peterson	Councilmember
	Vern Phipps	Councilmember
	Tim Roper	Councilmember
	Karece Thompson	Councilmember
STAFF PRESENT:	JJ Allen	City Manager
	Summer Palmer	Assistant City Manager
	Stuart Williams	City Attorney
	Kelly Bennett	Police Chief
	Adam Favero	Public Works Director
	Eric Howes	Community Services Director
	Benji Frye	Parks and Open Space Manager
	Spencer Brimley	Community Development Director
	Brad McIlrath	Senior Planner
	Shaundra Rushton	Communications Manager
	Nancy Dean	City Recorder
	Joannie Strong	Deputy City Recorder

VISITORS: Jenna Nelson

Mayor Shepherd called the meeting to order at 7:03 p.m.

Mayor Shepherd informed the audience that if they would like to comment during the Public Hearing or Open Comment Period there were forms to fill out by the door.

Councilmember Peterson invited the Barnes and Ortega families to participate in the opening ceremonies.

Mrs. Barnes served a mission in Nicaragua where she met the Ortega family. The Ortega Family expressed interest in coming to the United States due to some political unrest in Nicaragua. The Barnes family invited the Ortega family to come and stay with them. Councilmember Peterson invited the families to share their journey with the Council.

APPROVAL OF THE MINUTES FROM THE JULY 20, 2021, WORK SESSION; JULY 27, 2021, WORK SESSION; AUGUST 10, 2021, WORK SESSION

**Councilmember Thompson moved to approve the minutes from the July 20, 2021, work session; July 27, 2021, work session; August 10, 2021, work session; as written, seconded by Councilmember Peterson. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.**

PUBLIC HEARING TO RECEIVE PUBLIC COMMENT ON PROPOSED AMENDMENTS TO CITY CODE TITLE 11, CHAPTER 11, ARTICLE G – FORM BASED CODE LANDSCAPING REQUIREMENTS

Brad McIlrath, Senior Planner, stated Weber Basin Water Conservancy District collaborated with the City to establish water efficient landscaping standards that were adopted in February 2022. The action under consideration would apply the standards to the Form Based Code (FBC) area. He reviewed the specific changes with the Council. The FBC allowed for 60 percent of the landscaped area to be installed with turf grass, the amendment would allow for 15 percent of landscaped area to be turf grass. Staff proposed to include that park strips and other areas less than eight feet wide would not be permitted to be landscaped with turf grass. This would be consistent with standards in Clearfield City’s recently adopted ordinance. “Inclement weather” language was proposed to be added to the amendment to ensure landscaping remained in good condition after installation. Included in the inclement weather amendments would be the revision of the required bond amount from 125 percent to 110 percent to comply with State Code. Mr. McIlrath noted the proposed amendments were in accordance with the General Plan, and the Planning Commission reviewed the proposal on April 6, 2022, recommending approval.

Mayor Shepherd opened the public hearing at 7:41 p.m.

Mayor Shepherd asked for public comments.

There were no public comments.

**Councilmember Thompson moved to close the public hearing at 7:42 p.m. seconded by Councilmember Bush. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.**

OPEN COMMENT PERIOD

There were no public comments.

APPROVAL OF ORDINANCE 2022-09 AMENDING CITY CODE, TITLE 11, CHAPTER 11, ARTICLE G – FORM BASED CODE REGARDING LANDSCAPE REQUIREMENTS

**Councilmember Peterson moved to approve Ordinance 2022-09 amending City Code, Title 11, Chapter 11, Article G – Form Based Code regarding landscape requirements and authorize the Mayor’s signature to any necessary documents, seconded by Councilmember Roper. Councilmember Phipps expressed his concern about how dramatic and excessive the proposal was. Mayor Shepherd acknowledged Councilmember Phipps’s concerns and commented Weber Basin recently spoke to the Council of Governments (COG) and had**

announced if there was another bad winter the secondary water would not be turned on next year. He noted the standards were aggressive but long term what was needed. Councilmember Peterson commented that amending of that portion of code covered new developments and that other areas were more difficult discussion and the Council would need to weigh property rights. That portion of the Code governed new construction and would allow the City to regulate and respond to the environment given the situation. She stated that the City was not taking anything from new property owners and that it made sense because it is at the time of initial development. Councilmember Peterson preferred to reduce passive water use through landscaping requirements rather than imposing restrictions inside the home through culinary use. Councilmember Roper stated it was an investment into future generations. Councilmember Phipps expressed appreciation for the comments and clarified his intent that action on water conservancy efforts would need to be enacted on a much larger scale and it did not seem that others were taking it as seriously. Mayor Shepherd agreed and stated that Clearfield City would be setting a positive example. **The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Roper, and Thompson. Voting NO – Councilmember Phipps.**

APPROVAL OF THE FINAL SUBDIVISION PLAT FOR THE CLEARFIELD STATION TRANSIT-ORIENTED DEVELOPMENT (TOD) LOCATED AT APPROXIMATELY 1250 SOUTH STATE STREET (TIN: 12-882-0005, 12-882-0001, 12-882-0004, 12-882-0006, 12-882-0007, 12- 068-0138, & 12-067-0139)

Brad McIlrath, Senior Planner, reviewed the background and plans for the development at Clearfield Station. Clearfield City on behalf of the Utah Transit Authority requested final subdivision plat approval for the Clearfield Station TOD Subdivision. The proposed subdivision included the creation of 21 lots, the dedication of seven (7) public streets (Station Boulevard, Depot Street, Box Car Drive, Bamberger Drive, Union Avenue, and the continuations of Grand Drive and Whistle Drive), and the vacating of five (5) previously platted streets. The subdivision also included the creation of easements for storm water management, access, and utilities. Mr. McIlrath mentioned the Council's question regarding the addressing for streets located on a diagonal tangent and noted that a solid conclusion had not been arrived upon and the matter was still being discussed with the Clearfield City Police Department.

Mr. McIlrath mentioned conditions of approval which included minor changes according to staff recommendations and would be fixed prior to recording with Davis County: the addition of a street name label, clarification on the markings for a utility easement, and the addition of a couple of the property tax id numbers to the notes of the plat prior to recording with Davis County. He informed Council the Planning Commission had reviewed the request on April 6, 2022 and unanimously recommended approval.

Mayor Shepherd stated the item had been discussed at length in a previous work session and asked for additional comments. There were no additional comments.

**Councilmember Roper moved to approve the Final Subdivision Plat for the Clearfield Station Transit-Oriented Development (TOD) located at approximately 1250 South State Street (tin: 12-882-0005, 12-882-0001, 12-882-0004, 12-882-0006, 12-882-0007, 12- 068-0138, & 12-067-0139), and authorize the Mayor's signature to any necessary documents, seconded by Councilmember Peterson. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – none.**

## COMMUNICATION ITEMS

### ***Mayor Shepherd***

1. Reported the Clearfield Station Project groundbreaking was held on April 25, 2022. He mentioned there had been a lot of public comment on the event and project.
2. Attended ULCT meetings in St. George and mentioned the meetings were very good.
3. Announced he would be leaving town on April 27, 2022 and return on April 30, 2022.

### ***Councilmember Bush***

1. Attended two conferences in St. George during April. He reported on the water conference he attended and noted that he would be meeting with Public Works to discuss some new products and equipment and spoke about the conservation of power. He stated that power was dependent on water.
2. Highlighted his takeaways from the ULCT conference. He noted the rental vacancy rate in Utah being at two percent and that 85 percent of those who rent could not qualify to purchase a home which was why apartments were being built.
3. Mentioned the comments surrounding the groundbreaking for the Clearfield Station Project. He suggested holding a Clearfield University to inform citizens about city government.

### ***Councilmember Peterson***

1. Expressed appreciation to staff for their hard work in getting the Clearfield Station Project to the groundbreaking stage.
2. Attended ULCT meetings in St. George and enjoyed visiting with other councilmembers to see similarities and differences other cities are experiencing compared to Clearfield.

### ***Councilmember Phipps***

1. Reported the ULCT Conference was great and mentioned the education he received at the conference while highlighting the last session.
2. Expressed his appreciation for the groundbreaking and commented how people would complain, but it was the best the City could negotiate with all the parties involved. He looked forward to the development.

### ***Councilmember Roper***

1. Commented on the Groundbreaking ceremony and expressed the business community's excitement over the project.
2. Thanked staff for their hard work.

### ***Councilmember Thompson***

1. Expressed his regret on not being able to attend the groundbreaking.
2. Stated his pleasure and honor to be a state delegate for his area at the GOP convention. Addressed the overlying concern or lack of understanding and involvement. He made an invitation to come and see what goes on and to be a part of the process.
3. Mentioned that according to the census, Clearfield was rated as the number 8 most diverse city in Utah. He stated that Clearfield was growing in a manner that was great for the City and had a great opportunity to bring a diverse aspect to business. He implored the citizens to attend meetings, participate, and present their ideas if they felt they wanted better than what the Council was providing. He looked forward to continuing to serve and stated service was selfless.

## STAFF REPORTS

### ***JJ Allen, City Manager***

1. Congratulated everyone on the groundbreaking stating it was a great milestone. He commented staff was actively working to acquire the additional funding needed for the infrastructure project.
2. Reported that the UCMA and ULCT conferences were time well spent.

### ***Nancy Dean, City Recorder*** –reviewed the Council’s schedule:

- Work Session on May 3, 2022
- Policy Session on May 10, 2022
- Work Session on May 17, 2022
- Policy Session on May 24, 2022

**Councilmember Thompson moved to adjourn as the City Council and reconvene in work session at 8:06 p.m., seconded by Councilmember Peterson. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.**

*\*\*The minutes for the CDRA are in a separate location\*\**

CLEARFIELD CITY COUNCIL MEETING MINUTES  
6:00 P.M. WORK SESSION  
April 26, 2022

City Building  
55 South State Street  
Clearfield City, Utah

PRESIDING:	Mark Shepherd	Mayor
PRESENT:	Kent Bush	Councilmember
	Nike Peterson	Councilmember
	Vern Phipps	Councilmember
	Tim Roper	Councilmember
	Karece Thompson	Councilmember
STAFF PRESENT:	JJ Allen	City Manager
	Summer Palmer	Assistant City Manager
	Stuart Williams	City Attorney
	Kelly Bennett	Police Chief
	Adam Favero	Public Works Director
	Braden Felix	City Engineer/PW Deputy Director
	Eric Howes	Community Services Director
	Curtis Dickson	Community Services Deputy Dir.
	Benji Frye	Parks and Open Space Manager
	Spencer Brimley	Community Development Director
	Brad McIlrath	Senior Planner
	Rich Knapp	Finance Manager
	Lee Naylor	Accountant
	Shaundra Rushton	Communications Manager
	Nancy Dean	City Recorder
	Joannie Strong	Deputy City Recorder

VISITORS: Jenna Nelson, Lauren DeSpain, Chad Mortensen, Zach Gaines

Mayor Shepherd called the meeting to order at 6:00 p.m.

Councilmember Thompson arrived at 6:06 p.m.

PLANNING COMMISSION INTERVIEWS

Mayor Shepherd and the City Council interviewed Lauren DeSpain, Chad Mortensen, and Zach Gaines to fill vacancies on the Planning Commission.

## DISCUSSION ON THE PLANNING COMMISSION VACANCIES

There was a discussion about the individuals who were interviewed and what positions were open. The Council proposed Lauren DeSpain for regular member of the Planning Commission and Chad Mortensen and Zach Gaines as alternates for the Planning Commission.

**Councilmember Bush moved to adjourn the work session and reconvene in policy session at 6:55 p.m., seconded by Councilmember Thompson. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.**

The meeting reconvened at 8:11 p.m.

## DISCUSSION ON THE CLEARFIELD STATION MASTER DEVELOPMENT AGREEMENT FOR PROPERTY LOCATED AT APPROXIMATELY 1250 SOUTH STATE STREET

Spencer Brimley, Community Development Director, presented Council with an amendment to the Clearfield Station Transit Oriented Development (TOD) for discussion. The project was originally approved at the end of 2020 with the Master Development Agreement executed in August 2021. He informed Council the amendment was to address the phasing of the project to install the infrastructure needed.

Councilmember Peterson proposed attaching a map as an exhibit that would lay out the phasing plan. There was a discussion around what type of map she was looking for and Councilmember Peterson clarified she was interested in a simplistic public friendly exhibit that would be part of the searchable record. JJ Allen, City Manager, reported that for an exhibit to be added to the agreement, it would need to be routed back through all the parties involved. Mr. Allen and Mr. Brimley agreed that something visible to enhance the public's understanding could be created. Mr. Brimley noted the item would go before the Council for consideration on May 10, 2022. There was no further discussion on the item presented.

## DISCUSSION ON WATER CONSERVATION MEASURES

Summer Palmer, Assistant City Manager, presented the Council with a discussion on Water Conservation Measures. She recapped the Council's last discussion on Water Conservation Measures. Ms. Palmer reminded Council that Weber Basin Water Conservancy had changed its contract to include a 33 percent reduction. She mentioned that due to staff's efforts, they were able to negotiate a 24 percent reduction. Ms. Palmer reported staff's assumption the City would need to pump more water from its wells than normal to have enough water supply. She confirmed the takeaways from the last meeting which were as follows:

- Council wanted to address conservation through rates instead of enforcing restrictions.
- Council wanted a plan for protecting the City's infrastructure while being mindful of conservation.
- Council wanted to focus on conservation strategies and education.

Adam Favero, Public Works Director, presented the methodology for rate calculations. He reported the preliminary calculations and methods were developed by City staff based upon recommendations from the Weber Basin Water Conservancy District's Financing Workshop, rate calculations based on the 2021

rate study and the current situation, and in partnership with Zions Public Finance. Mr. Favero brought to the attention of the Council the rates were based on a one-year cycle and would revert to the FY24 rates in July 2023. He noted that should the drought continue, FY24 rates would need to be addressed in a similar fashion as the FY23 drought emergency water rates.

Mr. Favero covered the suggested water usage reduction as follows:

- No reduction in residential water usage for 0 - 10,000 gallons
- A ten percent reduction in residential water usage for 10,000 – 20,000 gallons
- A 30 percent reduction in residential water usage above 20,000 gallons
- A ten percent reduction in commercial water usage
- A ten percent reduction in multi-family water usage

Mr. Favero pointed out the addition of a new tier of 10,001 – 20,000 gallons to help balance indoor and outdoor water usage for residential homes. Councilmember Thompson questioned the typical usage amount for multi-family units. Mr. Favero stated the indoor consumption of one unit within a multi-family complex would be approximately three-quarters the amount of the indoor consumption for a single-family residential unit. Ms. Palmer relayed Weber Basin’s request for everyone to reduce indoor water use by ten percent. There was a discussion regarding the necessity of water consumption and the uniqueness of the multi-family structure and the best way to communicate the reduction needs to residents.

Ms. Palmer presented a picture of residential water usage over a one-year time frame. She stated that 67 percent of residents stay on average within the 0-10,000-gallon range and would not be affected by the rate increase. Ms. Palmer acknowledged that during the summer months some of the residents would fall out of that range and into a range affected by a rate increase. Mr. Favero mentioned not wanting to penalize the 0-10,000 range since that was where the bulk of the residents fell. He recalled discussing becoming whole financially with the 20 percent reduction that the City would be selling its water as was done in the past, and assured the Council that it was built into the proposal. The new rates were meant to encourage residents to get back into the water saving range.

Ms. Palmer presented the proposed Drought Emergency Water Rates with the current rate, original 2023 rate, proposed 2023 rate, and percentage of increase as follows:

Usage Tier	Current Rate	2023 Original Rate	2023 Proposed Rate	Percent of Increase
<b>Residential</b>				
0-10,000 gallons	\$0.94	\$0.96	\$0.96	2%
10,001 - 20,000 gallons	\$1.09	\$1.11	\$1.20	10%
20,001 - 40,000 gallons	\$1.09	\$1.11	\$1.50	37%
40,001 - 60,000 gallons	\$1.25	\$1.27	\$2.00	60%
60,001 - 80,000 gallons	\$1.43	\$1.46	\$2.50	75%
80,001 + gallons	\$1.59	\$1.62	\$3.50	120%
<b>Commercial &amp; Multi over 7,000 gallons</b>				
All	\$1.14	\$1.17	\$1.45	27%

Ms. Palmer reminded Council that the rate study had already imposed an increase to the FY23 rates that was not a result of the drought. She stated the increase percentages were based on the model put together



by Zion Public Finance and the City's conservation reduction efforts based on the Weber Basin recommendation.

Councilmember Peterson expressed concern over the slight rate increase not being enough to evoke change in behavior within the community. She was concerned the community would simply adjust to the increase and take the hit as had been the case with the increases in gas prices. A discussion ensued around the monetary impact to the community not being sufficient to warrant a change in behavior, and the Council's concern of a disconnect between usage and the realization of the problem given the lag time in billing.

Councilmember Peterson reported that the Council's policy directive to staff, tentatively at that point, was instead of being water cops, let uncomfortable rates drive behavior. There was a discussion on the best way to approach encouraging the community to change its behavior, the necessity to enact real-time impacts, and communicating the problem and impacts to the community. Councilmember Thompson encouraged raising the rate increases higher than staff had presented.

Mayor Shepherd explained that the rates were just fees, and the model displayed what was needed to keep the City whole financially with the penalties the City would have to pay. He continued to say that if Council wanted to go beyond the amounts provided, the City would be accountable to the residents to explain why they would be charged more than the City. Ms. Palmer confirmed the rates provided to the Council were to cover the City's expenses and noted that if the City must pay more, it would be covered by the users who step out of the usage conserving range. She reported that the model presented to the Council was not meant to make money.

There was a discussion on how to encourage a consumption change within the community. Mayor Shepherd commented that it would come down to messaging. Instead of focusing on the ten percent increase, the messaging could focus on a higher percentage increase. Councilmember Peterson agreed. Eric Howes, Community Services Director, reported to Council that the average homeowner in Clearfield watering according to the restrictions would drop into the 20,001-gallon range and could easily cross into the 40,001-gallon range. Mayor Shepherd reiterated the importance of messaging. He was confident that conveying historical usage, previous rates, and the new rates to the residents would have an impact.

Councilmember Thompson advocated for rates that would be noticeable. Mr. Favero agreed with the methodology of implementing higher rates from the start. His thought process was if rates were raised sooner and accomplished the City's goal, there would not be a need to sell as much water which would prevent the City from making money reducing it back down to keep the City whole financially. Councilmember Phipps suggested a surcharge along with the dispersal of great messaging relaying to the residents the negative action, the repercussions from their actions, and a solution to help get them back into conservation mode. Mr. Favero expressed concern over the resources implementing a surcharge would require.

Councilmember Roper suggested keeping the rates and revisiting if the crisis wasn't being taken seriously. Councilmember Thompson agreed with an emphasis on educating the residents. Councilmember Peterson expressed her concern over the short timeframe during the summer months to work with. She reiterated the issue with the City's ability to be responsive with the billing lag time. Ms. Palmer explained the rates were emergency rates and would take effect on the May 8, 2022, billing

cycle. She explained the billing cycle process and stated she preferred Council to increase rates as soon as possible rather than revisiting.

Ms. Palmer requested clarification from Council on its direction for the rate increase percentages and noted the percentages could be adjusted. Mayor Shepherd was in favor of increasing the top three tiers. Councilmember Peterson agreed with the acknowledgement that the City had evidence based modeling which was based on an anticipated water use, and that was the variable. Councilmember Bush agreed with the increase in the top three tiers noting that on average, not many residents fell into those tiers.

There was a discussion on how much the percentages should increase. Mr. Favero addressed Mr. Howes’s comment on the average use in the summer being around 40,000-gallons and entertained the notion of the 20,001-40,000-gallon range needing to be increased since that range was not a 60 percent reduction. Mayor Shepherd expressed his concern about asking residents to conserve, them complying with restrictions, and then imposing a penalty for doing exactly what the City was asking.

After discussion, it was agreed that the emergency drought rates would be presented to the Council in a special meeting on May 3, 2022, proposed as follows:

Usage Tier	Current Rate	2023 Original Rate	Proposed Rate	Percent of Increase
<b>Residential</b>				
0-10,000 gallons	\$0.94	\$0.96	\$0.96	2%
10,001 - 20,000 gallons	\$1.09	\$1.11	\$1.20	10%
20,001 - 40,000 gallons	\$1.09	\$1.11	\$1.50	37%
40,001 - 60,000 gallons	\$1.25	\$1.27	\$2.19	75%
60,001 - 80,000 gallons	\$1.43	\$1.46	\$2.86	100%
80,001 + gallons	\$1.59	\$1.62	\$3.98	150%
<b>Commercial &amp; Multi over 7,000 gallons</b>				
All	\$1.14	\$1.17	\$1.45	27%

Mr. Howes briefed the Council on the City’s Conservation Strategy to conserve resources and attempt to preserve the investment placed into Clearfield City’s parks and playing fields. The strategy consisted of four phases that targeted sports fields, other turf areas, and park strips. He reviewed the triggers for each phase along with the goals for the targeted areas within the phase, and the City’s strategy to achieve the goal. Mr. Howes noted that the City was taking preemptive measures to keep the playing fields open for sports. However, he acknowledged the possibility of having to close the sports fields completely. Benji Frye, Parks and Open Space Manager, clarified that the strategy had to be site specific. Mr. Howes stressed the importance of reprioritizing the City’s capital projects list to prioritize projects that would remove turf and change landscaping.

Shaundra Rushton, Communications Manager, presented the Council with the Communication Plans for conservation. She developed key messages, or main points, that the City needed its residents to hear and understand. Those messages were:

- Clearfield City is implementing emergency water rate increases due to Northern Utah’s severe drought conditions.
- Rate increases are necessary to meet the rising cost of water due to its limited availability.

- Rate increases will preserve the community’s water resources by encouraging conservation and reducing water waste.

Councilmember Phipps expressed belief that the public had not come to the realization of the severity of the situation and the need to paint a picture might be required to help the residents understand. Councilmember Peterson mentioned Governor Cox had declared a state of emergency for water and how there might be no secondary water. Secondary water was not prevalent in Clearfield, she believed the declaration had been lost on the residents and questioned the best way to convey the severity of the drought to the residents. Ms. Rushton clarified that the key messages were overarching and were a starting point.

Ms. Ruston explained the City’s communication campaign needed to happen in two steps and reviewed that process with them. The first step would be awareness which would consist of providing answers upfront to reduce the risk of public relations crises. She provided examples of the methods for achievement that would include a utility bill insert, city-wide mailer, website blog, social medial announcement, and customer-facing employee training. The second step would be education which would answer and discuss frequently asked questions on a continued basis. She highlighted the social media plan with a spotlight on a different department each week that would convey a message regarding conservation. There was no further discussion on City’s communication plan.

Mayor Shepherd recommended adopting the water rates in a special session on May 3, 2022, at 6:30 p.m. and moving the discussion on the City’s Fiscal Year 2023 (FY23) budget and the CDRA’s FY23 budget to the work session on May 3, 2022, following the special session. Council agreed to the Mayor’s suggestion.

**Councilmember Thompson moved to adjourn at 10:01 p.m., seconded by Councilmember Bush. The motion carried upon the following vote: Voting AYE – Councilmember Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.**

CLEARFIELD CITY COUNCIL MEETING MINUTES  
6:00 P.M. WORK SESSION  
May 17, 2022

City Building  
55 South State Street  
Clearfield City, Utah

PRESIDING:	Mark Shepherd	Mayor
PRESENT:	Kent Bush	Councilmember
	Nike Peterson	Councilmember
	Tim Roper	Councilmember
	Karece Thompson	Councilmember
	Vern Phipps	Councilmember
STAFF PRESENT:	JJ Allen	City Manager
	Summer Palmer	Assistant City Manager
	Stuart Williams	City Attorney
	Kelly Bennett	Police Chief
	Adam Favero	Public Works Director
	Kenny England	Utilities Superintendent
	Eric Howes	Community Services Director
	Curtis Dickson	Community Services Deputy Director
	Spencer Brimley	Community Development Director
	Nancy Dean	City Recorder
	Joannie Strong	Deputy City Recorder

VISITORS: Chief Becraft (NDFD), Angie Van Leer, Jaystin Van Leer, and Cybin Van Leer

Mayor Shepherd called the meeting to order at 6:02 p.m.

The City Council was visited by Members from Boy Scouts of America (BSA) Troop 719 out of Riverdale, who were working on their Citizenship in the Community merit badge. Councilmembers provided time at the beginning of the meeting to answer any questions the troop members had. Afterwards, councilmembers provided information on the Youth Commission, encouraged community involvement, and thanked them for visiting.

DISCUSSION ON A FEE WAIVER REQUEST BY THE NORTH DAVIS FIRE DISTRICT

The North Davis Fire District (NDFD) would be demolishing the existing fire station located at 88 East Center Street, Clearfield, and building a new state of the art fire station to help better serve its customers and improve the physical work environment for its employees. The NDFD acknowledged and accepted that it would need to pay for all additional costs the City incurred from outside third parties during the review and approval of the building permit. However, the NDFD asked that the City “waive” all required building permit fees.

Spencer Brimley, Community Development Director, presented a request from the North Davis Fire District (NDFD) for a building permit fee waiver. He informed the Council that Clearfield City Municipal Code § 10-1-3 required a building permit for any excavation, grading, fill or construction in the community. Therefore, the NDFD would be required to obtain a building permit. He also informed the Council that Clearfield City Municipal Code § 10-1-1A adopted the International Building Code (IBC) and it included the following:

- a fee for each permit be paid as required and in accordance with the fee schedule established by the city (Section 109.2 of the IBC)
- authorizes the building official to establish a refund policy (Section 109.6 of the IBC)
- The building official may only refund building permit fees pursuant to IBC Section 109.6 after a determination has been made by the Council to donate the fees collected and appropriate them back to the NDFD.

The State required the City to charge a one percent surcharge on all building permits (Utah Code Ann. § 15A-2-209). Mr. Brimley stated that based on Clearfield City Code and the International Building Code, it was concluded that the City could not grant a “waiver” of the required building permit fee. However, the City had the option to “refund” up to 99 percent of the total building permit fee paid to the City after taking the steps required to appropriate funds through a donation.

Mr. Brimley provided the following alternatives to the fee waiver request for the Council to review:

- Direct staff to inform the NDFD that a waiver of the building permit fees was not possible, and that Council would not refund any of the building permit fees to be collected by the City.
- Direct staff to inform the NDFD that a waiver of the building permit fees would not be possible, but that Council would consider a refund of a percentage or specific dollar amount of the total available 99 percent of the building permit fees that were authorized to be refunded.
- Provide staff with an alternative direction.

Mr. Brimley reviewed the fees the City had surrounding the permit and everything associated with the fees. He informed the Council that State Law required a one percent fee to be collected and remitted to the State from all permit fees. Based on information provided from the North Davis Fire District Chief Becraft, Mr. Brimley estimated the permit fee to be around \$50,000. Mr. Brimley asked Council for direction as to the amount that would be remitted in the refund. He noted that the impact fees would not change.

There was a discussion surrounding impact fees and site plan. Mr. Brimley confirmed the Site Plan application had been received and was in the review process. He noted that the impact fees would not change and reiterated the acknowledgement and acceptance from NDFD to pay all additional costs the City incurred from outside third parties during the review and approval of the building permit.

JJ Allen, City Manager, restated the request to Council would be whether they wanted to donate staff time. He reiterated that the permit fees were intended to cover those costs and noted that if

Council would like to donate staff time, then direction as to a percentage or dollar amount would be needed. There was a discussion regarding the staff time and cost associated with permits, the number and type of inspections, the possibility of needing to outsource inspections, and the actions the City had taken with other entities in similar situations.

Mayor Shepherd expressed concern over who should pay for the fee since the fire station serviced three cities. A discussion ensued regarding the role the Fire District played within Clearfield and Councilmember Peterson expressed the need for the City to develop a policy for consistency. Should the Council decide to proceed with a refund, JJ Allen noted the refund would take place once the project was completed.

Council agreed that Community Development would come back to the Council once the costs had been finalized and to set a public hearing for consideration of the refund.

#### DISCUSSION ON APPROPRIATING SIEZED EVIDENCE AS PUBLIC INTEREST USE BY A GOVERNMENT AGENCY

Police Chief Kelly Bennet informed the Council in December of 2019, the Clearfield Police Department conducted a child pornography investigation in which the suspect was arrested, convicted, and sentenced for the possession of child pornography. During the investigation, an Xbox gaming device was found that contained images of child pornography. The Xbox was seized and booked into evidence. The Davis County Attorney's Office has authorized destruction of the Xbox.

Pursuant to Utah Code Annotated § 24-3-103, if the rightful owner was not entitled to lawfully possess the property, the law enforcement agency may apply the property to a public interest use. Additionally, before the property could be applied to a public interest use, the agency's legislative body shall give permission to apply the property to public interest use and approve of the designation of the public interest use.

Chief Bennet stated that the police department would like to remove and destroy the hard drive as directed by Utah Code and use the "shell casing" of the Xbox in proactive investigative operations. He requested Council to appropriate the item for public interest use. Chief Bennet stated that other agencies had gone through the same process for their operations. He noted that the individuals committing vehicle burglaries had become increasingly more violent where the burglars were armed and not afraid to confront owners so he would like to get in front of the situation. There were no additional questions, and the consensus of the Council was to move forward with the appropriation of the item.

#### DISCUSSION ON JUNETEENTH OBSERVANCE

Summer Palmer, Assistant City Manager, came to the Council with a request for direction on the City's Observance of Juneteenth. She stated that on June 18, 2021, President Biden declared Juneteenth a National Holiday calling upon the people of the United States to acknowledge and celebrate the end of the Civil War and the emancipation of Black Americans and commit

together to eradicate systemic racism that undermines the Nation’s founding ideals and collective prosperity.

Ms. Palmer mentioned that during the 2022 Legislative Session, the Utah State Legislature passed HB0238 designating Juneteenth a Utah State holiday, and in March of 2022 the Davis County Commission approved the addition of Juneteenth to the County’s holiday schedule. She noted that many local entities including, Farmington, Layton, Centerville, West Bountiful, South Weber, Weber County, Weber School District, and Davis School District had also added the holiday and planned to observe it by closing their workplaces on that day.

Ms. Palmer noted that the observance of the holiday would include City offices being closed to the public annually on June 19<sup>th</sup> and the addition of the paid holiday to the list of observances in the Policy and Procedure Manual.

There was a brief discussion surrounding the impact of the observance of the holiday on the City, and it was decided to move forward with the observance request.

DISCUSSION ON SIGNANGE FOR CITY HALL, CORNERSTONE PARK, AND STEED PARK

Spencer Brimley, Community Development Director, presented a request from Community Services to install new monument signs in three locations within the City. The signs would be located at the front lawn of City Hall, Steed Park, and Cornerstone Park. The signs would provide information to the public through an electronic message center (EMC), as well as act as City indicators for entry or gateway areas to the City. The EMC would be surrounded by a monument sign with the City logo and architectural features.

Mr. Brimley informed the Council that staff was seeking City Council feedback and direction regarding the new monument signs. He reviewed each location of the new signs along with the current zoning, and provided a Form Based Code analysis on each sign, indicated as follows:

**City Hall**

<b>Current Sign</b>	<b>Proposed Sign</b>
C-V (Commercial) zone	C-V (Commercial) zone
Located at the north side of City Hall entry	Located on the front lawn of City Hall below the third floor
Large monument design with a small EMC	Large Monument design with a large EMC and a wall sign

**Form Based Code Analysis (Civic Center C-V)**

<b>Current Code (FBC)</b>	<b>New Signage</b>
Height: 6 feet	Height: 10 feet
Size: 70 square feet	Size: 136 square feet
EMC: allowed to be 50 percent or 20 square feet max of sign square footage	EMC: 57 square feet

Wall Sign: <ul style="list-style-type: none"> <li>○ Consistent with code</li> <li>○ More artistic look</li> </ul>	Base: not shown on plans, TBD
	New Wall Sign: <ul style="list-style-type: none"> <li>○ More simplistic</li> </ul>

**Steed Park**

<b>Current Sign</b>	<b>Proposed Sign</b>
P-F (Public Facilities) zone	P-F (Public Facilities) zone
Located on 300 North 1000 West	Located on 300 North 1000 West
Small identifier design	Large Monument design with a large EMC

**Public Facilities Analysis (P-F)**

<b>Non-FBC Standard</b>	<b>New Signage</b>
Height: 9 feet	Height: 10 feet
Size: 64 square feet	Size: 136 square feet
EMC: allowed to be 50 percent of sign total square footage	EMC: 57 square feet
Base: 1 foot	Base: not shown on plans, TBD

**Cornerstone Park**

<b>Current Sign</b>	<b>Proposed Sign</b>
R-1-8 (Residential) zone	R-1-8 (Residential) zone
No sign	Located in the corner area of the park
	Large Monument design with a large EMC

**R-1-8 Analysis**

<b>Non-FBC Standard</b>	<b>New Signage</b>
Monument signs not allowed in this zone	Height: 10 feet
	Size: 136 square feet
	EMC: 57 square feet
	Base: not shown on plans, TBD

Mr. Brimley pointed out to the Council and wanted them to keep in mind that one proposed site was commercial, one was public facility, and one was residential. There was a discussion on the assumption of all parks being rezoned to P-F with the consensus being that it was a discussion at one point without follow through.



Mr. Brimley presented options for the Council's consideration so that Community Services wouldn't have to redesign the sign or have three different designs allowing for cost savings and uniformity:

- The regulations for monument signs in the FBC and non FBC areas could be changed.
- Signs could be permitted based on acreage.
- Have sign regulations based on zoning allowing different sizes in the FBC and non FBC areas.
- Only change the regulations for FBC to match non FBC regulations
- Do not make any changes
- Other options the Council would provide

Mr. Brimley stated that if Council approved the design of the signs as proposed, direction on the best way to regulate them would be needed. There was a discussion on the brightness of the signs and the ability to adjust it. Curtis Dickson, Community Services Deputy Director, confirmed that the brightness of the signs would be adjustable, and that the direction of the City Hall sign would not shine directly at City Centre Apartments.

Councilmember Peterson mentioned changing the zones to P-F with the realization that would mean City Hall would be pulled from FBC. Mr. Brimley rebutted that the zoning regulations within C-V could be amended to be consistent and noted the need to be mindful of not creating any issues or unintended consequences. He suggested rezoning all the parks to P-F as a part of that process. There was a discussion on the pros and cons of the zoning options and issues that could arise with changes.

A discussion arose on the purpose of signs and the necessity to have all three signs the same and the need to have the EMC on the signs at Steed Park and Cornerstone Park or if a smaller EMC could suffice. Mr. Dickson stated the purpose of the signs was to advocate for the City's branding and messaging such as events, closures, and job posting, along with program registrations. He stated the goal of having the three signs the same was to create uniformity and cost savings. Mr. Dickson noted that having different sized EMCs would be difficult for communications as the same messaging would be displayed across all three signs simultaneously and would require different programming configurations for different sizing. He stated that there had been a noticeable influx of registration sign ups using a trailer based electronic messaging board.

The Council discussed the cost difference between the inclusion and exclusion of the EMC on the signs, and the estimated frequency of replacement of the EMC. The consensus of the Council was to amend Code to allow for the signage as proposed using acreage for scale, and rezone parks to P-F leaving the City Hall zoning the same as it currently was.

## DISCUSSION ON MONTHLY REPORTS

### *Fourth of July and Centennial Celebrations*

Curtis Dickson, Community Services Deputy Director, highlighted planned events surrounding the 4<sup>th</sup> of July and Centennial Celebrations. He mentioned the centennial logo stencil Public

Works was creating for Paint the Bridge, the Pool Bash, Movie in the Park, a Patriotic Concert, Weber State University Freedom Run 5K/1mile, and the hometown parade. Mr. Dickson laid out the Freedom Festival events and reviewed the Birthday Carnival plans that would take place on July 17, 2022. At the Birthday Carnival, limited edition centennial keychains and cake would be handed out, there would be carnival games and bounce houses, and attendees would have the option to place items into the time capsule.

### *Lead and Copper Pipe Requirements*

Kenny England, Utilities Superintendent, briefed the Council on the Environmental Protection Agency's (EPA) new Lead and Copper Pipe Requirements as of December 2021, which included:

- A requirement to have inventory of the complete water system by October 16, 2024, through various testing methods. (Mapping, records review, pothole, scratch, and magnet test)
- Lead and copper flux was banned in 1986 but still used in some areas until 1988. Testing would not be needed on homes newer than 1988, and any home not tested by October 16, 2024, would be determined a lead source until verified.
- The City was required to sample 20 percent of all schools and daycares each year from 2025-2029.

Mr. England noted that the requirement was recently placed back onto the schools to sample. He was not sure about a change to daycares. Mr. England noted that there could be minor adjustments to the rule revision, and potential funding could be available.

Mr. England showed the Council an image comparing the new water system responsibility and the old as a point of reference. He stated that any lead piping found would need to be replaced; lead goosenecks are not considered part of the study. Mr. England gave the Council a brief description of the current investigative process.

### *Preliminary Discussions: Regional Dispatch District*

JJ Allen, City Manager, briefed the Council on a discussion he was invited to regarding regional dispatch consolidation. He mentioned there were four dispatch centers in Davis County: Layton, Bountiful, Clearfield, and Davis County. He indicated the County was interested in creating a special service district to manage dispatch services. Mr. Allen confirmed the discussion of physical consolidation was just beginning; however, Davis County would like to explore the creation of a dependent special service district with as much of Davis County as possible. Layton and Bountiful were not interested in physical consolidation yet, and Clearfield City would participate in discussions and would only be interested if there was a significantly higher level of service.

### *Parking Study/Award for NDATIP (North Davis Active Transportation Implementation Plan)*

Spencer Brimley, Community Development Director, provided Council with an update on the City's parking study. He stated that according to the analysis, the Form Base Code (FBC) parking ratios were in line with what the consultants were seeing. Mr. Brimley informed Council

that the bedroom count would be critical as the City moved forward with evaluating parking throughout the City.

Mr. Brimley also noted that Brad McIlrath, Senior Planner, received an award of Merit (2021) for the North Davis Active Transportation Implementation Plan (NDATIP) at the APA Utah awards ceremony, and that Mr. McIlrath was working with WFRC for implementation of the City's plan into the overall Long Range Transportation Plan (LRTP),,which would allow for funding and other opportunities.

### *Scooters*

JJ Allen, City Manager, updated Council on the situation surrounding scooter availability in Clearfield. He mentioned that Lime scooters and bikes launched on Hill Air Force Base on May 6, 2022, and that there seemed to be an immediate interest in users taking the vehicles through the gate. Mr. Allen held discussions with Lime, and staff would be working to identify the best process to enable an official launch in Clearfield.

### *Miscellaneous*

Mayor Shepherd provided an update to Council on Falcon Hill. He met with Woodbury and mentioned that they were in discussion with Hill Air Force Base for the removal of some buildings to bring hotels. The City had been asked to preserve the Three Gates Trail right-of-way on the north end of 650 North, and for the trail and Frontage Road to connect to 200 South. Mayor Shepherd mentioned that it would only make sense if the Base would open the Southwest Gate. He provided Council with an update from UDOT on the upcoming construction projects in Clinton, West Point, and Roy.

**Councilmember Peterson moved to adjourn at 8:18 p.m., seconded by Councilmember Thompson. The motion carried upon the following vote: Voting AYE – Councilmember Bush, Peterson, Phipps, Roper, and Thompson. Voting NO – None.**

CLEARFIELD CITY COUNCIL MEETING MINUTES  
7:00 P.M. POLICY SESSION  
May 24, 2022

City Building  
55 South State Street  
Clearfield City, Utah

PRESIDING:	Mark Shepherd	Mayor
PRESENT:	Kent Bush Vern Phipps Tim Roper	Councilmember Councilmember Councilmember
EXCUSED:	Nike Peterson Karece Thompson	Councilmember Councilmember
STAFF PRESENT:	JJ Allen Summer Palmer Stuart Williams Kelly Bennett Adam Favero Spencer Brimley Shaundra Rushton Nancy Dean Joannie Strong	City Manager Assistant City Manager City Attorney Police Chief Public Works Director Community Development Director Communications Manager City Recorder Deputy City Recorder

VISITORS: Jenna Nelson, Katie Nicholson

Mayor Shepherd called the meeting to order at 7:02 p.m.

Mayor Shepherd informed the audience that if they would like to comment during the Public Hearing or Open Comment Period there were forms to fill out by the door.

Councilmember Roper led the opening ceremonies.

APPROVAL OF THE MINUTES FROM THE OCTOBER 26, 2021, WORK SESSION; MAY 3, 2022, SPECIAL SESSION; MAY 3, 2022, WORK SESSION; MAY 10, 2022, POLICY SESSION; AND MAY 10, 2022, WORK SESSION

**Councilmember Roper moved to approve the minutes from the October 26, 2021, work session; May 3, 2022, special session; May 3, 2022, work session; May 10, 2022, policy session; and the May 10, 2022, work session; as written, seconded by Councilmember Phipps. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Phipps, and Roper. Voting NO – None. Councilmembers Peterson and Thompson were not present for the vote.**

Mayor Shepherd excused Councilmembers Peterson and Thompson.

PUBLIC HEARING TO REVIEW AMENDMENTS TO THE CR ZONE ALLOWING SINGLE-FAMILY DWELLINGS AS A PERMITTED RESIDENTIAL USE - WITHDRAWN

The applicant withdrew the application for consideration. There was no public hearing.

PUBLIC HEARING TO REVIEW AMENDMENTS TO THE GENERAL PLAN AND THE REZONE REQUEST FROM COMMERCIAL TO MIXED USE AND C2 (COMMERCIAL) TO CR (COMMERCIAL RESIDENTIAL) FOR PROPERTIES LOCATED AT APPROXIMATELY 500 WEST 1700 SOUTH – WITHDRAWN

The applicant withdrew the application for consideration. There was no public hearing.

OPEN COMMENT PERIOD

Katie Hall, a resident of South Ogden, visited the Council meeting. She announced she was running for Utah House of Representative District 11, and informed Council she planned to attend a City Council meeting for each city within District 11 to introduce herself and get to know a little about each city. Ms. Hall provided her contact information along with her website.

Mayor Shepherd thanked her for coming out and visiting. JJ Allen, City Manager, mentioned that the vision for the downtown redevelopment hinged on the part of the Clearfield City that would be in District 11.

APPROVAL OF ORDINANCE 2022-11 AMENDING TITLE 1, CHAPTER 16- CODE ENFORCEMENT REGARDING REQUESTS FOR COMPLIANCE

Mayor shepherd provided background for the amendments to Ordinance 2022-11. During the 2021 City Council retreat direction was provided to amend the current code enforcement administration to replace the current “Notice of Violation (NOV) with a “Request for Compliance” (RFC). Additionally, during that meeting staff received direction that code efforts should be more reactive, responding to complaints or suspected violations, rather than being proactive. The proposed ordinance defined and initiated those changes.

Mayor Shepherd asked for comments. Councilmember Phipps appreciated the work that went into the amendments to the Ordinance. Councilmember Roper commented that the amendment was a great move to show residents the City was willing to work with them and help them out rather than forcing them into compliance. Mr. Allen briefed the Mayor and Council on an earlier conversation he had with Spencer Brimley, Community Services Director. Mr. Allen encouraged

Mr. Brimley to help staff understand that when they respond to a complaint, it would be appropriate to assess other properties within the area for visible issues, and to work with the property owners to address any issues staff had discovered.

**Councilmember Phipps moved to approve Ordinance 2022-11 amending Title 1, Chapter 16 – Code Enforcement Regarding Requests for Compliance and authorize the Mayor’s signature to any necessary documents, seconded by Councilmember Bush. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Phipps, and Roper. Voting NO – None. Councilmembers Peterson and Thompson were not present for the vote.**

APPROVAL OF RESOLUTION 2022R-08 APPROPRIATING SEIZED PROPERTY FOR A PUBLIC INTEREST USE

Kelly Bennet, Clearfield City Police Chief, briefed the Mayor and Council on a request to appropriate seized property for a public interest use. Chief Bennet informed Council that pursuant to Utah Code, if the owner is not entitled to property that was lawfully seized as evidence, law enforcement would be authorized to request the appropriation of the seized property for public interest use from the local legislative body. He mentioned the Code stated law enforcement would have to designate the use of the property. Chief Bennet explained the police department would like to use the shell casing from an X-Box that was confiscated during an investigation for proactive investigative work. He noted the internal hard drive would be destroyed prior to the use of the shell casing. Chief Bennet informed the Mayor and Council that this was a common practice withing the law enforcement community and he would be happy to report back on any outcome.

Mayor Shepherd commented that this would be a great use of property.

**Councilmember Roper moved to approve Resolution 2022R-08 appropriating seized property for a public interest use and authorize the Mayor’s signature to any necessary documents, seconded by Councilmember Bush. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Phipps, and Roper. Voting NO – None. Councilmembers Peterson and Thompson were not present for the vote.**

COMMUNICATION ITEMS

***Mayor Shepherd***

1. Announced he would be attending Syracuse High School’s graduation ceremony on May 25, 2022, and Clearfield High School’s graduation ceremony on May 26, 2022.
2. Expressed his enjoyment over presenting the City’s scholarship and seeing the scholarships offered to the City’s Youth Commissioners during the past week.
3. Thanked staff for the City’s Flip the Strip event and noted the Standard Examiner’s article covering the event.
4. Reported on a presentation he presented regarding his idea to revamp Low-Income Housing Tax Credit (LIHTC) to allow for military housing and to change the program.

***Councilmember Bush***

1. Announced the Kiwanis pickleball tournament would be postponed until the Fall.
2. Reported he would be handing out Kiwanis awards.

*Councilmember Phipps - nothing*

*Councilmember Roper*

1. Reported on progress of Wasatch Integrated.
2. Congratulated the Youth Commissioners and his son on their graduation.

## STAFF REPORTS

*JJ Allen, City Manager*

1. Reported that the Council retreat would take place on July 8, 2022 and mentioned a reading assignment.
2. Announced the City's employee benefits taking place on May 25, 2022.
3. Informed Council of a forwarded email regarding an employee's farewell.
4. Reminded everyone the offices would be closed on Monday, May 30, 2022, for Memorial Day.

*Nancy Dean, City Recorder* –reviewed the Council's schedule:

- Work Session on May 31, 2022
- No meeting on June 7, 2022
- Reported the rest of the meetings in June were planned.

**Councilmember Bush moved to adjourn at 7:19 p.m., seconded by Councilmember Roper. The motion carried upon the following vote: Voting AYE – Councilmembers Bush, Phipps, and Roper. Voting NO – None.**

CLEARFIELD CITY COUNCIL MEETING MINUTES  
6:00 P.M. WORK SESSION  
May 24, 2022

City Building  
55 South State Street  
Clearfield City, Utah

PRESIDING:	Mark Shepherd	Mayor
PRESENT:	Kent Bush Vern Phipps Tim Roper	Councilmember Councilmember Councilmember
EXCUSED:	Nike Peterson Karece Thompson	Councilmember Councilmember
STAFF PRESENT:	JJ Allen Summer Palmer Stuart Williams Kelly Bennett Adam Favero Eric Howes Spencer Brimley Brad McIlrath Shaundra Rushton Nancy Dean Joannie Strong	City Manager Assistant City Manager City Attorney Police Chief Public Works Director Community Services Director Community Development Director Senior Planner Communications Manager City Recorder Deputy City Recorder

VISITORS: Jenna Nelson, Katie Nicholson

Mayor Shepherd called the meeting to order at 6:03 p.m. He excused Councilmembers Peterson and Thompson.

DISCUSSION ON AMENDMENTS TO THE FORM BASED CODE REGARDING SIGNS

Spencer Brimley, Community Services Director, presented Council with requests from the Davis County Health Department and The Lotus Company for signage located in the Downtown Form Based Code (FBC) area that would not comply with FBC signage requirements. He determined to address each sign request separately and began with the Davis County Health Department's request.

Mr. Brimley reported that the Davis County Health Department wanted to remove their current monument sign with an electronic messaging center (EMC) and replace it with a new backlit monument sign without an EMC. He explained the sign was located within the C-V (Civic



Center) zone and presented the Form Based Code Analysis comparing the FBC Sign Regulations with the proposed sign as exhibited below:

<b>FBC Sign Regulations</b>	<b>Proposed Sign</b>
<b>Height:</b> 6 feet	<b>Height:</b> 8 feet
<b>Size:</b> 70 square feet	<b>Size:</b> 96 square feet
<b>EMC:</b> can be 50 percent or 20 square feet maximum	<b>EMC:</b> none
<b>Base:</b> minimum of 20 percent of sign	<b>Base:</b> 6 feet

Councilmember Bush asked for the reasoning behind the FBC sign regulations. Brad McIlrath, Senior Planner, explained the location was meant to be more of a pedestrian oriented type of environment and therefore, it was concluded that a larger sign could have been an imposition. Mr. Brimley admitted that when the regulations were being established, the staff may have been too restrictive based on the assumption of an imposition when there really didn't seem to be one. He then questioned if there could be a need to amend the code to accommodate larger signs since there had been an influx of requests for them.

Mr. Brimley asked the Council for feedback regarding the proposed signage to ensure conformance with goals and objectives of the FBC while remaining responsive to possible issues for signage should they arise. There was a discussion on amending the Code or evaluating each request on a case-by-case basis. Councilmember Phipps mentioned he was intrigued by the consistency in the similarities of the change requests the city has been seeing. The main concern with evaluating on a case-by-case basis was the lack of consistency. The consensus was to amend the Code for C-V Zoning Districts to allow for larger monument signs.

Mr. Brimley reviewed the signage request from The Lotus Company with the Council. He mentioned that Lotus's goal was to make the sign unique, and a wall sign wouldn't achieve that goal for them, so they have requested a blade sign. Mr. Brimley informed Council that the FBC allowed for three-foot by four-foot blade sign and noted that the blade signs were intended to give direction and provide signage for a business on the ground floor. He explained that given the angle of the building to the roadway, if Lotus was to install a flat sign, there would not have the ability to showcase the sign. Mr. Brimley presented the Form Based Code Analysis to the Council as follows:

<b>FBC Sign Regulations (Projecting or Blade sign)</b>	<b>Proposed Sign</b>
<b>Height:</b> 3 feet or 4 feet	<b>Height:</b> 15 feet
<b>Size:</b> Maximum area – 12 square feet (36” x 48”)	<b>Size:</b> 52.5 square feet
<b>Clearance:</b> no less than 8 feet	<b>Clearance:</b> 21.6 feet from sidewalk
Permitted on front or corner side facades only; shall not extend above the eave or parapet	

Mr. Brimley presented a few options to the Council for consideration. Council could direct staff to accommodate signage through an existing Development Agreement with Lotus, amend the existing Code for Projecting or Blade Signs, add a new signage type to the Code, or to proceed in a different direction. There was a discussion on the pros and cons of the given options and the consensus was to amend the signage regulations in Code regulations for the U-R (Urban Residential) and U-C (Urban Commerce) zones.

#### UPDATE ON THE GENERAL PLAN PROCESS

Spencer Brimley, Community Services Director, briefed Council on the status of the update the City’s General Plan and wanted to discuss changes needed to achieve completion of the update to the General Plan. He reviewed the background and a timeline of the progression of the update. Mr. Brimley informed Council that a consultant had been selected and work had commenced. However, as of April 2022 staff ended the contract and was seeking to partner with a new consultant to complete the needed work on the update. He detailed the reasoning behind the decision to end the contract with VODA Planning and Design and noted the most significant determinant was the dissatisfaction with VODA’s General Plan. The provided general plan was academic or generic in nature and not specific to Clearfield City.

Mr. Brimley described the path forward for the project:

- The staff is drafting a revised scope to see work completed.
- Wasatch Front Regional Council (WFRC) committed to provide funding based on the final scope.
- The staff believed public engagement was necessary to help the Planning Commission find success in the project through surveys, open houses, etc.

He conveyed the request for Council’s feedback on elements of the scope that were essential to Council and would help to define what success would look like. Regarding the request, Mr. Brimley provided recommendations:

- Keep the General Plan in its current form (out of date)

- Adopt the version of the General Plan provided by the consultant after final edits and corrections were completed by staff
- Hire a new consultant (along with WFRC funding) to finish the process of updating the plan with all the requirements necessary for compliance with recent and past LUDMA changes.
- Any additional options or considerations from the Council to complete the update.

There was a discussion surrounding the options, compliance requirements, and other Legislative additions that would need to be included in the General Plan. The Council decided to hire a new consultant to complete the process of updating the General Plan that included the requirements necessary for compliance with Land Use Development Act (LUDMA) changes.

**Councilmember Roper moved to adjourn the work session and reconvene in policy session at 6:49 p.m., seconded by Councilmember Bush. The motion carried upon the following vote: Voting AYE – Councilmember Bush, Phipps, and Roper. Voting NO – None.**

DRAFT

CLEARFIELD CITY COUNCIL MEETING MINUTES  
6:00 P.M. WORK SESSION  
May 31, 2022

City Building  
55 South State Street  
Clearfield City, Utah

PRESIDING:	Mark Shepherd	Mayor
PRESENT:	Kent Bush Vern Phipps Tim Roper Karece Thompson	Councilmember Councilmember Councilmember Councilmember
EXCUSED:	Nike Peterson	Councilmember
STAFF PRESENT:	JJ Allen Shawn Robinson Kelly Bennett Spencer Brimley Brad McIlrath Rich Knapp Shaundra Rushton Nancy Dean Joannie Strong	City Manager Assistant City Attorney Police Chief Community Development Director Senior Planner Finance Manager Communications Manager City Recorder Deputy Recorder

VISITORS:

Mayor Shepherd called the meeting to order at 5:59 p.m.

Mayor Shepherd excused Councilmember Peterson.

DISCUSSION ON THE SELECTION OF A NEW AUDITOR

Rich Knapp, Finance Manager, presented Council with a discussion on the selection of a new auditor. He informed the Council that the City was required by State Law (Utah Code §17-36-39) to provide an annual audit of its financial statements by a Certified Public Accountant in accordance with generally accepted auditing standards. The City had received two bids – HBME and Child Richards CPAs. After the bids were rated and references were checked, it was determined that HBME rated highest. Mr. Knapp mentioned HBME's price was low, they received great references, they had experience with the City's software, and their governmental accounting experience was extensive. He highlighted HBME's involvement with Utah Government Finance Officers Association (UGFOA). Mr. Knapp informed Council that the selection of an auditor would be for the current 2022 Fiscal Year with an additional four years and the option to extend if things went well. He suggested keeping using Ulrich and Associates to help prepare financial statements for the audit, especially during the first year. Mr. Knapp

informed Council that there would not be a need to approve the selection of the auditor in a policy session. The consensus was to move ahead with HBME as the City's auditor.

DISCUSSION ON A PROPOSED ORDINANCE ESTABLISHING REGULATIONS ASSOCIATED WITH MICROMOBILITY, (SCOOTERS)

Shawn Robinson, Assistant City Attorney, discussed a proposed ordinance establishing regulations associated with Micromobility with the Council. Mr. Robinson explained that the Council would be asked to consider adopting two new ordinances, amending an existing ordinance, and amending the Consolidated Fee Schedule to allow for the licensing, regulation, and enforcement of policies and procedures related to the limited use of electric bikes and scooters within the City. On May 6, 2022, Hill Air Force Base kicked off an E-Scooter/E-Bike Ride Share Program that provided Airmen and civilians with affordable means to commute around the base. Mr. Robinson stated that the implementation of dockless shared mobility devices within the City would support the ability of Airmen and civilians to travel to and from the base, provide alternative means to the Frontrunner Station, UTA bus stops, housing, employment, and retail shops, and was consistent with the goals of the North Davis Active Transport Implementation Plan (NDATIP).

Mr. Robinson mentioned the importance of implementing the ordinances quickly. He noted that the ordinances were based on other cities' ordinances and State Code. Mr. Robinson explained the ordinances would help avoid potential liabilities by outlining the responsibilities of the City and service provider and addressing the City's actions should problems arise.

Councilmember Phipps inquired about the section of the ordinance that mentioned sharing data. Mr. Robinson and City Manager, JJ Allen, confirmed the data tracking would be for safety and opportunities for collaboration to improve service. There was a discussion regarding the docking station abilities and the restrictions that would be placed on micromobility. Mr. Allen stated the docking stations would not be charging stations and the restrictions would be the same as they were for bicycles.

Shaundra Rushton, Community Relations Manager, relayed the information surrounding Lime's launch party to the Council. The launch party would coincide with the City's glow party and would take place on Saturday, June 4, 2022. She mentioned that from 9:00 p.m. to 11:00 p.m., in the library's parking lot, residents would be able to test drive Lime's products.

DISCUSSION ON A GENERAL PLAN AMENDMENT (GPA) AND REZONE REQUEST FOR PROPERTY LOCATED AT APPROXIMATELY 1200 AND 1204 EAST 1450 SOUTH FROM COMMERCIAL TO RESIDENTIAL AND ZONING CHANGE C-1 (COMMERCIAL) TO R-3 (MULTI-FAMILY RESIDENTIAL)

Josh Hughes and Greg Day with 258 Development had submitted a request for a General Plan Amendment and a zoning map amendment for properties located at approximately 1200 and 1204 East 1450 South. The applicants requested the amendments to redevelop the properties with a commercial building and townhomes. This item was tabled until further notice.

DISCUSSION ON PROPOSED AMENDMENTS TO THE PUBLIC NOTICE REQUIREMENTS IN THE CITY CODE

Nancy Dean, City Recorder, approached the Council with proposed amendments to the public notice requirements in the City Code. In 2021, the State Legislature made changes to public notice requirements eliminating the requirement to publish notices in newspaper of general circulation for most notices. The City Code had been amended to eliminate the newspaper publication requirement for land use issues. In doing so, other areas of the Code that could possibly be amended to reduce costs had been discovered. Ms. Dean reviewed the proposed amendments with the Council. The Council agreed to proceed with the changes, and Ms. Dean mentioned the changes would be presented to Council for consideration in the policy session on June 14, 2022.

TRAINING ON THE OPEN AND PUBLIC MEETING ACT AND REVIEW OF THE COUNCIL RULES OF ORDER

Ms. Dean provided the City Council with a training exercise to review and discuss open meeting law in accordance with State Law. The exercise also included a review of the Council Rules of Order.

**Councilmember Bush moved to adjourn at 7:02 p.m., seconded by Councilmember Thompson. The motion carried upon the following vote: Voting AYE – Councilmember Bush, Phipps, Roper, and Thompson. Voting NO – None.**



## STAFF REPORT

**TO:** Mayor Shepherd and City Council Members

**FROM:** Brad McIlrath, Senior Planner

**MEETING DATE:** Tuesday, June 14<sup>th</sup>,

**SUBJECT:** Public Hearing, Discussion and Possible Action on **GPA 2022-040054**, a general plan amendment request by Josh Hughes and Greg Day with 258 Development to change the general plan designation for 3.60 acres of the subject properties from Commercial to Residential. **Location:** 1200 & 1204 East 1450 South (TINs: 09-022-0164 & 09-022-0165). **Subject Area:** 3.60 Acres of a total 4.75 Acres. **(Legislative Action).**

Public Hearing, Discussion and Possible Action on **RZN 2022-040054**, a zoning map amendment request by Josh Hughes and Greg Day with 258 Development to rezone for 3.60 acres of the subject properties from C-1 (Commercial) to R-3 (Residential). **Location:** 1200 & 1204 East 1450 South (TINs: 09-022-0164 & 09-022-0165). **Subject Area:** 3.60 Acres of a total 4.75 Acres. **(Legislative Action).**

---

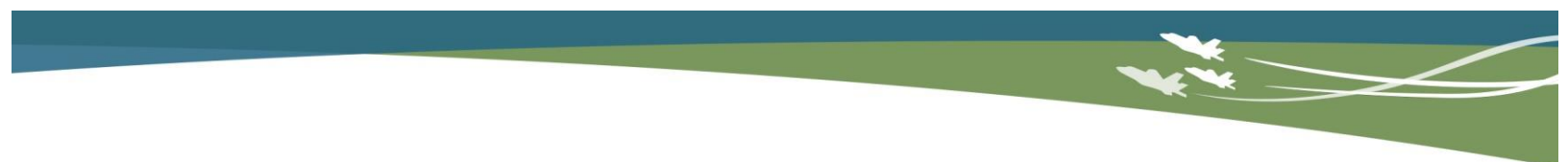
### CITY COUNCIL ACTION

#### General Plan Amendment

1. **Approve GPA 2022-040054**, to the Clearfield City Council, a general plan amendment request by Josh Hughes and Greg Day with 258 Development to change the general plan designation for 3.60 acres of the subject properties located at 1200 & 1204 East 1450 South (TINs: 09-022-0164 & 09-022-0165) from Commercial to Residential.
2. **Deny GPA 2022-040054**, to the Clearfield City Council, a general plan amendment request by Josh Hughes and Greg Day with 258 Development to change the general plan designation for 3.60 acres of the subject properties located at 1200 & 1204 East 1450 South (TINs: 09-022-0164 & 09-022-0165) from Commercial to Residential.
3. **Table GPA 2022-040054** to request additional time to consider the request.

#### Zoning Map Amendment

1. **Approve RZN 2022-040054**, to the Clearfield City Council, a zoning map amendment request by Josh Hughes and Greg Day with 258 Development to rezone 3.60 acres of the subject properties located at 1200 & 1204 East 1450 South (TINs: 09-022-0164 & 09-022-0165) from C-1 (Commercial) to R-3 (Residential).
2. **Deny RZN 2022-040054**, to the Clearfield City Council, a zoning map amendment request by Josh Hughes and Greg Day with 258 Development to rezone 3.60 acres of the subject



properties located at 1200 & 1204 East 1450 South (TINs: 09-022-0164 & 09-022-0165) from C-1 (Commercial) to R-3 (Residential).

3. **Table RZN 2022-040054** to request additional time to consider the request.

### **PLANNING COMMISSION RECOMMENDATIONS**

On May 18<sup>th</sup>, 2022, the Planning Commission forwarded a recommendation of **DENIAL** for both the general plan amendment and the zoning map amendment. The vote was a unanimous vote but there were individual and well-thought-out reasons for each commission member and why they voted for the denial.

### **DESCRIPTION / BACKGROUND**

The applicants are requesting a general plan amendment and rezone to redevelop the subject properties with a commercial building and townhomes as illustrated in the attached concept plan. To approve the rezone request of the 3.60 acres of the subject properties to R-3 (Residential), the future land use designation of the general plan must also be changed to reflect Residential as the future land use designation. These properties and most of the properties to the east and northeast have been designated with a future land use of Commercial in the general plan and are zoned C-1 and C-2 as an extension of the medical office and professional office around Davis Hospital and Medical Center.

#### **Concept Plan**

The applicants have provided a concept plan as part of the general plan and zoning map amendment request. Staff has previously on other applications cautioned about the validity of concept plans in the general plan and rezone process and as such the concept is included for illustrative purposes only. The concept includes a 20,000 square foot commercial building to be located on the area of the properties that would remain zoned C-1. The 3.60 acres as part of the R-3 Zone request includes sixty-one (61) total townhomes in a mix of four-, five-, six-, seven-, and eight-unit buildings. The applicants desire to proceed with the project concept and would accept the utilization of a development agreement by the city to outline the specifics of the overall project with the commercial and residential uses. These aspects may include the timing of the commercial and residential portions of the project, square footages, and design elements of the project.

#### **Other Conceptual Development**

At the planning commission meeting, the applicants recognized that there may be some interest from medical clinic to acquire the property and construct a new medical office at this location. The applicants recognize that this would be a valuable development to the community and wanted to recognize that they would understand if that is a more desirable use by the Planning Commission and City Council. That being said, they wanted to pursue this request because to





their knowledge, those discussions are not final and may not result in that type of development at all. That development, just like theirs, is conceptual in nature and may not occur, therefore, they wanted to pursue their request to see if the Planning Commission and City Council felt it was a better use or not. They have an application that is in process while the other concept has not come forward with a formal request to date.

**PUBLIC COMMENT**

Mailed notices were sent out on May 5<sup>th</sup>, 2022. The property sign and public hearing notice legal ad were posted on site and on the Utah State public notice website and in the local newspaper the weekend of May 7<sup>th</sup> and 8<sup>th</sup>. Prior to the Planning Commission meeting, staff had spoken with a couple of property owners in the area. One was opposed to residential multi-family development while the other had concerns about any type of development and the impacts it may bring.

At the Planning Commission meeting, several residents that received notices were present to comment as a group in opposition to the request, but also to express their concerns about increased traffic on 1450 South. They view 1450 South as a residential street, and they are concerned it is not wide enough or designed to accommodate additional vehicular traffic.

**GENERAL PLAN AND ZONING MAP AMENDMENT ANALYSIS**

As outlined in Section 11-6-3 and 11-6-4 of the Clearfield City Land Use Ordinance, the Planning Commission shall review the petition to change the land use title or zoning map and provide recommendation to the City Council for each request. The Planning Commission may recommend adoption of the proposed zoning map amendment when it finds that the proposed amendment is in accordance with one of the two considerations listed in the table below.

Review Consideration	Staff Analysis
<i>The proposed amendment is in accordance with the General Plan and Map; or</i>	The requested amendments are inconsistent with the General Plan as this area has a future land use designation of Commercial (See Exhibit 1 – Future Land Use Map of the General Plan).
<i>Changed conditions make the proposed amendment necessary to fulfill the purposes of this Title.</i>	Changes in the commercial service and retail markets have drastically changed the amount of land and building square footage needed for new commercial businesses. As demand for commercial land has decreased, there has been a surging demand for land to be developed as residential. For these reasons, the applicants are requesting the general plan



	<p>amendment and rezone to allow for smaller amount of commercial space with a townhome residential development in accordance with current market demands and pressures.</p> <p>There is limited commercial land available in Clearfield City for the development of medical office or professional offices that are seen in this area. As the population in the area continues to grow and much land is developed for residential uses, it is important to maintain commercially zoned properties that will serve as employment opportunities for current and future residents. The townhome residential and densities that would be allowed in the R-3 Zone are inconsistent with the surrounding commercial and residential uses.</p>
--	--

**GENERAL PLAN LAND USE ELEMENT ANALYSIS**

The Clearfield City General Plan outlines the overall community vision and provides land use guidelines located in Chapter 2 - Land Use Element, which should be followed throughout the City. The following table provides an analysis of those guidelines and the applicable land use goal and policy of the General Plan.

**A. Land Use Guidelines**

Land Use Guideline	Staff Analysis
<p>1. <i>The identity of Clearfield City should be strengthened by land uses which improve the image of the community and foster a positive, healthy living environment conducive to long-term residency.</i></p>	<p>The proposed concept could provide commercial uses that improve the image of the community. The residential portion of the development is inconsistent with and lacks compatibility to the surrounding and established single-family neighborhood.</p>
<p>2. <i>The relationship of planned uses should reflect consideration of existing development, environmental conditions,</i></p>	<p>As the City and region continues to develop, it is important to maintain planned commercial areas for future employment opportunities of current and future residents.</p>



<p><i>service and transportation needs, and fiscal impacts.</i></p>	
<p>3. <i>Redevelopment should emphasize the reuse of developed areas and existing community resources in such a way as to increase the livability and aesthetics of the city.</i></p>	<p>As presented, the redevelopment of these properties should consider the established single-family residential neighborhood as well as the commercial uses that are complementary to the medical campus of the Davis Hospital and Medical Center.</p>
<p>4. <i>The Land Use Plan should provide for a full range and mix of land uses including residential, commercial, manufacturing, and public use areas.</i></p>	<p>The existing land use element of the General Plan provides a full range and mix of land uses throughout the city. Adding residential to an area that is designated for future commercial use is inconsistent with the General Plan.</p>
<p>5. <i>Transitions between differing land uses and intensities should be made gradually with compatible uses, particularly where natural or man-made buffers are not available. Adequate screening and design should be provided to protect existing residential areas from more intense land uses.</i></p>	<p>The design concept with townhome residential could be considered a gradual increase or decrease in residential and commercial intensities in this area. The townhomes are a medium density residential type that can be used as a middle housing type between high density residential and low density residential in the area.</p>
<p>6. <i>Development approval should be tied to the construction of culinary water, sewer, storm drainage, and circulation systems.</i></p>	<p>Connections to existing lines and the upgrade of infrastructure may be needed for any new development in this area.</p>
<p>7. <i>Density increases should be considered only after adequate infrastructure and resource availability have been sufficiently demonstrated.</i></p>	<p>Based upon preliminary discussions with Clearfield City Public Works Staff, the infrastructure in the area should be sufficient to accommodate the additional densities. The sewer line along 1450 South is a main sewer transmission line for this area and also carries</p>



	<p>sewage from the east side of I-15 as well. The size of the line may need to be upgraded to accommodate additional densities in this area other than commercial or assisted living type demands.</p>
<p>8. <i>An interconnecting public open space system should be provided, including pedestrian linkages, recreational areas, natural areas, on-road cycling facilities, and drainage ways.</i></p>	<p>The North Davis County Active Transportation Implementation Plan includes future bike lanes along 1450 South that will connect to Clearfield Station and to the Davis Hospital and Medical Center.</p>
<p>9. <i>Commercial and manufacturing uses should be highly accessible, clustered near the center of their service areas, and developed in harmony with the uses and character of surrounding districts.</i></p>	<p>Continuing the clustering of C-1 commercial uses in this area is supported by this guideline. As an area that has become a medical and professional office area between Layton and Clearfield maintaining the C-1 Zone future continued centering of these uses in this area is important.</p>
<p>10. <i>The Land Use Plan should promote and encourage land use patterns that provide a high quality of life to all and offer choice in mobility and transportation.</i></p>	<p>Medium-density residential increases housing choice and usually offers multiple choices in mobility and transportation. Clearfield City has made significant efforts in areas along key corridors and in centers to increase housing choice and availability. In so doing, there is also a need to maintain land for future growth of commercial use that will provide employment opportunities for current and future residents.</p>
<p>11. <i>The remaining vacant properties in the City should be developed at their highest and best use to maximize their value to the landowner and the City.</i></p>	<p>The highest and best use of any property is driven by market demands and realities. Development with medium-density residential uses may provide the highest and best return to the property owner but may provide an additional impact/burden on services for the city. Additionally, the opportunity to provide more commercial and employment in the city would be lost by developing the land as residential.</p>



<p><i>12. The quality and usefulness of parks and open space should be maximized. Open spaces that are small, inaccessible, difficult to maintain, or encumbered by utilities, drainage basins, or excessive slopes should not be encouraged.</i></p>	<p>Not applicable.</p>
<p><i>13. Manufacturing and industrial activities should be limited to those areas already zoned for such uses.</i></p>	<p>Not applicable.</p>
<p><i>14. Properties registered with the County or State for agricultural or industrial protection should be recognized by the City to allow such land uses.</i></p>	<p>There is no evidence that the properties are registered for agricultural protection.</p>
<p><i>15. Land use decisions should be based on a comprehensive understanding of their effects on the environment and surrounding areas.</i></p>	<p>The proposed density above what is found in the nearby residential neighborhoods could change the character of this area of the city and how it functions as an extension of the Davis Hospital and Medical Center office campus.</p>

**B. Goals and Policies of Land Use**

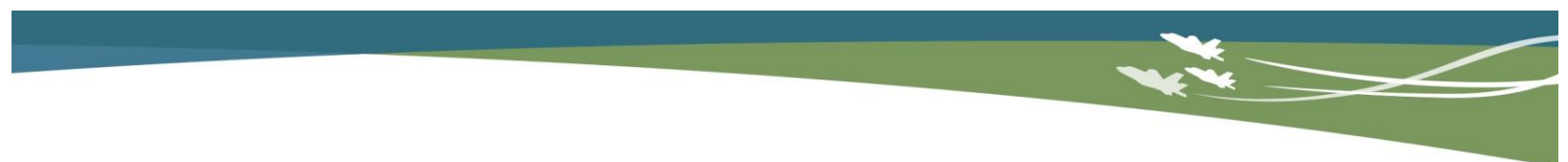
The General Plan includes four land use goals that have policies and implementation measures associated with each. Out of the four goals, Goal 3 most closely aligns with the proposed rezone request and is provided as part of the following analysis.

**Goal 3:** *Increase Employment and Commercial Opportunities.*

**Policy:** *Promote the creation of new jobs, business, and retail opportunities in the City.*

**Analysis:**

The request to change the future land use designation from Commercial to Residential and rezone the 3.60 acres of the subject properties is inconsistent with this goal and policy. As the



community continues to grow, maintaining viable commercial properties and zoning designations is important to promote existing and future employment and commercial opportunities.

### **GENERAL PLAN TRANSPORTATION ELEMENT ANALYSIS**

Chapter 3 – Transportation, addresses goals and policies to ensure balance between future transportation needs that come with future land use development. The following is a summary of applicable guidance and direction provided in the Transportation Chapter that would apply to any request of this sort.

In the introduction of the chapter five (5) items are identified that should be included in the long-range Transportation goals. The second item states that Clearfield City should, “determine if outlying potential development could degrade existing streets and consider actions to limit or concentrate future land-use densities, if required.” Focusing higher density residential development within the downtown area and in key locations already identified and under development in the city would be supported by this recommendation. Expanding residential density into an area that has been envisioned for future commercial use would be inconsistent with this recommendation.

### **CORRESPONDING POLICY PRIORITY (IES)**

#### ***Improving Clearfield’s Image, Livability and Economy***

The purpose along with the goals and objectives of General Plan and Zoning Ordinance are to improve *Clearfield’s Image, Livability, and Economy*. It is important to maintain that vision to allow for future commercial office opportunities in this area that will contribute improving the city’s image, livability and economy.

### **STAFF RECOMMENDATION/CONCLUSION**

Based upon analysis of this request and the Clearfield City General Plan, staff recommends that the Planning Commission forward a recommendation of **DENIAL** to the Clearfield City Council for both the proposed general plan amendment request and zoning map amendment request. These recommendations are based upon the analysis of the staff report and the following findings:

1. The proposed general plan and zoning map amendment is inconsistent with the land use guidelines, goals, and objectives of the Clearfield City General Plan.
2. The General Plan was amended to allow for greater use of the R-1-6 Zone for residential single-family infill development and as an alternative to multi-family residential.



**FISCAL IMPACT**

None

**ALTERNATIVES**

None

**SCHEDULE / TIME CONSTRAINTS**

If the City Council chooses to table the item to direct staff to perform research for further information on this item, the item will need to be tabled to a date specific so as to comply with public hearing notice requirements.

**LIST OF ATTACHMENTS**

1. General Plan: Future Land Use Map
2. General Plan Project Exhibit
3. Zoning Map
4. Zoning Map Project Exhibit



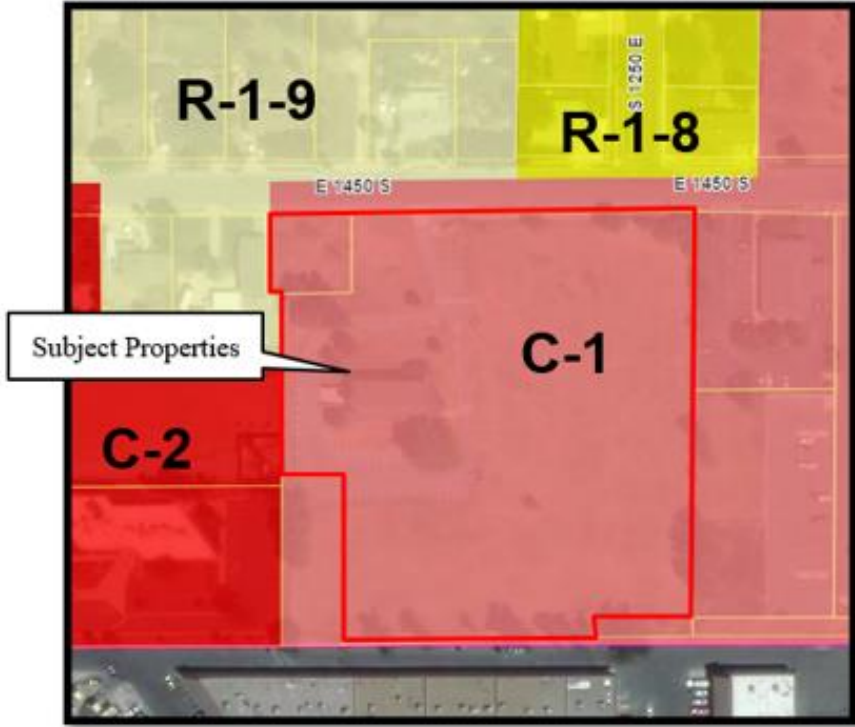
**GENERAL PLAN**



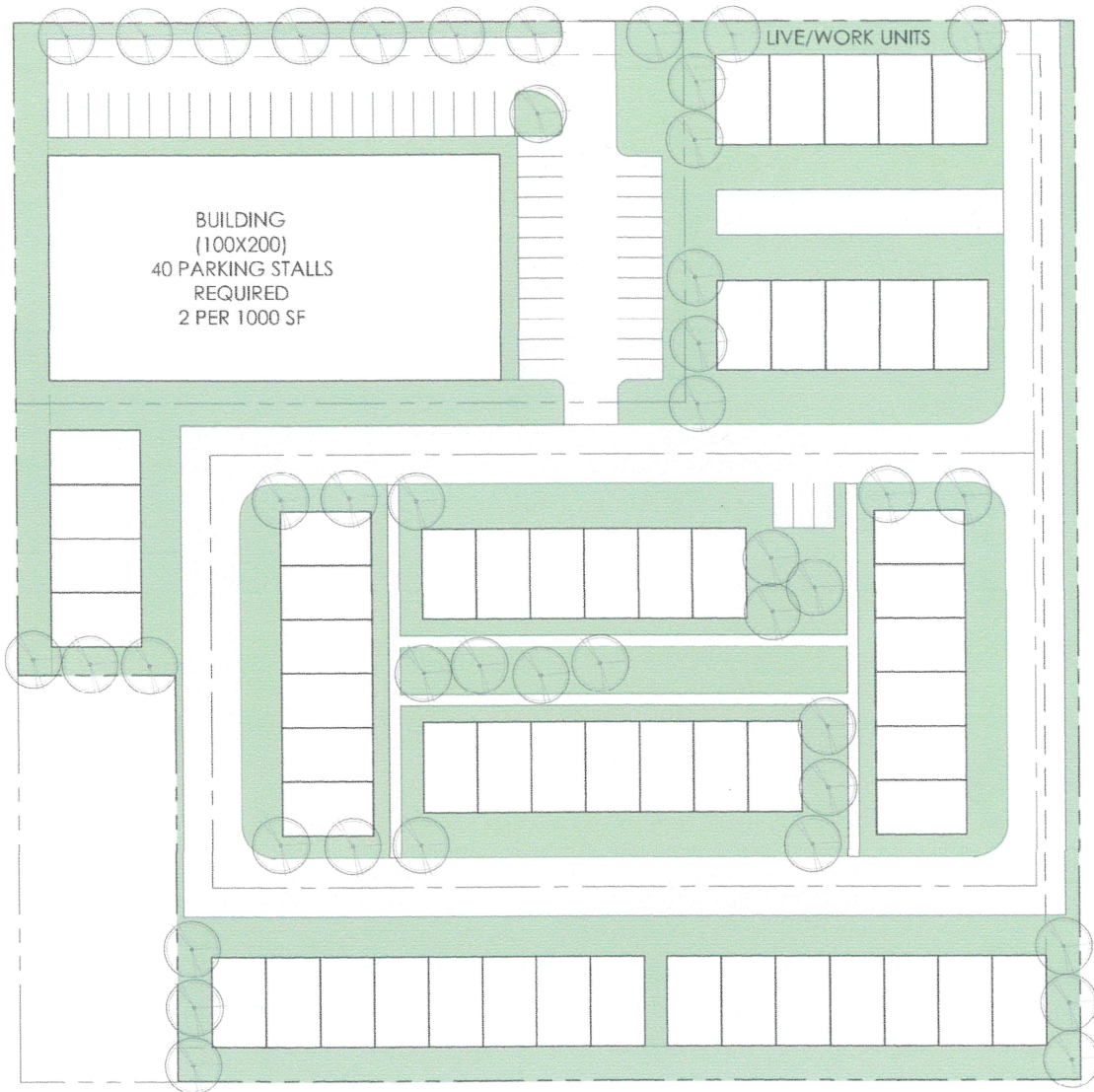




### ZONING



# 1450 SOUTH



PROJECT STATS	
TOWNHOMES	56
LIVE WORK UNITS	5
TOTAL UNITS	61
1 COMMERCIAL BUILDING	20,000 SF
GROSS AREA	5.07 ACRES

# CLEARFIELD CITY ORDINANCE 2022-15

## AN ORDINANCE AMENDING THE CLEARFIELD CITY GENERAL PLAN FUTURE LAND USE MAP

PREAMBLE: This Ordinance changes the land use classification from Commercial to Residential in the Clearfield City General Plan Future Land Use Map for 3.60 acres of the properties located at approximately 1200 East and 1204 East 1450 South (TINs: 09-022-0164 and 09-022-0165).

WHEREAS, 3.60 acres of the 4.75 total acres of the properties located at approximately 1200 East and 1204 East 1450 South (TINs: 09-022-0164 and 09-022-0165) currently has a land use designation of Commercial in the Clearfield City General Plan Future Land Use Map; and

WHEREAS, the applicant has requested an amendment to the Future Land Use Map of the General Plan to change the land use designation for 3.60 acres of the total 4.75 acres of the subject properties from Commercial to Residential; and

WHEREAS, the property is currently used for a church; and

WHEREAS, the applicant believes the residential designation would be the highest and best use for the property because it would help to address housing and affordability needs; and

WHEREAS, after a public hearing on the matter, the Clearfield City Planning Commission recommended the Clearfield City Council deny the applicant's request to change the future land use from Commercial to Residential for 3.60 acres of 4.75 total acres of the properties located at approximately 1200 East and 1204 East 1450 South (TIN: 09-022-0164 and 09-022-0165); and

WHEREAS, after its public deliberation and careful consideration, the Planning Commission recommended the request be denied because it is inconsistent with the land use guidelines, goals, and objectives of the Clearfield City General Plan; and

WHEREAS, the Clearfield City Council received and reviewed the proposed application and recommendation from the Clearfield City Planning Commission; and

WHEREAS, following proper notice, as set forth by State Law, the City Council held a public hearing on the matter and received input thereon; and

WHEREAS, after the public hearing, the City Council carefully considered any comments made during the public hearing as well as the Planning Commission's recommendations of denial regarding the proposed modifications; and

WHEREAS, following its public deliberation, the City Council has determined that changing the future land use classification on the Future Land Use Map of the City's General Plan from Commercial to Residential for 3.60 acres of the 4.75 total acres of the properties located at approximately 1200 East and 1204 East 1450 South (TINs: 09-022-0164 and 09-022-0165) is in the best interests of Clearfield City and its residents;

NOW THEREFORE BE IT ORDAINED, by the Clearfield City Council that:

Section 1. General Plan Amendment: The future land use classification for 3.60 acres of the 4.75 total acres of the properties located at approximately 1200 East and 1204 East 1450 South (TINs: 09-022-0164 and 09-022-0165) be changed from Commercial to Residential and that said change be incorporated into and reflected by the City's General Plan and its Future Land Use Map.

Section 2. Effective Date: This Ordinance shall become effective only upon its posting in three public places within Clearfield City.

DATED this 14<sup>th</sup> day of June, 2022, at the regularly scheduled meeting of the Clearfield City Council.

CLEARFIELD CITY CORPORATION

\_\_\_\_\_  
Mark R. Shepherd, Mayor

ATTEST

\_\_\_\_\_  
Nancy R. Dean, City Recorder

VOTE OF THE COUNCIL

AYE:

NAY:

# CLEARFIELD CITY ORDINANCE 2022-16

AN ORDINANCE REZONING 3.60 ACRES OF THE 4.75 TOTAL ACRES OF THE PROPERTIES LOCATED AT APPROXIMATELY 1200 EAST AND 1204 EAST 1450 SOUTH (TINS: 09-022-0164 AND 09-022-0165) FROM C-1 AND C-2 (COMMERCIAL) TO R-3 (MULTI-FAMILY RESIDENTIAL) AND AMENDING THE CLEARFIELD CITY ZONING MAP ACCORDINGLY.

PREAMBLE: This Ordinance rezones 3.60 acres of the 4.75 total acres of the properties located at approximately 1200 East and 1204 East 1450 South (TINs: 09-022-0164 and 09-022-0165) from C-1 and C-2 (Commercial) to R-3 (Multi-family Residential) and amends the City's Zoning Map to reflect the change.

WHEREAS, pursuant to an application received by the City's Community Development office, the City Council must consider a change in the zoning for 3.60 acres of the 4.75 total acres of the properties located at approximately 1200 East and 1204 East 1450 South (TINS: 09-022-0164 AND 09-022-0165); and

WHEREAS, after a public hearing on the matter, the Clearfield City Planning Commission recommended to the Clearfield City Council that the rezone be denied because it is inconsistent with the land use guidelines, goals, and objectives of the Clearfield City General Plan; and

WHEREAS, following proper notice, as set forth by state law and the City's Land Use Ordinance, the City Council held a public hearing on the application for a change in the zoning for the property and allowed for public comment thereon; and

WHEREAS, after the public hearing, the City Council carefully considered any comments made during the public hearing, the applicant's position, as well as the Planning Commission's recommendations regarding the proposed rezone; and

WHEREAS, following its public deliberation, the City Council has determined the zoning change listed below is in the best interest of Clearfield City and its residents and will most effectively implement the City's planning efforts while allowing the subject property to be put to its highest and best use;

NOW, THEREFORE, be it ordained by the Clearfield City Council that:

Section 1. Zoning Changes: The zoning for 3.60 acres of the 4.75 total acres of the properties located at approximately 1200 East and 1204 East 1450 South (TINs: 09-022-0164 and 09-022-0165) in Clearfield City, Davis County, Utah, is hereby changed from C-1 and C-2 (Commercial) to R-3 (Multi-family Residential).

Section 2. Amendments to Zoning Map: The Clearfield City Zoning Map is hereby amended to reflect the changes in zoning outlined in Section 1 above and the City Planner is hereby directed to have a new Zoning Map prepared showing said rezoning.

Section 3. Effective Date: This Ordinance shall become effective immediately upon its posting in three public places within Clearfield City.

Dated this 14<sup>th</sup> day of June, 2022, at the regularly scheduled meeting of the Clearfield City Council.

CLEARFIELD CITY CORPORATION

---

Mark R. Shepherd, Mayor

ATTEST

---

Nancy R. Dean, City Recorder

VOTE OF THE COUNCIL

AYE:

NAY:

# CLEARFIELD CITY ORDINANCE 2022-13

## AN ORDINANCE AMENDING TITLE 4 AND TITLE 7 OF THE CLEARFIELD CITY CODE

**PREAMBLE:** This Ordinance amends Title 4- Business and License Regulations and Title 7 – Motor Vehicles and Traffic Safety by enacting regulations for mobility devices, motor assisted scooters, and amending operational rules and regulations generally.

**BE IT ORDAINED BY THE CLEARFIELD CITY COUNCIL:**

**Section 1. Enactment:**

*Title 4, Chapter 13 – Business License and Regulations, Mobility Devices is hereby enacted to read as follows:*

### CHAPTER 13 MOBILITY DEVICES

- 4-13-1:       **Definitions**
- 4-13-2:       **Authority To Establish Rules And Regulations**
- 4-13-3:       **Compliance Responsibility**
- 4-14-4:       **Requirements For Operating A Dockless Shared Mobility Device Program**
- 4-13-5:       **Dockless Shared Mobility Devices – Equipment Required**
- 4-13-6:       **Dockless Shared Mobility Device Program – Operating Requirements**
- 4-13-7:       **Violations – Dockless Shared Mobility Device Program Operators**
- 4-13-8:       **Contract-Based System For Providing Dockless Shared Mobility Device Program Services**

**4-13-1: DEFINITIONS:**

The following words and phrases, when used in this chapter, shall have the meanings defined and set forth in this section.

**BUSINESS:** A voluntary association legally formed and organized to carry on a Business in Utah in the legal name of the association, including without limitation a corporation, limited liability company, partnership, or sole proprietorship.

**CITY:** The governmental institution and landmass contained within the boundaries of Clearfield City, Utah.

**DEPARTMENT:** The Community Development Department or such other City department or division as may be designated by the city manager to have responsibility for the enforcement of this chapter.

**DEPARTMENT DIRECTOR:** The director of the department designated by the city manager to have responsibility for the enforcement this chapter or the authorized designee of such director.

**MOBILITY DEVICE CONTRACT:** A valid, existing, and current contract negotiated and approved by the department for providing dockless shared mobility device services within the corporate boundaries of Clearfield City.

**DEPARTMENT RULES AND REGULATIONS:** Rules and regulations developed and adopted by the department director to govern dockless shared mobility device services and businesses within the City.

**DOCKLESS SHARED MOBILITY DEVICE:** A shared mobility device that a customer is not required to return to a docking station at the conclusion of a ride.

**DOCKLESS SHARED MOBILITY DEVICE PROGRAM:** The offering of a dockless shared mobility device for hire.

**IN-SERVICE:** A shared mobility device that is deployed for use on the streets of the City.

**MARKED DOCKING STATION:** A public place alongside the curb of a street, or elsewhere in the City, which has been designated for the exclusive deployment of shared mobility devices and has been marked in a manner that identifies such docking station as being set aside for that purpose.

**MOTOR ASSISTED SCOOTER:**

- A. A self-propelled device with:
  - 1. At least two (2) wheels in contact with the ground;
  - 2. A braking system capable of stopping the unit under typical operating conditions;
  - 3. An electric motor not exceeding two thousand (2,000) watts or other motor providing equivalent power;
  - 4. Either:
    - a. Handlebars and a deck design for a person to stand while operating the device; or
    - b. Handlebars and a seat designed for a person to sit, straddle, or stand while operating the device; and
  - 5. A design for the ability to be propelled by human power alone; and
  - 6. A maximum speed of twenty (20) miles per hour on a paved level surface.
  
- B. Motor Assisted Scooter does not include:
  - 1. An electric assisted bicycle;
  - 2. Any power-driven device used by individuals with mobility disabilities for the purpose of locomotion; or
  - 3. A motor-driven cycle.

**PERSON:** An individual, a corporation or other legal entity, a partnership, and any incorporated association.



SHARED MOBILITY DEVICE: A bicycle, electric bicycle or motor-assisted scooter made available to the public for hire.

SHARED MOBILITY DEVICE PROGRAM OPERATOR: A person offering a shared mobility device for hire.

**4-13-2: AUTHORITY TO ESTABLISH RULES AND REGULATIONS:**

To the extent authorized by the provisions of this chapter and consistent with other applicable provisions of this code, the city manager, under guidance and direction from the city council, may enter into contracts deemed necessary or desirable and may establish rules and regulations necessary to administer the provisions of this chapter.

**4-13-3: COMPLIANCE RESPONSIBILITY:**

- A. All persons operating a dockless shared mobility device program shall comply with and operate under requirements of applicable law, including without limitation Federal, State, County and City laws and ordinances, and department rules and regulations. Shared mobility device programs that exclusively operate using devices that must be returned to a dock are not subject to the dockless shared mobility device program requirements set forth herein.
- B. No dockless shared mobility device program shall be relieved of any responsibility for compliance with the provisions of this chapter, regardless of whether the dockless shared mobility device program operator pays salary, wages, or any other form of compensation.

**4-13-4: REQUIREMENTS FOR OPERATING A DOCKLESS SHARED MOBILITY DEVICE PROGRAM:**

- A. No person shall permit a dockless shared mobility device owned or controlled by such person to be in service for hire upon the streets of Clearfield City unless such person is authorized to do so under a business license obtained from the City.
- B. No person may operate a dockless shared mobility device program in the City unless the person is authorized to do so under a business license obtained from the City.
- C. Each dockless shared mobility device program operator shall pay to the City the applicable business licensing fees as set forth in the City's Consolidated Fee Schedule, Clearfield City Municipal Code § 2-5-1.
- D. Insurance:
  - 1. Each dockless shared mobility device program operator shall provide, concurrent with the execution of this Agreement:

- a. A comprehensive general liability insurance policy covering business operations with minimum limits of \$1,000,000 per occurrence with a \$5,000,000 general aggregate;
  - b. Automobile insurance coverage with a limit of at least \$1,000,000 each occurrence and \$1,000,000 aggregate;
  - c. Umbrella or excess liability coverage with a limit of at least \$5,000,000 each occurrence and \$5,000,000 aggregate or sufficient general liability insurance to satisfy the excess liability coverage requirement; and
  - d. Workers' compensation insurance in an amount no less than required by law.
2. A current certificate of insurance, approved by the City Attorney, must be kept on file with the City Recorder verifying such continuing coverage and naming the City as an additional insured on a primary and non-contributory basis in comparison to all other insurance including City's own policy or policies of insurance. The certificate shall contain a special endorsement to the effect that the City will be notified at least thirty (30) days prior to cancellation or reduction in the limits. The City requires continuous coverage. Cancellation of insurance will result in the automatic suspension of the dockless shared mobility device program operator's ability to operate until the shared mobility device program operator provides proof of coverage in the amounts and manner specified above.
- E. Indemnification: Each dockless shared mobility device program operator shall indemnify, save harmless, and defend the City, its agents, and employees, from all claims, liens, damages, demands, actions, costs, and charges, including attorney fees, arising out of negligent, reckless or intentional acts, errors or omissions of the dockless shared mobility device program operator, its officers, employees, and agents. If the City's tender of defense, based upon this indemnity provision, is rejected by the dockless shared mobility device program operator, and the dockless shared mobility device program operator is later found by a court of competent jurisdiction to have been required to indemnify the City, then in addition to any other remedies the City may have, the dockless shared mobility device program operator shall pay the City's reasonable costs, expenses, and attorney fees incurred in proving such indemnification, defending itself, or enforcing this provision. The dockless shared mobility device program operator shall not be liable for claims, demands, costs, losses, or damages that arise out of the City's negligence or willful misconduct.
- F. Data Sharing: Dockless shared mobility device program operators will share data with the City in accordance with the requirements set forth in Utah Code, in City Code, and in any applicable state or local regulations.

#### **4-13-5: DOCKLESS SHARED MOBILITY DEVICES - EQUIPMENT REQUIRED:**

- A. Dockless shared mobility device program operators will comply with all applicable safety standards established by federal, state, or city law.

- B. Bicycles, electric bicycles, and motor assisted scooters operated as dockless shared mobility devices will comply with the most recent applicable safety standards promulgated by the city.
- C. All dockless shared mobility devices will be equipped with both a primary and a secondary braking mechanism.
- D. All dockless shared mobility devices will be equipped with a bell or other audible signal device used to alert pedestrians to the presence of the dockless shared mobility device.
- E. All dockless shared mobility devices will be equipped with Global Positioning Satellite ("GPS") systems.
- F. All dockless shared mobility devices will be regularly inspected and maintained at least every thirty (30) days by the dockless shared mobility device program operator.
- G. Dockless shared mobility device program operators must be able to remotely render inoperable any dockless shared mobility device that has been reported as being damaged or defective.
- H. Dockless shared mobility device program operators shall provide the City with a list individually identifying all dockless shared mobility devices.
- I. All dockless shared mobility devices must have an identification number prominently displayed on such device.
- J. A dockless shared mobility device program operator shall prominently display dockless shared mobility device program operator's contact information, including a toll-free phone number and an email address, on each dockless shared mobility device deployed within the City.

**4-13-6: DOCKLESS SHARED MOBILITY DEVICE PROGRAM – OPERATING REQUIREMENTS:**

- A. Deployment Of Dockless Shared Mobility Devices:
  - 1. A dockless shared mobility device program operator may not deploy dockless shared mobility devices within city-designated zones in quantities or allocations that violate the regulations promulgated by the City.
- B. Parked Dockless Shared Mobility Devices:
  - 1. Dockless shared mobility devices may not be temporarily placed or left in the following areas in such a way as to impede the normal operation of such areas or the free flow of pedestrians and traffic:

- a. Any multi-use path;
  - b. Any vehicle travel lane;
  - c. Any vehicle parking space;
  - d. Any UTA TRAX or FrontRunner boarding platform;
  - e. Anywhere that impedes safe access to or egress from a UTA bus;
  - f. Within fifteen (15) feet of any building access or egress, including driveways;
  - g. Within thirty (30) feet of any ADA ramp or access of any kind;
  - h. Anywhere that impedes the use of an existing docking station or corral for motor assisted scooters or other mobility devices;
  - i. Any areas in which leaving a shared mobility device is prohibited pursuant to regulations promulgated by the City.
2. Dockless shared mobility devices may not be parked in an undocked status in any of the following locations:
    - a. Within ten (10) feet of any Utah Transit Authority bus stop sign;
    - b. Within fifteen (15) feet of any traffic signal pole;
    - c. Within fifteen (15) feet of any utility box or other utility structures.
  3. Dockless shared mobility device program operators shall require dockless shared mobility device drivers to take a photograph of their properly parked dockless shared mobility device, or otherwise verify that they have properly parked the dockless shared mobility device, as part of the process for completing a dockless shared mobility device program transaction.
  4. Upon notification, a dockless shared mobility device program operator has two hours to move dockless shared mobility devices that have not been parked in accordance with the restrictions set forth in this Agreement. If the dockless shared mobility device program operator fails to remove the improperly parked dockless shared mobility devices within the specified two-hour time period, then the City may impound the improperly parked dockless shared mobility devices at the dockless shared mobility device program operator's expense.

**4-13-7: VIOLATIONS - DOCKLESS SHARED MOBILITY DEVICE PROGRAM OPERATORS:**

- A. Violations of this chapter shall be addressed pursuant to the processes and penalties set forth in § 1-16A-1 *et. seq.*, of the Clearfield City Code.
- B. Dockless shared mobility device program operators shall work with the City, including the Department and the Clearfield City Police Department to facilitate enforcement of this chapter with the most advanced and appropriate available technology. Such enforcement efforts will include facilitating the enforcement of permanent, semi-permanent, and temporary no-ride zones designated by the City.

**4-13-8: CONTRACT-BASED SYSTEM FOR PROVIDING DOCKLESS SHARED MOBILITY DEVICE PROGRAM SERVICES:**

- A. The City reserves the right to adopt a contract-based system to govern the provision of dockless shared mobility device program services within the City.
- B. If the City hereby adopts a contract-based system for provision of dockless shared mobility device programs, then only dockless shared mobility device program operators selected pursuant to the City’s Purchasing Policy, Clearfield City Municipal Code § 2-3-1 *et. seq.*, and who have entered into a mobility device contract, as defined in Section 4-13-1, may operate a dockless shared mobility device program upon Clearfield City streets.
- C. The city council shall determine the number of dockless shared mobility device program operators that shall be awarded a mobility device contract.
- D. The city council shall determine the total number of dockless shared mobility devices authorized to operate in the City under all such mobility device contracts.
- E. Mobility Device Contracts between the City and any selected dockless shared mobility device program operators may contain additional requirements and restrictions beyond those set forth in the Clearfield City Municipal Code.

*Title 7, Chapter 6 – Motor Vehicles and Traffics Study, Motor Assisted Scooters is hereby enacted to read as follows:*

**CHAPTER 6  
MOTOR ASSISTED SCOOTERS**

**7-6-1: Definitions**

**7-6-2: Traffic Laws**

**7-6-3: Sidewalk And Right-Of-Way Restrictions**

**7-6-4: Enforcement**

**7-6-1: DEFINITIONS:**

## MOTOR ASSISTED SCOOTER:

### A. A self-propelled device with:

1. At least two (2) wheels in contact with the ground;
2. A braking system capable of stopping the unit under typical operating conditions;
3. An electric motor not exceeding two thousand (2,000) watts or other motor providing equivalent power;
4. Either:
  - a. Handlebars and a deck design for a person to stand while operating the device; or
  - b. Handlebars and a seat designed for a person to sit, straddle, or stand while operating the device; and
5. A design for the ability to be propelled by human power alone; and
6. A maximum speed of twenty (20) miles per hour on a paved level surface.

### B. Motor Assisted Scooter does not include:

1. An electric assisted bicycle;
2. Any power-driven device used by individuals with mobility disabilities for the purpose of locomotion; or
3. A motor-driven cycle.

## 7-6-2: TRAFFIC LAWS:

A driver of a motor assisted scooter shall be subject to all laws that apply to the operation of a bicycle. Drivers are also prohibited from operating a motor assisted scooter while consuming any alcoholic beverage or while under the influence of alcohol or any drug to a degree that renders the driver incapable of safely driving a vehicle within the city as set forth in Utah State Code Ann. § 41-6a-502, *et. seq.*, as amended.

## 7-6-3: SIDEWALK AND RIGHT-OF-WAY RESTRICTIONS:

- A. Motor assisted scooters shall not be operated on any sidewalk on which a bicycle may not be operated.
- B. Motor assisted scooters may not be operated in a manner contrary to signs, traffic control devices, or other devices governing movement, traffic, or other activities.

C. Any motor assisted scooter that is not in use must be secured to a permitted dock rack or corral or otherwise placed as required below:

1. Motor assisted scooters may not, at any time, for any reason, impede the free flow of pedestrian traffic.
2. Motor assisted scooters may not be temporarily placed or left in the following areas in such a way as to impede the normal operation of such areas or the free flow of pedestrians and traffic:
  - a. Any multi-use path;
  - b. Any vehicle travel lane;
  - c. Any vehicle parking space;
  - d. Any UTA TRAX or FrontRunner boarding platform;
  - e. Anywhere that impedes safe access to or egress from a UTA bus;
  - f. Within fifteen (15) feet of any building access or egress, including driveways;
  - g. Within thirty (30) feet of any ADA ramp or access of any kind;
  - h. Anywhere that impedes the use of an existing docking station or corral for motor assisted scooters or other mobility devices.
  - i. Any areas in which leaving a motor assisted scooter is prohibited pursuant to regulations promulgated by the city transportation director.

D. Motor assisted scooters placed or otherwise left in violation of the requirements of this section may be relocated or impounded at the motor assisted scooter owner's expense.

#### **7-6-4: ENFORCEMENT:**

A person who violates the provisions of this chapter is guilty of an infraction.

*Title 7, Chapter 2, Section 4 – Motor Vehicles and Traffic Safety, Administration of Traffic Regulations, Operational Rules and Regulation; Generally, is hereby amended to read as follows:*

#### **7-2-4: OPERATIONAL RULES AND REGULATIONS; GENERALLY:**

- A. Failure To Keep Lookout: No person shall drive a motor vehicle within the corporate limits of the City in such a manner as to endanger life or property by failing to keep a safe and proper lookout for other traffic, objects, or persons.
- B. Negligent Collision: It shall be unlawful to operate a vehicle with such lack of due care and in such a negligent manner as to cause the same to collide with any vehicle, person, or object.
- C. Careless Driving: It shall be unlawful for any person to drive a vehicle without the care and caution of a reasonable, prudent person under the circumstances then and there existing or in a manner so as to endanger or be likely to endanger any person or property.
- D. Exhibition Driving: It shall be unlawful for any person to engage in exhibition driving in any motor vehicle upon any public highway, street, or alley within the corporate limits of the City. Exhibition driving shall consist of, but not be limited to, unnecessarily or unreasonably doing of one or more of the following in the operation of a motor vehicle: squealing or spinning the tires through application of excessive power or through excessive braking, throwing rocks, gravel, sand or dirt through excessive application of power or in sharp turns; fishtailing, rocking, weaving while applying excessive power; sliding, spinning or skidding a motor vehicle; alternating between extreme acceleration and extreme deceleration; or display of extreme acceleration. This offense may be committed by any person operating a motor vehicle singly or in concert with or in the company of another person operating a separate motor vehicle and it shall not be necessary to show that any person intended to engage or was engaged in any contest or display with another to constitute a violation of this subsection.
- E. Interference With Vehicle: No person shall engage in any activity or do any act which interferes with the safe operation of any vehicle.
- F. Control By Driver: No driver shall engage in any activity that interferes with the safe control of his vehicle while the same is in motion.
- G. Use Of Coasters, Roller Skates: No person upon roller skates, rollerblades, or riding in or by means of any coaster, sled, toy wagon, **non-motorized** scooter or similar device shall go upon any roadway or street or alley.
- H. Cutting Through Corners: No driver of a motor vehicle, motorcycle or vehicle of any kind, shall drive through any private driveway or private property, such as a gas station or lot, or similar areas, whether vacant or not, with intent to avoid obedience to any traffic regulations set forth in this Code; and no person shall drive a motor vehicle, motorcycle or any other vehicle through any private driveway, lot or similar area where any business establishment, manufactory, retail store, drugstore, cafe, confectionery, drive-in food and drink establishment or drive-in market or any other kind of business or trade is maintained or carried on for the purpose and with the intent of avoiding obedience to any traffic regulation or for the purpose and with the intent of harassing and annoying the owner thereof or his patrons. Driving by any person of a motor vehicle upon or through



any such private driveway, lot, or similar area without a visible display of slowing or stopping shall constitute prima facie evidence of a violation of this subsection.

**Section 2. Repealer:** Any provision or ordinances that are in conflict with this ordinance are hereby repealed.

**Section 3. Effective Date:** This Ordinance shall become effective immediately upon its posting in three public places within Clearfield City.

DATED this 14<sup>th</sup> day of June, 2022, at the regularly scheduled meeting of the Clearfield City Council.

CLEARFIELD CITY CORPORATION

---

Mark R. Shepherd, Mayor

ATTEST

---

Nancy R. Dean, City Recorder

VOTE OF THE COUNCIL

AYE:

NAY:

# CLEARFIELD CITY ORDINANCE 2022-14

## AN ORDINANCE AMENDING TITLE 1, TITLE 2, AND TITLE 14 OF THE CLEARFIELD CITY CODE

**PREAMBLE:** This Ordinance amends multiple chapters Title 1, Title 2, and Title 14 regarding amendments to Public Notice Requirements.

**BE IT ORDAINED BY THE CLEARFIELD CITY COUNCIL:**

### **Section 1. Enactment:**

*Title 1, Chapter 6, Section 5, Paragraph E – Mayor and City Council, Ordinances is hereby amended to read as follows:*

#### **1-6-5: ORDINANCES**

E. Publication And Posting: All ordinances, except those enacted pursuant to Utah Code Annotated sections §10-3-706 to §10-3-710, as amended, before taking effect, shall be deposited in the office of the city recorder. Publication and posting shall be in accordance with Utah Code Annotated §10-3-711 et. seq., as amended. Any state law relating to building or safety standards, city functions, administration, control, or regulations, may be adopted and shall take effect without further publication or posting if reference is made to the state code.

*Title 2, Chapter 2, Section 6, – Budget, Public Hearings is hereby amended to read as follows:*

#### **2-2-6: PUBLIC HEARING:**

At a meeting of the City Council at which the tentative budget is adopted, the City Council shall determine the time and place of a public hearing to consider the adoption of the budget and shall order that notice thereof be published at least seven (7) days prior thereto posting on the Utah Public Notice website, the City's website on the home page, and in three (3) conspicuous places within the city. At the time and place so advertised, the City Council shall hold a public hearing on the budget as submitted, at which all interested persons shall be given an opportunity to be heard, for or against, the estimates of revenue and expenditures or any item thereof in any fund.

*Title 2, Chapter 4, Section 5 – City Donations, Public Hearing is hereby amended to read as follows:*

#### **2-4-5: PUBLIC HEARING:**

Except those donations that qualify as exempt pursuant to section 2-4-7 of this chapter, prior to the City Council making any decision to appropriate any funds for a purpose under this section, a public hearing shall be held. Notice of the hearing shall be published on the Utah Public Notice Website, the City's website and in three public places at least fourteen (14) days prior to the date

of the hearing, or, if there is no newspaper of general circulation, by posting notice in at least three (3) conspicuous places within the city for the same time period.

*Title 14, Chapter 1, Section 11, Paragraph E – Impact Fees, Refunds is hereby amended to read as follows:*

**14-1-11: REFUNDS:**

E. Termination Of Program: When the city seeks to terminate any or all components of the impact fee program, all unexpended or unencumbered funds from any terminated component or components, including interest earned, shall be refunded pursuant to this section. Upon the finding that any or all impact fee requirements are to be terminated, the city shall place notice of such termination and the availability of refunds in accordance with Utah Code Annotated § 11-36A-601 et seq., as amended. All funds available for a refund shall be retained for a period of one year. At the end of one year, any remaining funds shall be retained by the city, but must be expended for the appropriate planned facilities. This notice requirement shall not apply if there are no unexpended or unencumbered balances within the impact fee account being terminated.

**Section 2. Repealer:** Any provision or ordinances that are in conflict with this ordinance are hereby repealed.

**Section 3. Effective Date:** This Ordinance shall become effective immediately upon its posting in three public places within Clearfield City.

DATED this 14<sup>th</sup> day of June, 2022, at the regularly scheduled meeting of the Clearfield City Council.

CLEARFIELD CITY CORPORATION

---

Mark R. Shepherd, Mayor

ATTEST

---

Nancy R. Dean, City Recorder

VOTE OF THE COUNCIL

AYE:

NAY:

## **Proclamation**

### **National League of Cities Small Cities Month June 2022**

**Whereas** small cities and towns under 50,000 population are the home to millions of Americans and constitute the vast majority of municipalities across the United States; and

**Whereas** small cities and towns strive to strengthen their communities through the provision of services and programs to improve the quality of life for all citizens; and

**Whereas** the federal government is an essential partner in the success of small cities and towns, and must be encouraged to continue to support programs and legislation that strengthen small communities; and

**Whereas** state governments are partners in the success of small cities and towns, and must be encouraged to continue to support key programs and legislation that strengthen communities; and

**Whereas** organizations, businesses, and citizens are partners in the success of small cities and towns, and must be encouraged to continue to grow their efforts to make small communities a viable choice for people to live in; and

**Whereas** during these challenging economic times, the need for a renewed intergovernmental partnership to support essential public services is more important than ever to ensure the safety and growth of small-town America; and

**Whereas** the National League of Cities President *and* the Small Cities Council of the National League of Cities have declared June 2022 as Small Cities Month;

**Now therefore**, the Council of Clearfield City does hereby proclaim June 2022, as Small Cities Month, and encourages President Biden, Congress, state governments, organizations, businesses, and all citizens to recognize this event, and to work together this month and throughout the year to invest in small cities and towns to better the lives of all citizens.

---

[Mayor's Signature]